Commissioner Foreword

Welcome to the 2nd quarterly edition of Common Ground for 2023.

Body corporate living is becoming more common with over 525,00 lots registered in Queensland, an increase of over 6000 lots since June 2022. With more and more people moving into body corporate schemes, it is vital that owners and tenants are aware of their responsibilities.

A significant portion of lots in community titles schemes are part of the rental market. If you are a landlord, it is important to ensure your tenants have a copy of the current by-laws. By giving your tenants a copy of the by-laws, you are informing them of their obligations while they occupy your lot. This can go a long way to avoiding disputes that end up in my office. Our articles this month focus on dispute resolution and other contentious issues that can lead to disputes and property damage.

While on the topic of disputes, timeframes for disputes lodged with our conciliation service are starting to improve. Please read the guide to completing the application form before submitting an application to ensure you are giving us the right information. Giving us the right information helps us progress your application quickly.

One of the articles in this edition provides information about interim adjudication applications. Applications for interim orders are often rejected as the orders sought are not interim in nature. Nonetheless, the applications are assessed as a priority, and this may delay other applications from progressing which has an impact on the timeframes currently experienced in adjudication services. I hope the article provides some clarity about when an interim adjudication may be appropriate.

Finally, in November last year Parliament passed the *Building Units and Group Titles and Other Legislation Amendment Act 2022*. Since commencement of the amendments on 1 December 2022, my information and community education unit have responded to over 100 inquiries about bodies corporate governed by the BUGT Act and other Specified Acts.

The team is currently working on updating our webpages to include information on the Acts. Please check the website before contacting us. You might find answers to questions you didn't know you had.

Jane Wilson
Commissioner for Body Corporate and Community Management

Navigating the dispute resolution process

Community living has its challenges because of the potential for conflict.

The proximity of residents to one another in community living and the fact that individuals with diverse backgrounds and views must, as a group, make major decisions, opens itself up to disagreements.

If a dispute cannot be resolved internally, the two official avenues for dispute resolution under the *Body Corporate and Community Management Act 1997* (the BCCM Act) are conciliation and adjudication.

Our office also provides referees who can resolve disputes under the *Building Units and Group Titles Act 1980* (BUGT Act), however, this article focuses on the disputes lodged under the BCCM Act.

If you require information about seeking an order of a referee please submit an enquiry online or read our webpage referee orders for body corporate disputes.

We understand that lodging a dispute application can be a daunting process. This article focuses on some key points to assist you in navigating the waters of dispute resolution as smoothly as possible.

Can we consider your dispute?

We deal with disputes relating to rights and obligations under the BCCM Act or a body corporate's community management statement (CMS).

From the outset, you must bear in mind that our office can only consider disputes that fall within our jurisdiction. For example, while some debt disputes *may* be conciliated, disputes of this kind cannot progress to adjudication under the BCCM Act.

Additionally, if a dispute is defined as a 'complex' dispute under the BCCM Act, it cannot be dealt with in conciliation or adjudication within our office. Contractual matters involving an engagement or authorisation of a body corporate manager, service contractor or letting agent are classed as complex disputes.

Applications to adjust lot entitlements also fall within this category of dispute.

We recommend reading Practice Direction 24 and Practice Direction 25 for further guidance about debt disputes and complex disputes and the appropriate forum for resolving these disputes.

Who you can lodge a dispute against

Section 227 of the BCCM Act sets out the different combinations of parties that can have a 'dispute'. Importantly, your application will be rejected if your dispute does not fall within one of the specified combinations.

In our experience, the most common mistakes are made by owners who attempt to lodge an application directly against their committee, caretaking service contractor or body corporate manager.

An owner cannot lodge an application against any of these parties.

If an owner wants to dispute a committee decision, the other party in the dispute would be the *body corporate* – not the committee. A decision of the committee is a decision of the body corporate under the BCCM Act.

If an owner wants to raise concerns about a body corporate manager or caretaking service contractor, they can ask their committee to issue a remedial action notice if contractual duties are not being performed or there has been a breach of the relevant code of conduct.

Mandatory self-resolution

Before wading any deeper into the waters of dispute resolution, you must attempt to resolve your dispute internally with whomever your dispute is against. If you ignore this step before lodging your application, it is likely to be rejected.

This self-resolution requirement is in keeping with the key legislative objective of self-management, which is essential to community living. In addition to being more efficient, there is a greater likelihood of better managing delicate relationships if a matter is resolved internally.

The benefits of preserving relationships within a body corporate cannot be stressed highly enough.

Conciliation

If your self-resolution efforts prove unsuccessful, conciliation is the more informal of the two dispute resolution processes.

Conciliators do not make decisions about the issues in dispute. Rather, conciliators play a more facilitative role by trying to help the parties reach a good faith agreement. As the name suggests, 'good faith' agreements are not binding on the parties.

If the parties cannot agree to resolve the issues through conciliation, or if a good faith agreement is ultimately ignored, adjudication may be the next step to gain a resolution.

It is important to note that conciliation is not a service that is offered to clients seeking dispute resolution under the BUGT Act.

Adjudication

Adjudication is a more formal process in which an adjudicator makes a binding order on the issues in dispute.

Many of our clients mistakenly assume that adjudication involves a hearing – this is not the case. These applications are normally determined 'on the papers' by an adjudicator after reviewing an application, submissions and replies to submissions.

Our adjudicators have broad powers of investigation which enable them to seek additional information from any party or other person, undertake site inspections or request copies of body corporate records.

To safeguard natural justice, these investigative powers do not extend to meeting or speaking with the parties individually.

The equivalent process for clients lodging an application to resolve a dispute under the BUGT Act is called an order of a referee.

Do I start with conciliation or adjudication?

In most instances, you cannot side-step conciliation and jump straight to adjudication, although there are some matters where conciliation is not suitable.

If you are lodging an application against your body corporate, it is helpful to ask yourself – can the *committee* make a decision to resolve this issue?

If the answer is yes, you will generally need to lodge a conciliation application. If the answer is no, it is more likely that you will need to lodge an adjudication application.

For instance, adjudication is normally the correct process for disputing a motion passed by the owners at a general meeting. This is because the body corporate representatives at a conciliation session are normally voting committee members.

As the legislation does not allow the committee to change or revoke motions passed at a general meeting, it follows that the committee would have no authority to do so in conciliation.

It may be different in smaller bodies corporate where all owners are on the committee, as there is arguably little practical distinction between a committee decision and a general meeting decision if the same people are voting. Conciliation may be the more appropriate starting point when disputing a general meeting decision in this situation.

You can read Practice Direction 9 about other matters that are not suitable for conciliation.

Clear outcomes sought

You must clearly identify the outcome you are seeking when you lodge an application. It is not enough to simply identify breaches of the legislation, as it is not within the jurisdiction of our office to impose penalties.

An outcome is a clear and concise statement of:

- if conciliation – the specific action you want the other party to take, or to cease, to resolve the dispute.
- if adjudication – the specific action you want the adjudicator to order to resolve the dispute.

The outcome you are seeking must match the request you made to the other party in your application, in your attempt to have the issue resolved internally. You need to provide evidence that you attempted to resolve each outcome internally.

If you are seeking more than one outcome, you should separately number each outcome.

As a guide, we have provided some case examples of incorrect outcomes and how they can be improved.

Case example 1

Simon is an owner in a body corporate. At a recent committee meeting, his motion about maintaining the common property garden was considered. The committee voted against Simon's motion.

After unsuccessful attempts to resolve the matter internally, Simon lodges a conciliation application against his body corporate with the following outcome listed:

- The common property is not being maintained in good condition.

This is simply a statement of the problem – it does not tell us what Simon wants as an outcome.

Simon could change this statement as follows to make it an outcome:

- I would like the body corporate to approve the work proposed to maintain the common property garden, as it is currently not in good condition.

Simon is now correctly asking for a specific action to be taken to resolve the dispute.

Case example 2

After a month of dreary weather, rain has consistently leaked through the roof and damaged the carpet and walls within Lucy's lot. There has been an ongoing issue with a waterproofing membrane in the roof.

Lucy had the damage within her lot repaired at her own cost. However, Lucy believes that the body corporate should pay for the repairs, as the roof that caused the damage is common property.

As Lucy has already been to conciliation about this issue, she decides to escalate the matter to adjudication, seeking the following outcome in her application:

- There has been damage to the carpet and walls inside my lot because the body corporate has not maintained the roof.

Again, this is not an outcome – it is only a statement describing the problem.

To make this statement an outcome for an adjudication application, Lucy could change it as follows:

- An order requiring the body corporate to reimburse me a sum of $6,500 for repairs undertaken to fix the damage to the walls and carpet within my lot, caused by its failure to maintain the roof.

Lucy is now correctly setting out what order she wants the adjudicator to make to resolve the dispute.

Keep in mind, while apologies are nice to have, they usually don't resolve the substantive issue. The legislation does not require people to give apologies or make acknowledgements about an alleged wrongdoing.

Grounds supporting outcomes

If you are lodging an application, the onus is on you to summarise the history or background to the dispute and state *why* you are entitled to the outcome you are seeking. Naturally, the stronger the reasons are for lodging the application, the greater the likelihood of the dispute being resolved in your favour.

These reasons are normally referred to as 'grounds' in the application form.

If you are seeking multiple outcomes in your application, you should have separate grounds supporting *each* of these outcomes.

As vexing as a situation may be, you must still be able to demonstrate that there is some legal basis for the outcomes you want – namely, that the outcomes relate to a provision of the body corporate legislation or your scheme's community management statement (CMS).

The legislation specifies that detailed grounds are provided in an adjudication application.

While you are required to provide grounds supporting your outcomes in a conciliation application, the same level of detail is generally not required.

Including supporting documentation

If you are relying on any supporting documentation or evidence for your dispute application, you should clearly identify and reference these in your summary containing the background of the dispute and your grounds. You may wish to include things such as meeting minutes, photographs, plans, sketches, reports from qualified persons or correspondence in your statement of grounds.

For clarity, these attachments should be numbered. We also strongly recommend you provide a schedule listing all attachments referenced in your statement of grounds.

While you must include relevant supporting documentation to strengthen your grounds in an adjudication application, it is equally important to be selective about what you include. You should carefully consider whether

documentation is *directly relevant to the outcomes you are seeking* before attaching it.

For instance, by including 10 years of correspondence that is not directly relevant, you detract from the documentation that could clearly advance your outcomes – less is often more in this situation.

Exercising caution when disputing procedural errors

We regularly receive applications where the dispute is based purely on a procedural error.

As a rule of thumb, if you are lodging an application of this kind, you should demonstrate how these procedural errors *changed voting outcomes*.

We have provided a case example to better illustrate this point.

Case example

Michael recently discovered that his body corporate incorrectly counted proxy votes for a general meeting motion. Michael proceeds to lodge an adjudication application seeking the following outcome:

- An order that motion 10 passed at the general meeting of the body corporate held on 20 March 2023 is void.

In his grounds, Michael only relies on section 130 of the Standard Module which does not allow proxy votes for motions of this kind.

Michael failed to identify whether the voting outcomes changed because proxy votes were counted. If the voting outcomes remained the same – even though proxy votes were incorrectly included – it would be unlikely that Michael would be successful in obtaining an order that the motion was void.

It is important not to get too bogged down trying to dispute every procedural error that occurs.

As observed by the adjudicator in the matter of *Watermark Residences* [2021] QBCCMCmr 202, the body corporate legislation is: "*lengthy, technical and complex… It cannot be the case that the legislature expected all, or even most committee members of a body corporate, small, large or very large, to be experts in…law, or masters of community management*."

The reality is mistakes will inevitably be made in bodies corporate. If technical errors are the focus of your application, it is for you to demonstrate the *detrimental impact* of those errors – not to simply point out errors.

We that hope that this article gives you a solid foundation to work from if you are lodging a dispute application in the future. If you do not take the time to familiarise yourself with the relevant requirements before lodging an application, you are more likely to encounter obstacles through the dispute resolution process.

In addition to this article, you *must* refer to the guides for conciliation and adjudication that accompany the application forms. We also strongly advise you to read the relevant practice directions about dispute resolution that are available on our website.

In view of the time and effort invested in an application, it is in your best interests to equip yourself with the necessary knowledge from the outset.

Urgent dispute applications

Our clients regularly ask how they can quickly resolve what they consider an 'urgent' situation. While we acknowledge there is a considerable amount of stress involved in body corporate disputes – often intensified by the proximity of residents to one another – no general process exists to consider 'urgent' applications.

However, circumstances may warrant certain matters being fast-tracked.

This article explores the limited situations when this may occur – specifically:

- interim order applications
- emergency expenditure applications
- expeditable applications.

This article focuses on interim order applications and briefly discusses the other two categories. If your matter does not fall within these categories, there should be no expectation of priority and the normal avenues for lodging a dispute application would apply.

Although it is not the role of this office to provide legal advice about the type of application that should be lodged, this article will assist you to understand your options and to avoid common mistakes that can result in unnecessary delays.

Interim order applications

An interim order is a temporary order to urgently protect rights and interests until final orders are made.

Many of the interim order applications received by our office fall short of the necessary requirements to be considered for adjudication. The reality is that approximately 46% of interim order applications lodged do not actually progress to adjudication. They are either withdrawn by the applicant or rejected by the Commissioner. Of those interim order applications that do progress to an adjudicator, approximately 50% are dismissed.

A further caution against lodging interim order applications without understanding the requirements is that they attract a larger filing fee. If an interim order application is lodged and it does not meet the requirements, the fee will not be refunded.

The statistics above should be an important reminder to ensure you satisfy **all** the necessary criteria – outlined below – **before** lodging an interim order application.

⌘ *Urgency*

The interim order you are requesting must be **genuinely urgent**.

If the basis for the urgency is simply your preference for a swift resolution, this would not be enough to warrant an interim order being made. You must be able to demonstrate the gravity of the circumstances, or any serious legal questions raised.

⌘ *Temporary order*

The interim order must also be of a **temporary nature**.

This means that granting the interim order should not resolve your dispute. Rather, it should only give temporary relief until final orders are made. If the interim order you are seeking would provide the ultimate resolution for your

dispute, lodging an interim order application would be the wrong option.

⌘ *Related final order*

As interim orders and final orders are connected, there must be a final order(s) that relates to the interim order being sought.

Essentially, an applicant must seek two separate orders:

- a temporary interim order, and
- a related final order.

The final order would provide closure for the overall dispute.

⌘ *Self-resolution*

You must provide evidence of your **attempts to resolve the matter internally**. These attempts to resolve the issue must be made before the application has been lodged with our office.

If you lodge an interim order application without showing you have asked the respondent to do – or in many cases, *not* do – whatever it is you are urgently seeking in the interim, your application may not progress.

⌘ *Possible scenarios where an interim order application may be warranted*

The two scenarios below provide examples of circumstances that may warrant an interim order application.

❖ Scenario 1

An owner named Bob is concerned about improvements to the building proposed by the committee in the agenda for the upcoming annual general meeting.

Although the cost of the work is more than the major spending limit for the body corporate, Bob notes that the body corporate has only obtained one quote for owners to consider.

After doing some research, Bob believes that the same works could be undertaken at a significantly reduced cost to the body corporate.

Bob has expressed his concerns to the committee in writing, but they have told Bob that if the motion passes at the general meeting, the works will commence immediately.

It may be possible for Bob to seek an interim order to stop the works temporarily until a final order is made by an adjudicator.

If Bob wishes to seek an interim order, he should write to his committee to request that they not take any action to implement the motion until the final order is made.

❖ Scenario 2

The body corporate has made recent changes to an area of common property that Linda, an owner, believes could pose a safety risk to certain residents.

Linda has asked the committee in writing to put some temporary safety measures in place until they can resolve the issue properly. The committee has rejected Linda's request.

It may be possible for Linda to seek an interim order, so the body corporate puts certain temporary safety measures in place until a final order is made by an adjudicator.

Emergency expenditure applications

Where a body corporate proposal involves spending that exceeds the committee's spending limit, it typically needs to be approved by the owners at a general meeting.

Depending on the size of the scheme, the preparation associated with holding a general meeting can be both time-consuming and costly. A general meeting must also be held at least 21 days after notice of the meeting is given to owners.

The combination of these factors may create considerable obstacles for a body corporate where time is of the essence for adopting a proposal. The legislation provides an exception if an adjudicator determines the **spending is necessary to meet an emergency** and makes an order authorising the spending.

For example, in the matter of *Seahaven at Trinity* [2019] QBCCMCmr 176, there was a leak in a water pipe on common property that had caused damage under the driveway and had the "potential for a structural collapse of the car park/driveway area". After considering different factors, the adjudicator ultimately determined there was a genuine emergency and authorised the spending.

Simply stating the normal processes prescribed under the legislation are too inconvenient would not be sufficient grounds for an application of this kind. The onus will be on the applicant (normally the body corporate) to demonstrate there is a **current, genuine emergency** requiring the body corporate to take direct action.

When lodging an application of this kind, at least one quote should be obtained for the expense and certain details of the work to be carried should be provided – specifically, a description of the work, the date of commencement and the estimated timeframe.

Expeditable applications

Certain **routine or urgent** matters **may** be expedited by the Commissioner and adjudicators. Asking for a matter to be expedited because of a preference for it to be dealt with quickly, is unlikely to result in it being expedited.

Some more common types of applications that *may* be suitable to expedite include:

- return of body corporate property
- access to body corporate records
- change of the financial year-end date for a body corporate.

Importantly, even if a matter falls into one of the above categories, it does not guarantee it will be expedited. The onus will be on the applicant to provide clear grounds supporting *why* the matter should be expedited. Whether or not a matter is ultimately expedited will depend on the nature and circumstances of the application each time.

Applications may be expedited in various ways. Where there is no actual dispute (for example, seeking to change a body corporate's financial year-end date) an application can be referred directly to an adjudicator for a declaratory order without asking for submissions.

Other ways of expediting matters may include:

- adjudicators prioritising certain applications over longer-standing ones

- the Commissioner limiting the period for making or replying to submissions (while ensuring procedural fairness remains the primary consideration)
- the Commissioner refusing requests for an extension to submission or reply periods where there are insufficient reasons for the request.

Tips for lodging these types of applications

When lodging an application that falls into any of these three categories, we suggest that you **clearly identify** the type of application you are seeking.

While there is a specific section that must be completed in the adjudication application form (form 15) when seeking an interim order, there are no specific sections where you can state why it should be expedited or for emergency expenditure applications.

If you are posting a hard copy of your application form to our office, we recommend including an additional cover letter highlighting the type of application sought. Alternatively, if you are sending your application form via email, you should include a clear request in the body (and possibly also the subject line) of the email.

Given the urgency that usually accompanies these applications, taking these small extra steps is a means of ensuring our office is aware of what you are seeking from the start.

We hope this article has clarified the three different paths that are open to you if you believe you have an urgent matter. You must decide which of these options (if any) is most suitable for your application. Having a clear understanding of the available options and relevant criteria will help you to steer clear of the common pitfalls associated with these kinds of applications.

For further information see:

- Practice Direction 16 (interim order applications)
- Practice Direction 18 (emergency expenditure applications)
- Practice Direction 19 (expeditable applications)

Damage to property

Occasionally in bodies corporate, property can be damaged through no fault of the property's owner. The property's owner may be an owner of a lot, an occupier or the body corporate.

Under the *Body Corporate and Community Management Act 1997* (Qld) (**the Act**), a property owner may seek reimbursement or an order for repair, in certain circumstances, through our office.

This article will explain the application process, the thresholds required to lodge an application for dispute resolution, limitations on orders and relevant adjudication orders.

It is important to remember that any order is based on the circumstances of the parties involved and is not a precedent.

Section 281

Section 281 of the Act provides that, where an adjudicator is satisfied the applicant has suffered damage to property because of a contravention of the Act or the community management statement **(CMS**), the adjudicator may order the person who they believe, on reasonable grounds, to be responsible for the contravention to either:

1. carry out stated repairs to the damaged property; or
2. pay a fixed amount for reimbursement for the repairs.

Limitation of section 281

There are limitations on an adjudicator's order for damaged property. An adjudicator cannot make an order where:

- the costs of repairs are more than $75,000; or
- the reimbursement amount is more than $10,000.

While an adjudicator is limited to the amounts set out above, a property owner can seek a remedy through a court with a greater jurisdiction. If a property owner is seeking recompense beyond these limits, they can seek legal advice.

Section 281 of the Act sets out what an adjudicator can order, provided they are satisfied that the complainant has met key elements of the section. However, in most cases, parties to these types of disputes will have to try to resolve the dispute themselves including by participating in conciliation before lodging an application for adjudication.

More information about conciliation and adjudication can be found on our website.

Parties to the dispute

Our office can only provide dispute resolution services to certain parties and certain combinations of parties. Section 227 of the Act specifies who is eligible to lodge a dispute resolution application and the eligible party the application can be made against. A body corporate, owners, occupiers, letting agents, service contractors and body corporate managers may be parties to a dispute.

For example, if your property suffered water damage because an upstairs lot owner's shower leaked (something an owner has a responsibility to maintain), you would have grounds to bring an application to our office under section 227(1)(a) against the owner of the property.

Conversely, if your visitor's car was damaged because of a burst pipe in the car park, they (not being an owner or occupier, and assuming they do not stay at the property often enough to be classed as an occupier) would not have grounds to make an application for a remedy under section 281. They may need to seek legal advice on the options available to them.

Preliminary step – Self resolution

Before lodging a dispute application, you should first attempt to amicably resolve the dispute yourself. If you request the body corporate to act, you should propose a motion to be considered at a committee meeting or a general meeting and as soon as appropriate.

However, if you require another owner or occupier to remedy the issue, then a request in writing can be made directly to the other party.

When proposing a motion, or making a written request, you should consider advising the other party of the action you are seeking. If it is for reimbursement, you may provide a copy of an invoice and ask for a specific sum by a designated date.

If the request is for damage to be repaired, it may be prudent to provide a quotation and a reasonable timeframe for the works to be completed.

Establishing grounds for your application

⌘ Damage to property

Section 281 of the Act specifically relates to property damage.

Example of damage covered

Section 281 applies not only to common property, such as land or a building but also to personal property, such as a motor vehicle or furniture. An example of the type of damage covered under section 281 is soiled carpets after water ingress caused by a failed common property pipe. Carpets are generally not covered under the body corporate's building insurance, and some lot owners struggle to get the body corporate or person(s) responsible to agree to replace or fix carpet. This is where section 281 may offer recourse to the lot owner.

General damages

Section 281 is contained to repairs and reimbursement for repairs to property and therefore does not extend to general damages (for example, loss of rent).

Nevertheless, other courts with greater jurisdiction may award general damages. For example, in *MAGOG (NO. 15) Pty Ltd v. The Body Corporate for the Moroccan* [2010] QDC 70, the District Court awarded a lot owner loss of rent, plus interest, after the body corporate failed to maintain a waterproofing membrane that attributed to the damage to property and loss of rent.

⌘ Contravention of Act or CMS

Evidence should be included in an application that has claimed a contravention of the Act or CMS.

Identify the specific cause

When explaining the grounds of your application, you may include the chain of events that led to the damage. For example, if water ingress caused damage to the property, then specify the cause of the water ingress, which may be a failed waterproofing membrane. If you do not know the cause of the water ingress, you may need to engage a suitably qualified person to investigate and report on the cause of the issue. A copy of the report should be included with any dispute application to the BCCM.

Identify a contravention

Once the exact cause has been determined, it must be established that a contravention of the legislation or by-laws by a relevant party is related to the issue. Without identifying a relevant contravention, the application may not succeed (see, for example, *Qube Broadbeach* [2022] QBCCMCmr 90).

You can access the Act and regulation modules on our website here. Your CMS, which contains the by-laws, is available from Titles Queensland.

Common contravention – failure to maintain

A common example of a contravention is where a party has failed to maintain the item related to the cause of the damage.

If a party has a duty to maintain an item or area, it has a strict liability to do so. It is not relevant whether a party knew, or could not have known, the item or area was in disrepair. A party is not excused, even if they take swift action to address the issue once it has come to their attention. (see, for example, *MAGOG (NO. 15) Pty Ltd v. The Body Corporate for the Moroccan* [2010] QDC 70).

Maintenance responsibilities are largely set out in the Act and regulation modules. To see who may be responsible for the cause and what other sections of the legislation may apply, please see our webpages on maintenance which include common topics such as:

- Utility infrastructure maintenance
- Building format plan maintenance
- Standard format plan maintenance

If you require further general guidance on maintenance responsibilities, you can submit an online enquiry to our information service. You can also call our information service on 1800 060 119. Please note, we can give general guidance on the legislation only and cannot provide legal advice or rulings.

Example of contravention

A common example of a contravention is when a pipe, carrying water to several lots, has burst and caused water damage to a lot. If the pipe is classed as common property, under section 20 of the Act, the body corporate is responsible for its maintenance. Therefore, the body corporate may be responsible for the damage the burst pipe has caused. A party who bears a maintenance obligation is strictly liable for any maintenance failure. Whether the party knew or did not know the pipe may burst is immaterial to a claim under section 281.

Example of contravention that would not satisfy section 281

Hoses that connect appliances such as sinks, washing machines, or dishwashers to waste pipes can fail. Under section 20 of the Act, these types of hoses are generally not considered common property as they are located solely within the boundaries of a lot and service that lot, meaning that the body corporate is not responsible for their maintenance as provided in section 180 of the Standard Module.

Under section 211 of the Standard Module, the lot owner must maintain the hose in good condition and replace it when necessary. Damage that occurs to the owner's own property because of their hose breaking would not be covered under section 281 for that lot owner. However, the lot owner may be responsible for subsequent damage to other property under section 281. For example, if the water leaked into the lot below.

Examples of adjudicators' orders

The following decisions are examples of applications decided under section 281. Each case was decided on its individual circumstances.

Where the body corporate refused to rectify damage that was not covered under insurance - The Nelson [2022] QBCCMCmr 268

A lot owner suffered extensive damage to their lot after the building's sewerage pipe had been blocked on the ground floor. It caused sewage to back up and overflow into the owner's lot. The body corporate was responsible

for the maintenance of the sewerage pipe because it was classed as common property under section 20 of the Act.

Unfortunately, the body corporate's insurer would only cover part of the damage to the lot's kitchen and would not cover other items such as the carpet and the floating floor. The body corporate believed the lot owner was responsible for insuring their own property and was responsible for any damage not covered by the body corporate's insurance policy.

The Adjudicator said at [43] that:

> *Whether or not the applicants do, or should have particular insurance does not put the onus on them if another person or entity causes damage to their property. The person or entity* [who caused the damage] *will be liable for the damage and the fact that the person or entity responsible for the damage does not have insurance to cover the damage they caused does not alleviate them from the liability for compensating the person who has suffered property damage. Therefore, regardless of whether the body corporate has insurance which covers the relevant event or damage, or whether the applicants have insurance which covers the relevant event or damage, the body corporate is responsible for the damage.*

The body corporate was ordered to address all necessary rectification works regardless of whether it was covered under insurance.

In summary, whether the property was covered under the body corporate's insurance was irrelevant to the application of section 281 of the Act.

Where it was immaterial whether the body corporate took prompt action to address a leak and where that caused damage to personal property - Waterline at Oceanside [2021] QBCCMCmr 44

An occupier of a lot suffered damage to their car's paintwork because of a leaking pipe in the body corporate's common property car park. The body corporate was responsible for the maintenance of the pipe because it was classed as common property, under section 20 of the Act.

The body corporate took action to fix the pipe once it became aware of the issue. On this basis, the body corporate's insurer would not rectify damage to the vehicle as it was of the view that the body corporate took action to mitigate further damage after it became aware of the leak, and it was satisfied that the body corporate had not been negligent.

The Adjudicator cited other matters (including *MAGOG (NO. 15) Pty Ltd v. The Body Corporate for the Moroccan* [2010] QDC 70) and confirmed that the body corporate had a strict liability to maintain the pipe before it fell out of condition. It was immaterial to claim that the body corporate had acted promptly once it was aware of the leak. The case also illustrates that section 281 can apply in the case of damage to personal property.

The body corporate was ordered to reimburse the occupier for the repair of the paintwork of the car.

Where no breach of the legislation or CMS was established - Qube Broadbeach [2022] QBCCMCmr 90

An owner of a lot lodged a dispute application against the body corporate for an order under section 281 for damage to their car that was allegedly caused by a contractor engaged by the body corporate to undertake high-pressure water cleaning of the carpark. The body corporate denied liability and said it had used the same contractor in the past, without incident. The contractor denied causing the damage or working in a way likely to have caused the damage.

The Adjudicator noted that a party is not necessarily liable for the actions of an independent contractor engaged

by them if the contractor is competent and acting under their own work system. The adjudicator was not satisfied that the body corporate itself had contravened any provision of the Act or the CMS and dismissed their application.

Where a lot owner was required to reimburse another lot owner due to a leaking shower tray - Tracie Court [2015] QBCCMCmr 207

An applicant lot owner experienced water damage in their living room. A leak detection report showed the respondent lot owner's bathroom had insufficient waterproofing, causing water penetration to the applicant's lot. The respondent lot owner had a responsibility to maintain their lot in good condition under the legislation (Standard Module, section 211) and the adjudicator found that this section was being contravened by the waterproofing membrane not being in good condition. The respondent lot owner was ordered to repair the damage to the applicant's lot, as well as undertake the necessary maintenance to the bathroom's waterproofing membrane.

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