

Commissioner Foreword



Welcome to our new look common ground.

This year my Information Service hopes to send the e-newsletter more regularly. The new look will include frequently asked questions, a topical article, any upcoming events, new information products available and Office updates.

An important update for the Office is that I have been successful in securing the acting Commissioner role whilst Chris Irons is on a study sabbatical with the Queensland University of Technology. At this stage I will be in the position until 30 June 2018.

I join BCCM from the Queensland Building and Construction Commission where I lead the state-wide regulatory functions as Assistant Commissioner. I also held a statutory position as a member of the Service Trades Council and was a member of an Audit Taskforce established by the Queensland Government to tackle non-conforming building products including the exterior cladding of Queensland buildings.

Before joining QBCC, I worked in the Department of Justice and Attorney-General as a Compliance Director at the Office of Fair Trading and prior to that, as Director Investigations at the Office of Liquor and Gaming Regulation. I have also worked at Building Codes Queensland, Department of Local Government and Planning and the Environmental Protection Agency, supporting a number of statutory entities over the years, and representing Queensland on a COAG initiative.

I come to BCCM with over 20 years of experience in the Queensland Government, 10 of which have been in senior leadership positions.

My qualifications include a Bachelor of Arts in Criminology and Criminal Justice. I am a member of the Queensland Law Society, the Australian Institute of Company Directors and the Australian and New Zealand Society of Criminology.

I am looking forward to working in BCCM and I can see that there are a lot of synergies with BCCM's good work and that of my previous workplaces. I am keen to learn about all things body corporate in the coming months.

I encourage you all to register for the upcoming Information seminars so that you too can increase your knowledge in this area. I hope to attend some of these events so look forward to possibly meeting you in person.

If you are not yet a *Common Ground* subscriber, you can subscribe online by [clicking here](#).

You can call my Information Service on 1800 060 119 for any body corporate queries you may have.

Esther Blest
A/Commissioner
Office of the Commissioner for Body Corporate and Community Management





Frequently Asked Questions

Here at the Commissioner's Office, we are only too happy to answer questions (assuming they're ours to answer) and to give information about body corporate matters.

That said, it's fair to say that there are some queries that we hear regularly.

With this in mind, I present to you our list of *10 questions that are often asked*.

1. Someone requests a copy of the body corporate roll. The body corporate also has the email addresses and phone numbers of owners. Does the body corporate need to release all the information held or just the names and addresses of owners? Are there any privacy issues with sending out these details?

A body corporate (and a body corporate manager) must release body corporate records upon request and payment of the prescribed fee. Body corporate records are not subject to privacy laws.

The supply of information from the body corporate roll has been addressed in a number of adjudicator's orders. In [Club Lodge \[2010\] QBCCMComr 223 \(24 May 2010\)](#), the committee sought an order requiring the body corporate manager to provide unit owner and agent contact details. The adjudicator in this case ordered:

“that, within seven (7) days of the date of this order, [the body corporate manager] must provide all contact details for owners of lots within Body Corporate for Club Lodge, and their agents, that are within its possession and which were given to it in its capacity as body corporate manager for the scheme”

While the order referred only to the committee being provided with all contact details of owners, in the adjudicator's reasons for decisions the adjudicator made particular reference to the *Privacy Act 1988* and the requirement to release all information contained on the roll or other records, including email addresses and telephone numbers. The release of the information related not only to committee members but also interested persons as defined by [section 205](#) of the *Body Corporate and Community Management Act 1997* (BCCM Act).

2. Someone has requested a copy of the financial statements for each year from 2012 to 2015. It's going to take time for the records to be located and to copy them. Can the person (e.g. the body corporate manager) doing that work charge the prescribed inspection fee as well as the copy fee? Can any additional charges be passed on to the requesting party?

No. If the interested person is requesting photocopies of body corporate records, they only need to pay the copy fee (\$0.65 per page). They do not need to pay the fee for inspecting the records.

With respect to additional fees being charged, this has been considered in many past adjudicator's decisions and the same approach has been consistently applied since. In [Avant-Garde Apartments \[2001\] QBCCMComr 576 \(16 November 2001\)](#) the adjudicator stated:

*“...I do wish to make some comment on the resolution which has been carried by the body corporate regarding the provision of information ...to owners....
....The body corporate is not permitted to impose additional charges or fees on the provision of information to interested persons, or at least is not entitled to seek to recover those fees from such persons. If a manager, or other person, requires the payment of additional fees for the provision of information to interested persons, then this is a matter between the body corporate and the manager or other person providing the information on behalf of the body corporate. The interested person being provided with the information is only required to pay [the prescribed] fee... Any separate professional charge above this prescribed fee is a matter for the body corporate....”*

3. Can GST be charged on prescribed fees payable to the body corporate?

GST is governed by federal law and the Australian Taxation Office should be consulted in regards to any queries on GST. However, the prescribed fees in the BCCM Act and its regulations are GST free.

If a body corporate management company or other supplier of records is registered for GST and must charge for their services, the GST component of those charges should be billed directly to the person to whom their services are being provided under contract.

In [Ocean Resort Village \(No 1\) \[2014\] QBCCMComr 397 \(30 October 2014\)](#) the adjudicator stated (emphasis added):

“...the body corporate is required to retain certain records, and to make those records available to “interested persons” (including lot owners) within 7 days of receiving a request accompanied by the prescribed fee. The body corporate is to either provide copies of records, or permit an interested person to search the records, as requested by the interested person...”

Bodies corporate are not at liberty to inflate the prescribed fees. The fees have the force of law and must be levied at precisely the rate stated in [the legislation].”

4. I don't have a copy of the legislation. Where do I get it from?

The legislation printing service – Lit Support - can supply hard copies of the legislation upon payment. They can be contacted on (07) 3223 9200. Alternatively electronic copies can be viewed on our website at www.qld.gov.au/bodycorporate under the heading 'Body corporate legislation' or on the Office of Parliamentary Counsel's website www.legislation.qld.gov.au.

5. A motion was voted on at a recent general meeting and required a special resolution to pass. The votes were 21 'Yes', 7 'No' and 3 Abstain. There are a total of 40 lots. As this motion didn't get 75 per cent in favour am I correct that the motion failed?

The information service is not able to work out calculations to determine if a motion has passed or not. However general information can be provided on how votes are counted. Counting votes by special resolution has three elements that must be satisfied for the motion to pass. The first element states that two-thirds of the votes cast must be in favour of the motion. Two-thirds is approximately 66.6 per cent not 75 per cent as commonly believed. The words 'votes cast' means you should add up the 'yes' and 'no' votes and then calculate 66.6 per cent of the total. The number of 'yes' votes must be at least 66.6 per cent of the votes cast.

The second element is calculating the percentage of 'no' votes out of the total number of lots. There must not be more than 25 per cent of the number of lots against the motion.

The third and last element to the counting of votes for a special resolution is to consider the contribution schedule lot entitlements of all the lots and then specifically the contribution schedule lot entitlements of those lots that voted against the motion. If all the lots have equal contribution schedule lot entitlements then this element is the same as the previous one.

If the lot entitlements differ, the body corporate must ensure the total contribution schedule lot entitlements of those lots who voted against does not exceed 25 per cent of the total contribution schedule lot entitlements for all the lots.

If all three elements were passed, the motion is passed by special resolution.

6. Tenants keep contacting the body corporate about breaches of by-laws and maintenance issues. The committee and body corporate manager have told them to contact their property agent who can then liaise with the body corporate. Is this okay?

No. Tenants have rights under the body corporate legislation. Specifically, they are referred to as occupiers in the legislation. Therefore, the body corporate (including its committee and the body corporate manager) should communicate directly with the tenant. In some instances it is actually required by law that the body corporate communicate directly with the tenant. For example, if a tenant contravenes the body corporate's by-laws, the committee serves the contravention notice to the tenant, naming the tenant, and gives a copy to the owner. The tenant also has rights to raise concerns about maintenance issues and request the body corporate take action. There are also a number of other matters that the tenants should be communicating directly with the body corporate about.

7. Can an EGM be conducted by postal vote?

Not for all schemes. Schemes registered under the Small Schemes Module and the Commercial Module may vote outside general meetings (*section 111* of the BCCM Act). However, schemes registered under the Standard Module and Accommodation Module cannot conduct general meetings by postal vote. They must be called and held in the way provided under the regulation.

8. Can the body corporate, in a standard format plan, pass a motion forcing owners to vote on painting the scheme and use body corporate sinking funds?

Under a standard format plan (previously known as a group title plan), the boundaries of lots are defined horizontally with references to marks on the ground or a structural element (for example survey pegs in the ground or the corner of a building) and may be unlimited vertically (*Section 48B* of the *Land Title Act 1994*). The boundaries of lots are determined by measurements shown on the survey plan along with marks placed on the ground at the time of the survey.

The building on a lot in a standard format plan of subdivision is part of that lot, and not part of common property. A lot owner is responsible to maintain the lot in good condition. Therefore, the lot owner is responsible for the maintenance of the building, including painting the building and maintaining the roof. The responsibility of a lot owner in this regard is not altered if the building is "stand alone" as opposed to being part of a block including a building or buildings on another lot or lots in the scheme.


As a result, unless the body corporate has the agreement with each owner to supply and charge those owners individually for the service, the body corporate cannot force the painting of the lot or use body corporate funds for a lot owner's expense.

If the body corporate gets the agreement of all owners to do the work, then they must seek payment of the full cost of the job from the owners; they can't make the job a sinking fund cost.

9. Our scheme is doing a roof replacement because the roof has fallen into disrepair and this is the only option to maintain the roof. What type of resolution is required?

Maintenance above the committee's spending limit is always an ordinary resolution. The type of resolution does not change simply because of the cost of the maintenance.

Only if the work is considered an improvement will the cost of the improvement affect the resolution required to pass the motion.



It is often considered by adjudicators that if the roof is being replaced 'like for like' (e.g. terracotta tiles are being replaced with terracotta tiles), then this is maintenance, even if the whole roof is being replaced. If the roof is being improved (e.g. replacing terracotta tiles with powder-coated aluminium roofing), then the '[ordinary resolution improvement range](#)' will determine whether or not the motion must be passed by ordinary resolution or special resolution.

10. Can an 'unfinancial' owner submit a motion for a general meeting or be a part of a request for an EGM?

Yes. The legislation does not take the financial standing of an owner into consideration when exercising their right to submit motions or be a part of the 25 per cent of owners to request an EGM. Their financial standing is only an issue when voting at general meeting, as well as being nominated or elected to the committee.

When in doubt about the interpretation or implementation of any aspect of these Qs and As, legal advice should be considered.

For further information about the enforcement of by-laws or for general queries about the body corporate legislation please contact our Information Service on Freecall 1800 060 119, email bccm@justice.qld.gov.au or see our website www.qld.gov.au/bodycorporate.



Committee eligibility

As the day-to-day decision-making body on behalf of their body corporate, the body corporate committee plays an integral role. Its composition and a person's eligibility (or not) for membership of the committee can sometimes be a hotly-contested subject.

There are a few important points to remember, particularly on the topic of eligibility. This is general information intended as a guide and may not be relevant in all cases.


The position of a voting member of the committee becomes vacant (known as a casual vacancy) if the member:

- resigns in writing to the chairperson or secretary;
- is not present personally or by proxy at two committee meetings in a row without the committee's consent;
- is convicted of an indictable offence (i.e. a more serious crime, whether or not a conviction is recorded);
- is removed by an ordinary resolution of the body corporate;
- dies; or
- becomes ineligible to hold the position.

A member can become ineligible to hold a committee position if they:

- were a lot owner at the time they were elected, but have since stopped being a lot owner;
- were not a lot owner but were nominated by a lot owner who has since stopped being a lot owner; or
- have been engaged as a body corporate manager or service contractor or authorised as a letting agent.

In relation to ceasing to be a lot owner (i.e. due to the sale of the lot), ineligibility commences on settlement, not, for example, when the contract of sale is signed.



We sometimes hear of instances where someone has stopped being a lot owner, but either they want to continue being part of the committee, or the body corporate wants them to remain on the committee.

There may be some good reasons for this. For example, the former lot owner might have some considerable business or other experience and expertise which would be useful to the committee and the body corporate as a whole.

There is nothing preventing the committee from seeking input or advice from this person. From a best practice point of view, if a committee is considering 'using' someone in this way, it might be a good idea for them to be as clear and transparent as possible about it, for example, by communicating to the body corporate what the person's role is (and is not).

Then there is the matter of possible removal of a committee member. Before taking these step, committees and bodies corporate in this position should carefully reflect upon their intentions and the consequences of their possible actions, prior to undertaking a removal process.

It might be a lot simpler (and a lot less confrontational in the long run) to try to informally resolve whatever issues exist that lead to a committee or body corporate trying to remove a committee member. Strange as it may sound, the committee member in question may not be fully aware of these issues, so talking about the issues first could go some way to getting them resolved.

Where there are personality or communication issues involved, getting an alternative dispute resolution process in place could be a good idea. This might be as simple as having the committee member in question sit down with another committee member or members, together with someone else who could be relied upon to impartially encourage a resolution.

Remember that removing a committee member may result in long-lasting animosity and disharmony, so undertaking a formal process of removal should be something to be pursued where all other options have failed.

There are two ways to remove a committee member.

The first way is removal via the code of conduct for voting committee members. It is a reasonably prescriptive process, outlined in more detail on our [removing committee members](#) webpage. It is a process based on the principles of natural justice, which means that the committee member in question is given the right of reply to the notice of alleged breach of the code.

The second and, arguably, simpler method is to seek to remove a member from office by ordinary resolution at a general meeting. The person submitting the motion to a general meeting does not need to give the reason for the removal, although if said motion refers to the code of conduct then the process outlined at the link above would have to apply.

As we see from time-to-time in all levels of government, eligibility for and removal from office prompts fierce interest from all sides. So questions about eligibility for and removal from office in a body corporate context should be carefully considered – with qualified legal advice sought as necessary – and decisions about either matter should not be taken lightly.

For further information about the body corporate legislation please contact our Information Service on Freecall 1800 060 119, or visit our website www.qld.gov.au/bodycorporate.

BCCM update

We have again had a busy few months at BCCM, some of which Esther has briefly outlined in her foreword. Below are details of further matters that may be of interest to you.

Commissioner goes back to school

BCCM Commissioner, Chris Irons, has gone 'back to school' this year, taking up a 6 month placement at the Queensland University of Technology (QUT).

Chris is studying 'service science' which, in simple terms, means applying business economics and IT-related methods to come up with ways to enhance service delivery.

Chris' placement is part of the Public Service Commission's "Leader Connect" program, which aims to connect public service leaders with the latest in academic thinking.

While Chris is away, Esther Blest is acting in his role. Esther wrote the foreword to this issue of Common Ground, and comes to the BCCM with many years of relevant experience, including as an Assistant Commissioner at the Queensland Building and Construction Commission.

Information Seminars

Next week we will be holding the first of our information seminar events for the year. This year, our seminars are concentrating on the popular topics of access to body corporate records, enforcing by-laws, and making body corporate decision. We have good enrolment numbers for our Redcliffe and Kedron/Wavell events, so thank you to those who have registered!

If you are interested in any of our other events, please don't forget to book your spot at the following upcoming session, as they are filling quickly.

Date	Time	Venue
Wednesday 11 April 2018	10am - 12pm	Fitzy's 153 Margaret Street Toowoomba QLD 4350
Wednesday 18 April 2018	2pm - 4pm & 6pm - 8pm	Maroochy RSL Memorial Drive Maroochydore QLD 4558
Friday 20 April 2018	10am - 12pm	Coorparoo RSL and Community Club 45 Holdsworth Street Coorparoo QLD 4151
Wednesday 9 May 2018	10am - 12pm	Orion Hotel 1 Main St Springfield QLD 4300
Thursday 17 May 2018	2pm - 4pm	Brothers Sports Club 130 Takalvan Street Bundaberg QLD 4670
Friday 18 May 2018	10am - 12pm	Hervey Bay RSL 11 Torquay Road Pialba QLD 4655
Monday 28 May 2018	2pm - 4pm & 6pm - 8pm	North Burleigh Surf Life Saving Club 293 the Esplanade Miami QLD 4220

Go [here](#) to register. We are looking forward to going further up north later in the year.



Practice Directions

Recently we have uploaded a new practice direction to our website. [Practice Direction 35](#) addresses the process of interacting with our office during dispute resolution for those parties that are travelling or residing overseas.

Website changes

Thank you to everyone who participated in our card sort and tree jack activities to help us work out the best way to structure our website. The final structure has now been implemented. We are hoping it is easier for customers to navigate our webpages to find the information they are looking for about bodies corporate.

The changes have affected some of our links and we encourage you to update any favourite website that you have saved as they may no longer work. You may also want to look at your own business websites to ensure that the links you had on your site to our pages still work.



Body Corporate and Community Management

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