

Commissioner Foreword



Welcome to the new financial year and edition 18 of Common Ground.

Much has happened since my first foreword to you in March 2018 including the completion of stakeholder engagement events. The team and I have enjoyed meeting many of you at these events held across the State. These seminars have been a great opportunity for body corporate stakeholders and the Office of the Commissioner for Body Corporate and Community Management (BCCM Office) to tackle the issues currently facing Community Titles Schemes, to discuss the legislative framework which supports body corporate dispute resolution and most importantly, to hear first-hand from you what you are currently dealing with on the frontline.

Feedback from all forums attended is that the information has greatly assisted those working or living in the body corporate sphere gain a clearer understanding of their rights and responsibilities and about the role of the BCCM Office. We are now

preparing our engagement strategy for the next year ahead, taking on board suggestions made regarding topics and format for future events.

Bullying and harassment was one of the key topics presented last financial year. I was saddened to hear of members of the body corporate community being subjected to such behaviour. While the BCCM Office has limited jurisdiction to deal with bullying matters, it is working on some strategies with other agencies to provide information to help those being subjected to this behaviour. More about that in the next edition of Common Ground.

Insurance and the rising costs of premiums for bodies corporate has also been a hot topic. To assist bodies corporate, particularly those in natural disaster-prone areas such as north Queensland, the BCCM Office developed a joint fact sheet with the Insurance Council of Australia to provide tips to bodies corporate about how to keep insurance premiums low. To complement this, the BCCM Office developed a further fact sheet to explain the legislative obligations of bodies corporate when it comes to arranging insurance. Read our BCCM update to find out how to access them.

The exterior cladding of buildings has also been a topic of interest in recent months. The BCCM Office has been working closely with the Cladding Audit Taskforce set up by the Queensland Government, and the Department of Housing and Public Works about what this means for bodies corporate. The Honourable Mick de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport tabled the Audit Taskforce's interim report in Queensland Parliament in May and indicated that building owners in scope (which includes bodies corporate) will receive correspondence about this matter in due course. The BCCM Office continue to work closely with relevant stakeholders to assist in providing information to help bodies corporate with this subject.

Knowing what laws apply to which Community Titles Scheme can be quite confusing for some. As such, new information has been published online about [what by-laws apply](#) to what scheme. I would like to acknowledge and thank one of our Adjudicators and one of our Information and Community Education Unit staff for their hard work in developing this useful information.

Sadly this is my last foreword and I would like to thank you for making me feel so welcome in the body corporate world and I have to say, I have a new appreciation for those living and working in Community Titles Schemes. I wish you all the very best as we continue to work together to maintain harmonious places to live and work. The substantive Commissioner, Chris Irons, returns on 2 August 2018.

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



Frequently Asked Questions – Adjudication

What is the role of the Office of the Commissioner for Body Corporate and Community Management?

The Office provides two functions: information and dispute resolution services under the *Body Corporate and Community Management Act 1997* (“the Act”).

The dispute resolution service resolves matters in dispute either through department conciliation or a formal adjudication process.

The Office is not a complaints forum, nor an investigations body. We do not provide advocacy services, as we must remain impartial between the parties.

What is the role of the Commissioner in dispute resolution?

The Commissioner has responsibility for the administration of dispute resolution as set out in the Act. Once an application is referred to an adjudicator, the Commissioner has no role in relation to the substance of the dispute or the outcome sought by the application. An adjudicator is the decision-maker for an adjudication application referred by the Commissioner and must exercise their functions independently and free of external influence.

The Commissioner’s role is first to determine whether an application complies with the requirements of the Act, and then to progress the application in accordance with the processes set by the Act, which generally includes:

1. providing a copy of an application to the respondent named in the application, the body corporate and each affected person,
2. inviting submissions - affording natural justice ie. an opportunity for people that could be materially affected by the outcome sought by the application or that may be able to help resolve the issues raised in the application to “have their say”,
3. inviting the applicant’s reply to any submissions received,
4. allowing an interested person (applicant, respondent, body corporate or person who has made a submission) to inspect and obtain copies of submissions and/or the applicant’s reply,
5. requiring an interested person to obtain, and give to the Commissioner, a report or other information,
6. assessing the application and making a dispute resolution recommendation (in the context of this FAQ, to department adjudication).

The Commissioner must determine:

- if an applicant has provided evidence establishing the existence of a dispute between the parties for the purposes of the Act, and
- whether jurisdictional requirements have been met.

The Commissioner cannot:

- assess the *merit* of an application.
- waive compliance with the jurisdictional requirements of the Act regarding dispute resolution applications (with the exception of deciding fee waiver applications).

A case manager will contact an applicant to ask for further information, on behalf of the Commissioner, before an application can move forward, if their adjudication application does not address all of the requirements prescribed by the Act. The application may be rejected by the Commissioner for a number of reasons including:

- if the applicant does not provide the requested information
- the Commissioner considers the applicant has not made a reasonable attempt through conciliation and it is appropriate to do so
- a party to the application is no longer a person who can be included as a party to the application, in accordance with section 227 of the Act
- the applicant fails, without reasonable excuse, to comply with a practice direction issued by the Commissioner
- the outcome sought by the application is no longer relevant or required.



What is department adjudication?

An adjudicator is a quasi-judicial decision maker who makes binding written orders with respect to an adjudication application. Department adjudication is conducted “on the papers”. There is no court-style hearing.

Although the adjudicator determining the application has investigative powers, they too are impartial between the parties and the onus is on the applicant to prove their case in the grounds of their application.

Adjudicators’ orders can be [appealed to the QCAT](#) or [enforced at the Magistrate’s Court](#).

What can I lodge an adjudication application about?

An applicant can only lodge an application with the Office, if they have evidence of a “current dispute” with the respondent.

The Office can only deal with disputes about alleged breaches of the Act or registered community management statement (including by-laws) for the scheme.

Given I can only file a dispute resolution application about a “current dispute”, what is a “current dispute”?

As a simplified example, a current dispute may be established if you have:

- identified an alleged breach of the Act or by-laws for the scheme on the part of the respondent and
- asked them directly to take a specific action that would resolve your issue but
- your request has been ignored or declined.

How do I attempt internal dispute resolution, before lodging an application?

Examples of [internal dispute resolution](#) include:

- proposing a motion to be considered at a general meeting
- proposing a motion to be considered by the committee
- communicating in writing with the other person
- issuing a BCCM form 1 notice of a contravention of a body corporate by-law.

If I’ve attempted internal dispute resolution and have a current dispute, what do I do next?

As an applicant, you must attempt to resolve your dispute with the respondent by internal dispute resolution (self-resolution), and usually by department conciliation before an adjudication application can be made.

The Commissioner may excuse the requirement for attempting departmental conciliation in limited circumstances. Please refer to [Practice Direction 9 - Matters not appropriate for conciliation](#).

What are the preliminary requirements when my dispute is about an alleged by-law breach?

The Act sets out preliminary procedures for applications seeking to enforce body corporate by-laws (Act, *sections 184-186*). These preliminary procedures are the requirements that must be met before an application seeking the enforcement of by-laws can be lodged with our Office.

Please refer to [Practice Direction 6 – By-law enforcement applications](#) for the steps you must take.

What do I have to include as the 'Grounds' to my application?

The Act requires that an adjudication application must include *"the grounds, in detail, on which the outcome is sought"* (Section 239B).

A written statement of grounds in Section 9 of the Form is an applicant's opportunity to seek to "prove their case". The statement (and supporting attachments) should clearly outline:

- the history and nature of each outcome sought in chronological order;
- what action has been taken by you and when;
- the responses of the respondent to the dispute;
- why you consider orders on the outcomes sought should be made; and
- why the respondent is legally responsible. That is, on what basis you consider the respondent has breached, or is continuing to breach their obligation/s under the Act and/or by-laws for the scheme, which you believe entitles you to the outcome/s you are seeking.

It is appropriate to attach all relevant documentation to your application, however, these are not a substitute for a written statement of grounds. The statement of grounds provided should make reference (e.g. by attachment number, and where a large amount of documents are being attached to an application, the relevant page number) to any documents you may provide, illustrating how they are relevant to or support your application.

Please refer to Section 9 of the *Guide* and [Practice Direction 14](#).

Who can I lodge a dispute application against?

Your dispute must be within the jurisdiction of the BCCM Office (see table below) before it can be dealt with. Jurisdiction for a dispute exists only between a party mentioned in column one (the applicant) and a party mentioned in column two (the respondent), in each row.

1. You are (the applicant)		2. They are (the respondent):
<ul style="list-style-type: none">• an owner, or• an occupier	and	<ul style="list-style-type: none">• another owner or occupier; or• the body corporate
<ul style="list-style-type: none">• the committee	and	<ul style="list-style-type: none">• a member of the committee
<ul style="list-style-type: none">• a member of the committee	and	<ul style="list-style-type: none">• the committee
<ul style="list-style-type: none">• the body corporate	and	<ul style="list-style-type: none">• an owner or occupier• a member of the committee• the body corporate manager• the caretaking service contractor• the letting agent• a service contractor• a former body corporate manager**
<ul style="list-style-type: none">• a member of the committee• the body corporate manager• the caretaking service contractor• the letting agent• a service contractor	and	<ul style="list-style-type: none">• the body corporate

(**limited to an application about the return of body corporate property only)



Voting outside committee meetings

Sometimes body corporate committees face the issue of not being able to find a mutually agreeable time when all members are personally available to attend a committee meeting. This may be because they are all busy working or perhaps some live interstate or overseas.

When this happens, the legislation allows the committee to 'vote outside a committee meeting' (VOCM or VOC) to make a decision. This is commonly referred to in the industry as a flying minute, VOCM or VOC. The process of a VOCM enables voting members of the body corporate committee to make decisions in writing. Most committees use email to do this.

The Information and Community Education Unit receives many enquiries about when committees should use a VOCM instead of calling a meeting and sometimes clients complain when people feel they are being overused.

There are no hard and fast rules regarding their use. It is at the discretion of each body corporate committee. In some situations all committee members live interstate and it would be expensive and impractical for them to meet face to face.

The following information should give owners and committees an understanding of how VOCMs are conducted.

All committee members must be given notice of the proposed motion that is going to be decided. Advice should also be forwarded to all lot owners so they are aware of motions the committee is considering. The notice and advice of the motion may be given by the secretary or another member of the committee who is authorised to give the notice by the majority of voting members of the committee. They are served at the same time.

If there is an emergency situation it is acceptable that contact is made with as many committee members as practicable and the decision may be given orally, such as over the phone. This is to ensure that a decision is made quickly, to cope with the emergency situation. It should be noted that this method should only be used for genuine emergencies, such as deciding on something that may cause imminent danger to people or damage to a lot or the common property.

Even when there is not an emergency there is nothing to prevent committee members ringing each other up to discuss the decision before casting their written vote.

For the motion to pass using a VOCM the majority of ALL voting members of the committee (entitled to vote) must agree. For example, if a committee has seven members, four of these must vote yes for the motion to pass. This is different from a committee meeting where a motion will pass if a majority of those present at the meeting and entitled to vote on the motion, are in favour of the motion.

After the decision has been made, a record of the decision is to be sent to all lot owners (unless they have requested not to receive records), within 21 days of the decision being made. The record should include the:

- date notice of the motion was given;
- names of the committee members to whom notice was given;
- words of the motion voted on;
- names of the committee members who voted on the motion;
- number for votes for and against the motion.

All motions determined this way must be confirmed at the next meeting of the committee and included in the minutes for the committee meeting.

When making decisions by voting outside a committee meeting the committee still need to be mindful that any decision made must still comply with the legislation as it relates to the following;

- be within the committee spending limit
- have two quotes if above the major spending limit for the scheme
- not be a restricted issue for the committee
- still be aware of conflict of interest provisions
- be reasonable

Although the legislation does not provide for timeframes for committee members to respond to a notice for a VOCM it may be a good idea for the individual issuing the notice for a decision, to give a timeframe so that committee members understand the decision should be made in a timely fashion.

Votes outside committee meetings provide committees with a quick and flexible way of making decisions and should be utilised as committees feel necessary. If other lot owners feel that they are being over used by their committee they should express their concern directly with their committee members.

Note that occupiers, who are not lot owners, are entitled to be provided with a copy of VOCM decisions after the process has been completed if they request same in accordance with the [access to records](#) requirements as set out in the Act.

BCCM update

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

Change of name

The Information Service for the Office has had a name change. We are now called the Information and Community Education Unit. The name better reflects the direction taken by the Office, which is more than just providing a phone and written correspondence service. Our Office aims to further engage with our stakeholders to ensure that the service we provide reaches the people it needs to, in the way that it needs to.

We are now collecting your postcode

You may have noticed when you call the Information and Community Education Unit our message has changed. We are now asking for the postcode that you are calling from. It would be appreciated if you could state your postcode in your message, when you leave it - even if you call us multiple times. This will help us to find out where our callers come from so that we can target the areas in Queensland that may benefit from more community education.

Webinars

We are conducting our first webinar on 8 August 2018. An in-depth look into accessing body corporate records will be our first topic. If you are interested in participating [please register](#). We are taking the first 100 registrations. If there are more than 100 people interested we will look at holding another webinar the following week.

Fee increases

As of 1 July 2017 the fees for BCCM Office services have increased, in accordance with the consumer price index (CPI). Full details of [current fees](#) are available on our website.



Upcoming Seminars

Our Office provides FREE information seminars to all those who live or work in a community titles scheme and who would like to find out more about the lawful requirements when it comes to bodies corporate. As promised we will be up north in August and September. We hope to get to Cairns, Townsville, Rockhampton and Mackay areas. This time our seminars will include the topics of:

- Insurance obligations
- Enforcing bylaws and
- Body corporate decision making.

Register your interest for the venue you are wanting to attend.

Please note that if we are not able to meet a minimum of 20 registrations we will cancel the event and advise those that have registered via email.

Date	Time	Area	Venue	Address
Tuesday 28 August	2pm – 4pm	<u>Mackay</u>	Souths Leagues Club	181 Milton St, Mackay QLD 4740
Wednesday 29 August	11am – 1pm	<u>Rockhampton</u>	Rockhampton Leagues Club	Cambridge St, Rockhampton QLD 4700
Tuesday 4 September	2pm – 4pm	<u>Townsville</u>	Brothers Leagues Club, Townsville	14 Golf Links Dr, Kirwan QLD 4817
Wednesday 5 September	11am – 1pm	<u>Cairns</u>	Brothers Leagues Club, Cairns	99 – 107 Anderson St, Manunda QLD 4870

Insurance Fact Sheets

The Office has issued two new fact sheets:

- [Tips for reducing insurance premiums](#)
- [Body corporate insurance obligations](#)


We collaborated with the Insurance Council of Australia to provide you with some handy tips for bodies corporate to consider to reduce their insurance premiums.

Building insurance obligations of bodies corporate can be confusing. We have provided information based on the BCCM regulations about body corporate's responsibilities when it comes to organising building insurance.

We want your feedback about the *Building Units and Group Titles Act 1980 (BUGT Act)*

As part of the Queensland Government's Property Law Review, QUT has produced a final report about whether lot owners and bodies corporate regulated under the BUGT Act would benefit from provisions comparable to those in the BCCM Act.

One of the key recommendations in QUT's report is that the dispute resolution processes and body corporate procedures contained in the BUGT Act be amended to more closely resemble the processes and procedures contained in the BCCM Act.




The report can be accessed on the Department of Justice and Attorney General website [community consultation](#) page. Details about how to have your say on this review are available on the above link. Please note that consultation on this closes on 24 August 2018.

New webpage

We have published a new webpage called '[What by-laws apply](#)'. This new page is to provide information to help owners find out what bylaws apply to their community titles scheme. Sometimes it not as simple as checking your community management statement. It can depend on other factors such as when your scheme was established. This webpage should make it clearer especially for the older schemes.

Do not reply

When the Information and Community Education Unit send you an email (including this one) they send it from a 'no reply' mailbox. This means that if you reply to us it will not be read as that mailbox is not monitored. If you would like to make comment on the common ground e-newsletter or respond to our responses to your general enquiries that are submitted online please submit an [online enquiry](#).



Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

The material presented in this publication is distributed by the Queensland Government for information only and is subject to change without notice. The Queensland Government disclaims all responsibility and liability (including liability in negligence) for all expenses, losses, damages and costs incurred as a result of the information being inaccurate or incomplete in any way and for any reason. © State of Queensland (Department of Justice and Attorney-General) 2013