

## Body Corporate and Community Management

# Common Ground Issue 14

### Commissioner's Office update

Welcome to our latest edition of *Common Ground*.

It is coming up to 12 months since my appointment as Commissioner and while I still have much to learn about all things body corporate, I am nonetheless coming to see and understand an increasing amount of things.

One of those 'things' is how easily a relatively minor misunderstanding or dispute can escalate into a situation in which my Office is called upon to provide dispute resolution outcomes, namely, an adjudicator's order.

While in some cases an order will be the most appropriate method of settling a matter, it still remains that an order imposes an outcome on parties in which some will 'win' and some will 'lose'.

This is not a great outcome, not only for the 'losing' party but also then for the community titles scheme as a whole, which has to then keep on operating with these circumstances hanging over it.

One of the ways to avoid this type of outcome is to be informed. Information helps parties to understand their rights, obligations and options and how to exercise them appropriately in an effort to avoid misunderstanding along the way.

My Office's Information Service exists precisely for this purpose. We take literally tens of thousands of enquiries per year on everything and anything to do with body corporate – you name it and you can be fairly certain that we've heard it.

*Common Ground* is another important way in which my Office gets essential information out to the various body corporate stakeholders. This edition focuses on our newly-developed website, takes a look ahead to summer-related issues of storms and air-conditioning and considers some common Q and As.

Thank you for taking the time to be part of *Common Ground*. I welcome any feedback you have so we can continue to deliver our services in the best way possible.

**Chris Irons**  
Commissioner

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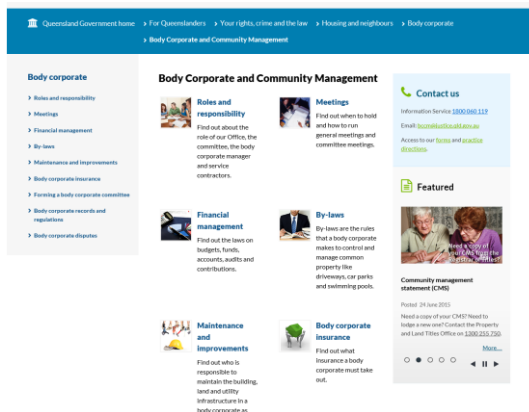
## New decision on reasonableness

A body corporate must act reasonably in undertaking its functions [section 94(2) of the *Body Corporate and Community Management Act 1997*]. The issue of whether a body corporate has acted reasonably arises in many disputes in my Office.

Since October 2014, disputes involving the question of reasonableness have frequently discussed the appeal decision of the Queensland Civil and Administrative Tribunal in *Re Body Corporate for Viridian: Kjerulf Ainsworth & Ors v Martin Albrecht & Anor* [2014] QCATA 294. The dispute involved an owner's request to join two small decks on his villa, which required the acquisition of exclusive use rights to the common property airspace between the decks. The adjudicator (*Viridian Noosa Residences* [2013] QBCCMCmr 351) originally concluded that the body corporate had acted unreasonably in refusing the request, by relying on irrelevant and unsubstantiated considerations. In overturning the adjudicator's decision, the Tribunal found that the adjudicator had erred in law and that the owner had not established that the Body corporate had acted unreasonably. Tribunal Member Roney QC discussed at length the principles applying to a question of reasonableness.

The matter has now been considered further by the Court of Appeal. In a decision handed down on 6 November 2015 (*Albrecht v Ainsworth & Ors* [2015] QCA 220), the Court of Appeal set aside the Tribunal decision. The reasons for judgement by President McMurdo concluded that there was no error of law by the adjudicator, and that the adjudicator's findings of fact were open to her on the evidence. The decision accepted [at paragraph 82 and 90] that the question of reasonableness is objective, requiring a consideration of all relevant circumstances; and that the determination of whether opposition to the motion was unreasonable required a consideration in an objective and fair manner of all the relevant facts and circumstances.

## Improved BCCM website information



The past 2 years has been one of transition for our online content as it has moved to the Queensland Government website [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate). We understand this looks very different and it may take you some time to get used to – we were the same!

To give some background about why we changed, there has been a progressive move in recent years by Queensland Government to move towards one website focusing on easy access to all state government information and services.

Body Corporate and Community Management

[www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate)

1800 060 119

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## Advantages

- we've eliminated the 'government speak' - content is written in plain English to make it easy to understand
- we've expanded our content to cover all five regulation modules
- page locations are based on subject matter as opposed to what department they belong to – where a page sits on the site is determined by people just like you
- all pages can be easily printed at home if you prefer a hard copy.

## Tips and Tricks

### 1. Use a search engine and ask your question

Our pages are easy to find when navigating from the home page [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate), however they are also easily located if you are using a search engine such as Google or Bing. Remember: put 'Queensland' in your search term as the legislation is state-based and the internet is world-wide.

For example, if you search in Google "how do I elect a body corporate committee in Queensland" you will get directed to our webpage on forming a committee.

### 2. Look by subject or topic

If you start on our homepage, firstly think about what you want to know and look under that topic. For example, if you want to know how to enforce by-laws then look under the heading 'By-laws'. If you want to know who is responsible to maintain something look under 'Maintenance'.

### 3. We no longer produce fact sheets

While information is no longer provided to you via a downloadable PDF fact sheet, all the information previously contained in the fact sheets – as well as some additional information – is now located on webpages. If you prefer a printed hard copy, simply hit the print button and a fact sheet style document – which can be saved – will be created for you.

### 4. Use the links included in the text

Each of our webpages will give you the relevant information on a topic and will also include links to forms, other relevant pages and external contacts. These are incorporated in the content as hyperlinks (usually identified as blue text and underlined).

### 5. Give us feedback

We can only improve our website and other services by getting constructive feedback. On the bottom of each page you will see an option for "Feedback". You can provide feedback for each individual page you are on and it will be sent to my Office.

The Information Service team continually reviews the feedback, and with many of you providing us with information, a number of enhancements and additions to information have already been made.

### 6. Use our email or 1800 number to contact us

If you need to talk to us, we encourage you to call our 1800 060 119 number or use our generic email address [bccm@justice.qld.gov.au](mailto:bccm@justice.qld.gov.au).

You may notice at the top of each of our webpages is a “contact us” option. Please note this will take you to an online enquiry form, which will not come directly to BCCM, it will initially be submitted to a whole-of-government collection centre to then be redirected to us.

## 7. Remember the shortcuts

We have created a number of shortened website addresses that you can save into your favourites. Here is a list of these for you:

Home page: [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate)  
Pay for BCCM services: [www.qld.gov.au/bodycorporatepayments](http://www.qld.gov.au/bodycorporatepayments)  
BCCM seminars: [www.qld.gov.au/bodycorporateseminars](http://www.qld.gov.au/bodycorporateseminars)  
Do our online training: [www.qld.gov.au/bodycorporatetraining](http://www.qld.gov.au/bodycorporatetraining)  
Dispute resolution: [www.qld.gov.au/bodycorporatedisputes](http://www.qld.gov.au/bodycorporatedisputes)  
Want to conduct a search of adjudicators’ orders for a particular scheme you are considering purchasing into: [www.qld.gov.au/searchofadjudicatorsorders](http://www.qld.gov.au/searchofadjudicatorsorders)

## 8. Subscribe to *Common Ground* and tell others to subscribe

As you have done to keep up-to-date on body corporate news and events, let others know about Common Ground and encourage them to subscribe via the ‘[What we do](#)’ page, where you can also amend your subscription details or unsubscribe.

## Online application forms

Did you know you can now complete a dispute resolution application online?

The online completion of a [conciliation application](#) and an [adjudication application](#) has been designed to guide customers through each section of the form. It helps customers name the correct parties and ensure they meet the self resolution requirements. Go to [www.qld.gov.au/bodycorporatedisputes](http://www.qld.gov.au/bodycorporatedisputes) for more information on dispute resolution.

**Note:** You cannot lodge the form online. This service is to help you complete the form for lodgement by post, email or facsimile to the BCCM Office.

## Storm season is approaching



Last year the storm season caused a lot of damage so it is timely to remind you to undertake preventative maintenance before the next storm season. This can include making sure your gutters are clean, windows are maintained, electrical and fire systems have been checked and the insurance is up-to-date and paid.

If you are dealing with storm related matters, we have targeted information on [storm damage issues](#).

## Air-conditioning

Along with the storm season comes the hot weather for Queensland. If you are looking to install air-conditioning in your unit, get started now on the formal processes necessary to gain approvals. Leaving this to the last minute can cause frustration and unnecessary delays in arranging meetings and contractors.

Give sufficient time for your request to be considered as some cases may require general meeting approval. The first step would be for individual owners to get quotes and consider which option is best for everyone. Depending on the costs of this choice and any by-laws registered for your scheme on this issue the approval process may differ from one body corporate to another.

BCCM's Information Service can assist with these types of queries so call us on 1800 060 119.

## Property Law Review



The Commercial and Property Law Research Centre of the Queensland University of Technology (QUT) is currently undertaking a review of property law in Queensland for the Queensland Government.

As part of the review, QUT will examine issues arising under legislation governing ownership, use and dealings in real property in Queensland including the *Property Law Act 1974*, *Land Sales Act 1984* and the *Body Corporate and Community Management Act 1997*.

Due to the range of matters being considered, the property law review is being conducted in stages. To date, QUT has conducted consultation about the seller disclosure regime in Queensland, body corporate lot entitlements and particular body corporate governance matters, including by-laws relating to smoking on balconies and the keeping of pets, and issues concerning the termination and redevelopment of ageing community titles schemes. It is expected that subsequent stages of the review will consider procedural and administrative issues relating to body corporate governance, including committees and general meetings.

Further information about the property law review (including copies of consultation papers for upcoming stages of the review) is being posted on the "community consultations" page of the Department of Justice and Attorney-General website at [www.justice.qld.gov.au](http://www.justice.qld.gov.au), as it becomes available.

## Community titles scheme statistics

Growth in the community titles sector continues. These are the statistics obtained from the Lands Registry Office, Department of Natural Resources and Mines as at end of September 2015.

Number of schemes: 44,734  
Number of individual lots: 422,852

Number of schemes registered under each regulation module:

Standard:	31,497
Small Schemes:	9,349
Accommodation:	3,442
Commercial:	1,945
Specified Two-Lot:	1,235



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Further breakdown of community titles scheme statistics:

<u>Summary</u>	<u>Number of schemes</u>	<u>Summary</u>	<u>Number of lots</u>
6 lots and under	31,497	6 lots and under	102,441
7 to 10 lots	5,510	7 to 10 lots	45,858
11 to 20 lots	3,717	11 to 20 lots	53,761
21 to 50 lots	2,557	21 to 50 lots	82,447
51 to 100 lots	1,052	51 to 100 lots	74,044
Over 100 lots	401	Over 100 lots	64,301
<b>TOTAL</b>	<b>44,734</b>	<b>TOTAL</b>	<b>422,852</b>

## Frequently asked questions

Here are a couple of questions we commonly get asked via the Information Service line:



**1. I own a unit in a three storey unit complex and my balcony tiles which are inside my lot boundaries have lifted because the building moved. The body corporate got an engineer's report which says the building is still structurally sound and it was just the normal movement that occurs over time. Is it the body corporate's responsibility to fix the tiles on the balcony of my lot?**

No. Firstly, the lot owner is responsible to maintain the tiles on a balcony that forms part of the lot. Secondly, under a building format plan (formerly known as a building unit plan) the body corporate is only responsible to maintain elements of the building that are not common property (foundation structures, roofing structures providing protection and essential supporting framework including load bearing walls) in a *structurally sound condition*. As the engineer's report made findings that the building is still structurally sound, the lot owner would be responsible to fix (maintain) the files as they are located within the boundaries of the lot.

**2. I heard there are new laws stating the body corporate cannot stop me from having a pet. Can you tell me where I can find these new laws?**

While the Government is currently undertaking a review of property law, including body corporate legislation, there has been **no change** to the law as yet. During recent years, this issue has been the subject of many dispute resolution applications including appeals of adjudicators' order to the Queensland Civil and Administrative Tribunal. It is more the case that the individual by-laws of some bodies corporate have been interpreted in certain ways that has changed the way all bodies corporate should deal with this issue.

In the first instance owners should look at the specific wording of the by-laws about the keeping of animals. By-laws are registered on the community management statement held with the Lands Registry Office. This is the crucial element to whether the pets are permitted in your scheme, whether permission is required beforehand and to work out what steps you need to take to have the by-laws changed, if necessary. You can search for previous orders on this topic at <http://www.austlii.edu.au/au/cases/qld/QBCCMCmr/>.

[Previous issues of Common Ground](#) have also addressed this issue in detail.

**3. I sent a letter to my body corporate manager to request they fix a leaking pipe. The body corporate manager won't make a decision and has now refused to reply to me. What can I do?**

Owners and committee members should be aware of what they engaged the body corporate manager to do for them. Body corporate managers are not decision-makers and are engaged normally to perform administrative duties. These duties are contained in the contract of engagement between the body corporate and the body corporate manager and this should be reviewed in the first instance.

Decision making powers sit with the committee or the body corporate in general meetings, so what should occur is the body corporate manager passes your correspondence on to the committee for a decision. You should direct your enquiries to the committee if you have not heard back about your request. As the person requesting the repair you ideally should also get a quote and/or a report about this leaking pipe so that the body corporate (committee) can be certain they are responsible for the repair.

**4. I have asked the committee to approve my request to keep a cat. This was sent to them two weeks ago and they still haven't made a decision. What is the timeframe for them to respond to my request?**

There is no provision under the legislation which requires the committee to respond to a request of this nature within a specific timeframe. The committee only have an obligation to act reasonably when making a decision and therefore your request may wait for the next committee meeting before it is dealt with.

If there is an urgency to your request you should identify this to the committee as part of your request. Alternatively, the legislation does provide that owners of 25 per cent of the lots can request an extraordinary general meeting to have specific motions considered. Our website includes information on [what your request needs to include](#) for the committee to be obligated to call this meeting.

