

Common ground

Body Corporate and
Community Management
Newsletter



Issue 1
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Minister's message

Welcome to the inaugural edition of *Common Ground*, the biannual newsletter from the Office of the Commissioner for Body Corporate and Community Management (the BCCM office). This newsletter provides up-to-date information for lot owners, body corporate committees, body corporate managers, resident managers, caretaking service contractors and others interested in body corporate matters.

I am pleased to have the body corporate legislation added to my responsibilities within the Department of Justice and Attorney-General. There are strong synergies between the work of the BCCM office and other aspects of the department. I look forward to working closely with the community titles sector in the future.

The Honourable Kerry Shine MP
Attorney-General and Minister for Justice
And Minister Assisting the Premier in Western Queensland

The Commissioner's update

Welcome to our first newsletter. For those of you who are new to the community titles industry, the BCCM office provides:

- an information and education service to inform the community about their rights and obligations under body corporate legislation; and
- a dispute resolution service, including conciliation and adjudication, to assist in resolving body corporate disputes arising from community titles schemes.

The BCCM office also provides the department with information on policy issues affecting the community titles industry now and into the future.

It has been a busy and successful year for our office, implementing amendments to the *Body Corporate and Community Management Act 1997* (the BCCM Act) which commenced in July 2007 to enhance dispute resolution services.

In this issue

- Minister's message
- Commissioner's welcome
- Introducing conciliation
- Legislation update – water meters
- Questions and answers

Did you know?

There are nearly 36,000 community titles schemes in Queensland representing over 329,000 lots.

Stop press

On 18 April 2008 new approved forms were gazetted.

Necessitated by the change in departments, there are no substantive changes in the new forms. The new forms can be accessed from the BCCM office website

www.justice.qld.gov.au/bccm.

Contact details

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Queensland Government

Department of Justice and Attorney-General

The amendments included introducing a conciliation service for body corporate disputes and improving access to appeals of adjudicators' orders through the Commercial and Consumer Tribunal.

The BCCM office received 1,121 dispute resolution applications in 2007-08 and resolved 1,259 disputes. The office resolved 69 per cent of conciliation applications through the provision of an agreement between the parties. The average time to resolve a conciliation application from the date of lodgement was three weeks.

The adjudication process under the Act involves:

- initial case management of an application
- inviting submissions from affected parties
- providing the applicant with the opportunity to reply to submissions
- referring the dispute to adjudication
- investigation and order by an adjudicator.

The office aims to resolve 80 per cent of adjudication applications within 60 days of the close of the applicant's reply to submissions and I am pleased that we have resolved over 91 per cent of applications within this timeframe. Adjudicators' orders may be appealed on a point of law in the Commercial and Consumer Tribunal. Only 1 per cent of adjudicators' orders were overturned or altered on appeal during the year.

The provision of information and education services to the community helps people to understand their rights and responsibilities under body corporate legislation and contributes to harmonious community living. The office provides information via the telephone, in writing (including email) and over the counter. In the last financial year our office responded to over 24 000 client contacts.

The office also produces a wide range of information products for the sector. We

have introduced an on-line training unit on maintenance responsibilities in community titles schemes and information on body corporate records, including the impact of privacy legislation.

A major priority for the coming year is the review of the regulation modules underpinning the BCCM Act. A Regulatory Impact Statement on remaking the regulations was released in March 2007 for public consultation.

Introducing conciliation

Most applicants in disputes must apply for conciliation of their dispute before applying for adjudication.

Conciliation involves people in dispute meeting face-to-face or by teleconference with a trained conciliator who knows the legislation. The conciliator can facilitate a constructive discussion to assist the parties to reach a mutually acceptable outcome.

Agreements are made in writing and, if parties agree, they can seek a consent order from an adjudicator to make the agreement legally enforceable.

Conciliation gives disputing parties the opportunity to explore the real reasons for a dispute and to understand the legislation. In community titles schemes, disputing parties will often continue to live or work next to each other in the future.

Conciliation supports ongoing relationships and helps avoid future disputes by providing open communication channels.

In most cases the conciliation service resolves disputes without the need for adjudication.

Our office forwards client surveys to all participants in conciliation sessions. Over 75 per cent of respondents to the survey indicated they would recommend conciliation as a means of resolving future disputes and over 90 per cent of respondents agreed the application was dealt with in a timely manner.

Information service news

In addition to responding to day-to-day enquiries, the information service is busy pursuing a range of projects for 2008-09 including:

- promoting new regulation modules which are expected to commence in September and updating all BCCM publications accordingly
- developing a new on-line training unit on by-laws in community titles schemes; and
- conducting an annual survey to learn more about the community's needs in regard to our information products and services.

New laws on water meters

The *Water and Other Legislation Amendment Act 2007* requires all new multi-residential and non-residential developments which are connected to reticulated water supply to install individual water metering for their lots.

Amendments to the BCCM Act to support this initiative became effective from 1 January 2008. The amendments clarify the ownership of utility infrastructure providing water services in community titles schemes which commenced after 1 January 2008.

The amendments provide that a water meter for a community titles scheme established after 1 January 2008 and installed after 1 January 2008, in compliance with the *Plumbing and Drainage Act 2002*, on infrastructure supplying water to a lot or common property is not part of the utility infrastructure owned by the body corporate. Rather it is the property of the service provider supplying water under the *Water Act 2000*.

FAQs

The responses to the questions below are for readers' general information and should not be relied on as advice.

Accessing body corporate records

We receive a large number of enquiries from owners who have been denied access to records by their committee, the body corporate manager or both.

A new factsheet about record-keeping and access to body corporate records is now available.

Question:

I am a lot owner and want a copy of the 'Roll of Owners'. My body corporate and its manager have refused to give it to me, saying that privacy legislation applies. Can I see the roll?

Answer:

All "interested persons" have a right to inspect the body corporate records without giving a reason, and to get a copy of records, including the 'Roll of Owners'. An "interested person" includes a lot owner, an agent eg. a solicitor, a mortgagee, a prospective buyer, and "any other person who satisfies the body corporate of a proper interest in the information sought." See section 205(6) of the BCCM Act.

The record holder must allow inspection and copies to be taken. Bodies corporate should be aware that penalties can apply for not releasing this information. If you have any difficulty seeing the records, contact us.

An interested person may have to pay a small fee for inspecting and obtaining copies of the records.

The secretary of the scheme must have a copy of the roll available for inspection at all general meetings (Section 55 Standard Module).

Question:

I am a lot owner. I saw on the financial statements that I owe debts to the body corporate. I asked the committee what these debts are and was told that it's none of my business. Can I see financial

records and find out where these debts came from?

Answer:

Any “interested person” has access to any body corporate record, including financial records and information about a lot owner who may be in debt to the body corporate.

The secretary for the scheme must have available for inspection at any general meeting a list of the people who have the right to vote.

This list will not include members who cannot vote because they owe a debt (Section 55 Standard Module).

Water use

With the continuing drought conditions throughout many areas of Queensland, water usage has become an important issue for community titles schemes.

Question:

I am an owner in a community titles scheme with six lots. How can I go about getting my body corporate to install a water tank for use on our common area garden?

Answer:

The self-management of community titles schemes is a fundamental principle under the BCCM Act. This includes owners making decisions about improvements to common property through a general meeting.

A body corporate may pass an ordinary resolution to install a water tank on common property at a general meeting. However, if the total cost of installation is more than \$300 per lot (in your case \$1,800), the decision must be made by a special resolution at a general meeting.

You may wish to discuss your idea with other owners, get some quotes on the total cost of the installation and propose a motion at the next annual general meeting.

Question:

I own a lot in a community title scheme which commenced in 1997. Our body corporate has just installed individual water meters for each lot but I was told that the local council will only read the meter at the front of the property. What options are there for older bodies corporate to measure and charge for water in their scheme?

Answer:

The BCCM Act provides a flexible framework for lot owners in community titles schemes to make decisions about charging for and managing water consumption in their scheme.

The options provided for schemes established prior to 1 January 2008 are:

- the water service provider may charge lot owners directly according to individual metered usage, where lots are individually metered and meet the requirements of the water service provider
- the body corporate may accept payment of total scheme usage and then levy owners according to:
 - individual measured usage or
 - if the supply cannot be measured, equally between lot owners or proportionately among the lot owners, according to the contribution schedule lot entitlement for each lot or
 - the water service provider may charge lot owners on the basis of the property values or in proportion to the contribution schedule lot entitlements for their lot.

Measuring and charging for water use in your scheme is a matter between your body corporate and your water service provider.

You can apply to the committee and request that the body corporate considers charging owners according to individually metered usage. You can also submit a motion to a general meeting seeking approval of this proposal.