

## Commissioner Foreword



Welcome to our first quarterly Common Ground edition for 2022.

I have been acting in the Commissioner role for the past three months. The team has faced some challenges during this time, including COVID isolations, delayed starts to school year and flooding to our South Brisbane building. Thankfully there has been limited disruption to customers as we continue to provide our Information and Dispute Resolution services.

It was my pleasure to be invited to speak at the Strata Community Association (QLD) annual conference at the Gold Coast in March 2022. I spoke about general growth in the community titles sector and recent notable adjudication decisions.

Our articles this quarter are focussed on relationships within community titles schemes. Our first article provides you with information about how to effectively communicate with each of the key players in a scheme - owners, committee members and the committee.

Our second article is about harassment, bullying and abuse in community titles schemes. This article focusses on what to do when there is a breakdown in communication between key parties.

I hope you are staying safe after this most recent weather event and if you require any information on how to deal with storms in a body corporate setting you may wish to read our webpage titled [storm damage](#) or contact our Information and Community Education Unit on 1800 060 119.

I would like to take this opportunity to remind you that the legislation amendments which commenced in 2020 to assist bodies corporate dealing with issues arising from COVID-19 come to an end on 30 April 2022. However, due to the new body corporate regulations which commenced on 1 March 2021, bodies corporate remain able to make decisions in relation to electronic attendance and voting at [committee meetings](#) and [general meetings](#).

I hope you have a happy and safe Easter.


**Sarah Zeidler**  
A/Commissioner for Body Corporate and Community Management



## Body Corporate Communications

The transition from life in a detached dwelling, where one is accustomed to a degree of autonomy, to life in a body corporate is a challenge for many residents.

How well the realities of community living are managed hinges upon communication. It is not an overstatement to say that good communication is the cornerstone of an effective body corporate. Where the ties of communication are strained or damaged, conflict inevitably follows, too often ending up as a dispute application in the BCCM Office.



We have observed that, while on its surface an application might relate to a problem such as a busted pipe, a rowdy neighbour, an unauthorised improvement to a lot, a pet application that has been rejected, or a bad body corporate decision, it is commonly poor communication – in its many forms – that has cultivated the seeds of dispute.

## Communication between residents

Living in close proximity to other residents is characteristic of community living. It follows that residents must do their utmost to be considerate and avoid placing unreasonably high expectations on each other. For example, you are more likely to experience noise issues where someone is living directly above you, or where you share a common wall with another lot. Also, it is important to bear in mind that all residents have the right to use and enjoy common property areas, provided it is within the parameters of the by-laws for the scheme and the relevant legislation.

Where a concern about another owner or occupier escalates to the point that it needs to be addressed, be mindful that how you communicate initially can set the tone for the remainder of your interactions with that person. As they may be unaware of the impact of their behaviour on others, immediately switching into combat mode is unnecessary and more likely to be counterproductive. So, rather than venting your frustration by demanding to ‘keep the noise down’ or to ‘get your leaking pipe fixed’ in an abrasive manner, ensure that your first attempt at communicating the issue is non-confrontational.

A polite letter explaining the situation or, depending on your existing relationship, a friendly chat in person, is potentially all it takes to remedy the situation.


## Communication between the committee and residents

We often hear from residents who are vexed by their committee’s failure to respond to questions or correspondence. We consistently advise that body corporate legislation does not govern general communications and does not oblige the committee to respond to questions or correspondence from residents. Where time permits, it may be preferable for the committee to acknowledge receipt of correspondence from residents to avoid unnecessary disputes or further correspondence caused by insufficient communication. While the body corporate is required to act reasonably in the circumstances – it may not be reasonable for volunteer committee members to expend limited time and resources responding to all correspondence.

In some schemes owners and occupiers believe that the committee’s role extends to acting as the body corporate ‘police squad’. While it is true that the committee has been elected to make decisions on behalf of the body corporate and tend to the day-to-day running of the scheme, membership is not a permit to unduly impose upon or harass residents. When communicating as a committee member, it is important for those communications to be courteous and professional. Limiting your involvement in the private lives of residents wherever possible as a committee member also minimises the potential for conflict. However, some situations may demand a firmer approach. It is for the committee to act reasonably when communicating and to strike the appropriate balance in the circumstances.

When communicating with committee members, residents must recognise that these positions are typically unpaid and avoid setting unrealistic standards. Adapting your communications accordingly to reflect this fact is worth considering. Limiting the amount of correspondence so as not to bombard volunteer members with excessive communications may be a good starting point.

If there is a legitimate issue you would like the committee to consider, an owner can submit a motion. While there is no statutory obligation on the committee to respond to general complaints or correspondence, the legislation specifically provides that an owner can submit a motion to the committee to be decided within the ‘decision period’ (within 6 weeks after the day the motion was submitted, or up to 12 weeks at most if the committee notifies the owner that more time is needed than the initial 6 weeks). A motion should state the *specific action* you want the committee to take to resolve the problem. If the committee does not decide within the decision period, or



an extended period, the motion is deemed declined. You can read more about [drafting motions](#) on our website.

## Communication between committee members

Committee members occasionally feel that they are being excluded from committee correspondence and discussions. As all committee members have equal voting power, there should be no reason to exclude certain members. Doing this only serves to exacerbate any negative feelings and promote further division within the group.

There is often confusion around the ‘conflict of interest’ provision in the regulations. To clarify, it does not mean that a committee member who has a direct or indirect interest in an issue being considered is to be excluded from all communications around the issue. It simply means that the member is required to disclose that interest to their fellow committee members and not vote on the issue.

While the legislation doesn’t regulate communication between committee members, it requires the committee to act reasonably when making decisions. Being inclusive and keeping the lines of committee communication open helps to maintain good working relationships.

## Internal dispute resolution processes

Developing internal dispute resolution processes may prove an effective means of promoting open communication in a body corporate. In addition to encouraging the free flow of communication, it enables grievances to be aired in a controlled environment, thereby deterring residents from lodging formal dispute applications.

Some examples of possible internal processes include mediation or meetings of some kind. Also, not quite an internal dispute resolution process – but still helpful – is the appointment of a committee member as the first point of contact where practical. These options could be proposed by the committee, or they could be submitted for consideration as a motion from an owner.

Enabling residents to voice their concerns internally means that they are less likely to view a formal dispute application through this office as their only hope of a resolution. Once an issue escalates into an application in the BCCM Office, the reality is that the ties of communication will be strained considerably, and relationships will be harder to preserve.

## Communication by-laws

Many of our clients experiencing communication issues are surprised to learn that the body corporate legislation does not specifically regulate communication. As the legislation is largely geared towards self-management and flexibility for schemes, communication is, for the most part, an internal matter.

In some situations, stronger measures may be needed to regulate inappropriate communication and keep residents accountable. Implementing by-laws that regulate communication may assist here.

For example, where a resident is persistently inundating the committee with correspondence or communicating in an offensive manner, a communication by-law may prove effective. In the decision of [Tank Tower \[2015\] QBCCMCMr 322](#), the body corporate adopted the following by-law:

*Owners and occupiers must communicate with the Committee in a reasonable manner and not in any way which may become an annoyance or a nuisance to any Committee member.*

In considering this by-law, the adjudicator noted that it was “entirely appropriate...to expect communications to be reasonable, respectful, constructive, and not a nuisance” considering the extensive responsibilities of the volunteer voting committee members and the paid non-voting members (namely, the body corporate manager




and the committee).

The adjudicator also determined that the respondent had clearly breached the relevant by-law. The volume of correspondence together with the abusive content were both found to be indicative of a failure to communicate in a reasonable manner.

When creating a new by-law to address issues of this nature, a body corporate should nevertheless bear in mind the limitations for by-laws in [section 180](#) of the *Body Corporate and Community Management Act 1997*. If a by-law is adopted that does not comply with section 180, the body corporate runs the risk that an adjudicator may decide that the by-law is invalid. For further information, you can search for similar orders about communication by-laws online via the [Australasian Legal Information Institute](#).

It is evident that good communication goes hand in hand with the smooth and efficient running of a body corporate. As we have outlined, there are various attitudes and measures the body corporate and its residents can employ to support productive communication and avoid fracturing fragile relationships permanently. In most cases, stopping a dispute before it gets through the doors of the BCCM Office is in the best interests of all involved. The strain on time and emotions makes formal dispute applications something to avoid where possible. Fostering healthy communication is critical and its value to a scheme should not be underestimated.



## Harassment, bullying and abuse – a body corporate perspective

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office) sometimes receives dispute resolution applications that raise emotive and concerning claims of harassment, bullying or abuse.

When people disclose these personal experiences, it is clear that these difficulties and challenges would benefit from a resolution.

However, under current legislation, there is no capacity for the BCCM Office to provide dispute resolution services in relation to allegations of harassment, bullying or abuse.


Sometimes parties seeking to have unacceptable behaviour addressed lose valuable time lodging applications that we are unable to progress because they do not fall within our jurisdiction, when other avenues or agencies would be of more assistance in their situation.

This article provides general information about some of the options that may be available. However, as the BCCM Office is not able to give legal advice about what steps a person should take in relation to a dispute, parties seeking legal advice should direct their enquiries to a qualified legal practitioner.

### BCCM office jurisdiction

The [Body Corporate and Community Management Act 1997](#) (the Act) defines the disputes that our office can deal with. Generally, a dispute must be about a claimed or anticipated contravention of the Act or the Community Management Statement (CMS) or the exercise of rights or powers or the performance of duties under the Act or the CMS.

There is no provision under the Act that considers or defines ‘harassment’. Accordingly, even though a party



might be experiencing considerable distress at what they perceive to be harassment, there is no jurisdiction for the BCCM Office to consider disputes about whether a person's behaviour constitutes "harassment".

Similarly, the Act does not deal with 'bullying'. Bullying is a term which has particular meaning in other contexts, for example, in relation to workplace health and safety. While this is not something on which the BCCM Office can advise or has jurisdiction over, further information about bullying in a workplace context can be found at <https://www.qld.gov.au/law/your-rights/workplace-rights/harassment-and-bullying/>.

Like harassment and bullying, 'abuse' is not a term which is contemplated under the Act and thus there is no capacity for the BCCM Office to provide dispute resolution services in relation to allegations of abuse. While the BCCM Office does not have jurisdiction over these matters, there can be avenues for addressing these types of issues under body corporate laws and BCCM dispute processes in some situations such as breaches of by-laws.

## **Possible options for addressing owner/occupier behaviour under body corporate law**

Nuisance and by-law provisions in body corporate legislation may provide avenues for addressing unwanted behaviour of other owners or occupiers through body corporate or BCCM processes.

### **1. Nuisance**

'Nuisance' is a concept provided for under [section 167](#) of the Act.

This provision comes with particular qualifiers and is not a general 'catch-all' about any action which might be regarded by the body corporate, or another occupier, as a nuisance.

Specifically, the section about 'nuisance' provides that an occupier *"must not use, or permit the use of, the lot or the common property in a way that—*

- (a) causes a nuisance or hazard; or*
- (b) interferes unreasonably with the use or enjoyment of another lot included in the scheme; or*
- (c) interferes unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property."*

Accordingly, the onus will be on the applicant in a dispute to ensure the nuisance provisions are satisfied such that they can provide evidence that an occupier has used, or permitted the use of, a lot or the common property resulting in an outcome including (a), (b) or (c) above.

#### **a. Steps an owner or occupier can take regarding nuisance in their body corporate scheme**

If a resident's use of their lot or common property causes a nuisance or hazard to another owner or occupier, they may be able to apply to commence a conciliation process in BCCM to assist them to resolve the issues they are experiencing.

However, before an owner or occupier does so, they must first attempt '[self resolution](#)' directly with the resident causing the nuisance.

This means they must first try to resolve matters with the resident causing the nuisance or hazard themselves. A good first step in these situations can be to initiate a conversation with the other resident involved, or to write to them asking them to stop the behaviour that is alleged to be beyond what is reasonable for day-to-day living.

Putting this request in writing can assist the owner or occupier to establish there is an ongoing or "current dispute" about these issues if their written requests are ignored or declined and it becomes necessary for them to lodge a [conciliation application](#) with BCCM to assist them to resolve matters.

## **b. Steps the committee can take regarding nuisance caused by an owner or occupier**

The case of [Tank Tower](#) considered whether the large volume and nature of a lot owner's correspondence to their body corporate and its representatives constituted statutory nuisance and/or a breach of their by-laws.

The Adjudicator said *"Receiving and responding to correspondence from owners is a normal part of the administration of a body corporate. I consider that, providing it acts reasonably in doing so, a committee is entitled to set conditions on how owners communicate with the body corporate to ensure that correspondence is handled efficiently and to minimise the resource impacts. For example, committees commonly specify an address for correspondence, a primary point of contact for queries, or request communication in writing so that there is a record of the issue"*.

This suggests that, depending on the facts and circumstances, it may be possible for a body corporate to satisfy the test for nuisance under section 167 of the Act if, for example, the body corporate committee is receiving voluminous correspondence from an owner, and the correspondence is of a nature and a frequency that would interfere unreasonably with a person of ordinary sensitivity.

Relevantly, the changes to the body corporate Standard Module Regulation that commenced on 1 March 2021 also assist in addressing this type of behaviour, as the new Regulation provides that the committee is not required to decide about an owner's motion if the lot owner has, within the last 12 months, submitted:

- a motion about the same issue; or
- six or more motions.

Committees in this situation are required by legislation to advise the lot owner that they are not resolving the motion for one of these reasons.

## **2. By-law enforcement**

By-laws are the rules that a body corporate makes to control and manage its community titles scheme. Bodies corporate commonly have by-laws that regulate how owners and occupiers can use their lots or common property, such as a noise by-law, flooring by-law, pet by-law, parking by-law, or communications by-law. The body corporate is responsible for enforcement of the scheme by-laws.

If a body corporate has by-laws as part of its community management statement (CMS) that touch upon issues that are related to, or underlying, the behaviour of the owner or occupier who is causing concern, enforcement of these by-laws may ultimately resolve the issues being experienced.

A copy of the scheme CMS and by-laws can be obtained by contacting Titles Queensland on 07 3497 3479.

Further information about the process for enforcing scheme by-laws can be found in [Practice Direction 6](#).


### **a. Steps an owner or occupier can take to enforce body corporate by-laws**

As outlined in Practice Direction 6, if an owner or occupier believes another resident is breaching any of the registered by-laws as recorded in their scheme's CMS, they can ask the body corporate committee to [enforce the by-laws](#) by issuing the body corporate committee with a [BCCM Form 1](#).

### **b. Steps the committee can take to enforce body corporate's by-laws**

If a body corporate believes that an owner or occupier is breaching scheme by-laws, the body corporate committee can speak to the owner or occupier informally to try to fix the issue.

If that does not work, the first formal step the committee must take to enforce the relevant by-law is to give a by-law contravention notice to the person it believes is breaching the by-law. While it is not compulsory to do so,



committees are encouraged to use [BCCM Form 10](#) when giving a contravention notice about a by-law breach it considers is likely to continue, or [BCCM Form 11](#) in other cases, as these forms have been designed to meet legislative requirements for a valid contravention notice.

The decision to give a by-law contravention notice can be made by the committee, or the body corporate at a general meeting.

The body corporate usually cannot take action to enforce the by-laws until it has sent a by-law contravention notice.

### ***c. Making a new by-law***

If a body corporate does not have by-laws as part of its CMS that touch upon issues related to, or underlying, the behaviour of the owner or occupier who is causing concern, the body corporate may wish to consider [making by-laws](#) to regulate nuisance behaviour.

For example, per the case of [Tank Tower](#), a body corporate could consider making a (new) by-law to expect communications to the body corporate to be reasonable, respectful, constructive and not a nuisance.

## **Possible options for addressing behaviour of service contractors under body corporate law**

When concerns exist about the conduct of a body corporate manager or another service contractor (as opposed to an owner or occupier), in the first instance, they can be raised with the body corporate committee, or the professional organisation to which the service contractor belongs.

If concerns are not resolved through these informal processes, body corporate legislation allows a body corporate to terminate an engagement with a body corporate manager, service contractor, or letting agent, for:

- engaging in misconduct
- being grossly negligent (extremely careless) in carrying out their functions under the engagement
- failing to perform duties as required under the engagement (contract with the body corporate)
- failing to comply with the [code of conduct](#)
- failing to comply with disclosure requirements.

However, before doing so, the body corporate must issue a remedial action notice (RAN).

The RAN must:


- state that the person has not met their obligation in a way mentioned above
- include specific details that identify the issue (such as the duties not carried out)
- provide a notice period (no less than 14 days) during which they must remedy the issue
- state that if they do not comply with the notice within the notice period, the body corporate can terminate the engagement.

While the decision to issue the RAN can be made by a body corporate committee, the decision to terminate an engagement must be by ordinary resolution at a general meeting.

## **Other avenues for assistance**

It is important to remember that any individual with safety concerns as a result of threats of violence, abuse or harassment from others in their scheme can report their concerns to the Queensland Police Service. Reports can be made online at [www.police.qld.gov.au](http://www.police.qld.gov.au) or by calling 131 444.

In addition to seeking legal advice, parties needing help to resolve other interpersonal conflicts in their body corporate that do not involve BCCM matters may also wish to consider the neighbourhood mediation services



offered by the Dispute Resolution Branch of the Department of Justice and Attorney-General. Further information about these services is available at <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/mediation-services/neighbourhood-mediation>



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