

Commissioner Foreword



Dear Common Ground Subscribers

I am pleased to let you know that earlier this month I was appointed as Commissioner for Body Corporate and Community Management in Queensland.

Prior to commencing my new role, I was Director of Land Tax at the Office of State Revenue (OSR) within Queensland Treasury, and have previously held policy, technical and operational leadership roles in OSR, as well as positions in the Australia Taxation Office, Department of Justice and Attorney General and legal practice.

With community titles schemes continuing to grow in popularity, size and complexity across Queensland, I know that my Office and its services can play an important role in the lives of many people living, working and investing in these communities.

I look forward to continuing the good work of previous Commissioners and the committed team in my Office, so as to provide you with the information you need about body corporate laws, and efficient and effective dispute services when you are unable to resolve issues that arise.

We're all aware of COVID-19 and the profound impacts it's having on our state, nation and the world around us, and that many are feeling the effects. My immediate priority is to provide the support that community titles schemes need during this time as best I can.

My team has been working hard to reorganise some processes so that we can continue to provide our services despite the current environment.


This issue of Common Ground explains the Government's recent measures to respond to COVID-19, to help bodies corporate navigate the current challenges. Further information about these measures, and our answers to the most frequently asked questions about COVID-19 can be found on our [website](#). If you have further queries, you can also call my Information Service on 1800 060 119 about these issues or other body corporate queries you may have.

We have also included an article about self-resolution. It is important to remember in these times of uncertainty that communicating with your body corporate effectively may help resolve your issues without the need to engage in the more formal dispute resolution services offered by my Office.

Finally, if you have feedback or suggestions regarding our services at this time, please let me know by emailing bccm@justice.qld.gov.au.

Michelle Scott
Commissioner
Office of the Commissioner for Body Corporate and Community Management





Frequently asked questions - COVID-19 in bodies corporate

The following is an updated version of the FAQ sent as part of the original release of Common Ground Issue 25. Information is current as of 26 May 2020.

We have a number of owners in our body corporate who have lost their jobs due to COVID-19. They were already overdue prior to the pandemic. It is coming up to 2 years since they have paid levies. Do we have to commence debt recovery against them?

No, usual obligations to start debt recovery proceedings on debts that have been outstanding for 2 years have been suspended to 31 December 2020, so a body corporate can decide to wait until 31 December 2020 to commence debt recovery proceedings.

Can we delay our body corporate annual general meeting due to COVID-19?

Yes. Depending on the number of owners wanting to attend your annual general meeting physically, you may wish to check the current Government health directives to see if it is necessary to postpone.

A body corporate committee can make a decision to postpone annual general meetings (AGM). Generally, an AGM must be held within three months of the end of the body corporate's financial year. However, if a body corporate determines it would be reasonable to postpone an AGM based on advice from health authorities, and it would fall outside of the legislated timeframe, it can apply to the Commissioner's office for an adjudicator's order. More information about these types of orders can be found in [Practice Direction 19](#).

Alternatively, if a body corporate decides to proceed with an AGM, the committee should consider [other options for meetings](#), including practising social distancing and using technology where available.

If we decide to proceed with a meeting, how do we make sure people don't attend in person?

Currently, only two people need to be present personally to form a quorum for a body corporate meeting, so it may be reasonable for the body corporate to encourage all others to return a voting paper by [email or post](#). Bodies corporate may also wish to include details in meeting notices on how members can attend by telephone or video conference. People who attend a meeting in person should consider social distancing guidelines from health authorities and any restrictions currently in place.

Can we re-open our pool?

With the gradual easing of restrictions in relation to social distancing it is best to keep updated from the [Queensland Health](#) website.

Can a body corporate postpone when our levies are due?

Yes, the committee can extend the dates that levies are due. This can be done for a particular owner if the committee is reasonably satisfied that the owner is suffering financial hardship due to the COVID-19 pandemic. Alternatively the committee can extend the date for all owners.

Can the body corporate adjust its budgets so that we can reduce our levies?

Yes, for the current financial year of the body corporate, the body corporate can decide not to include provision for major anticipated expenditure in future years in its sinking fund budget. As a result the levies may be adjusted.

If the body corporate has already passed its sinking fund budget for this financial year it can amend it to reduce or remove major anticipated expenditure amounts for future years. Any levies already collected for these amounts must be adjusted and the owners refunded. No written request is needed for owners to be refunded.



I have lost my job. Will I have to pay late penalties if my body corporate levies are overdue?

The body corporate cannot charge late payment interest for overdue levies from 25 May 2020 until 31 December 2020.

For any levies outstanding prior to 25 May 2020, the committee can decide to waive interest if they consider there are special circumstances. You need to make a request to the committee in writing.

There are quite a few lot owners who are unable to pay their levies. The body corporate will not be able to cover its bills. Can it borrow money to cover its expenses so that owners can recover financially?

Yes your body corporate may now borrow up to \$500 per lot by passing an ordinary resolution at a general meeting. However, for a small scheme, the total of all the borrowings must not exceed \$6000.

Do the social distancing rules apply in body corporate lifts?

The Federal Government has provided social distancing guidelines based on expert information from health authorities. People who reside in or visit community titles schemes should use their best judgement when deciding to enter a crowded lift. The body corporate may decide it is reasonable to display signage reminding residents of social distancing guidelines in common areas, including lifts.

Do owners have to notify the body corporate if they are infected with COVID-19?

A body corporate may make a by-law that requires people to notify the body corporate that they have an infectious disease but this may be difficult to enforce.

You can read more about [making](#) and [enforcing](#) by-laws.

Our body corporate / caretaker has sent out a health survey to all residents and threatened to not allow us into the building unless we complete it. Do we have to complete this survey?

Body corporate legislation does not provide bodies corporate or caretakers with a power to require people to complete a survey about their health. Nor does the legislation give power to a caretaker to prevent owners or occupiers from entering their lots or common property.

Who cleans the complex if one of the lot owners gets sick and contaminates it?

The body corporate must maintain any common property in good condition. This may include cleaning common property if it becomes contaminated.

We have people who are staying in a unit in our complex that is a short term rental through Air bnb. They are only staying for two weeks. Do they have to tell us if they are in self-isolation?

No. Body corporate legislation does not compel occupiers to disclose the circumstances for staying in a property. Bodies corporate need to remember that just because someone is in self-isolation, it does not mean that they have the COVID-19 infection.

Bodies corporate should stay up to date on the COVID-19 health situation, including monitoring advice from [Queensland Health](#) and announcements from state and federal authorities.



Mandatory self-resolution

Life in a community titles scheme comes as a surprise to many new residents.

Perhaps the most striking difference is the proximity to others in your scheme.

Life in a body corporate means thinking about how your everyday behaviour might affect other occupants.

Behaviour that might seem perfectly normal to you – for example, watching a movie late at night with the volume up high, allowing your dog to roam around the communal garden leash-free, or smoking on your private balcony – might interfere with another resident's right to the peaceful enjoyment of their lot or the common property.

Another common point of contention in community living tends to be decision-making. Naturally, not everyone is going to agree with the decisions made by their committee or the other lot owners at general meetings.

While there are those fortunate enough to be part of a harmonious body corporate, the reality is that a low-conflict body corporate requires a conscious effort on the part of all residents.

If there is a dispute – and particularly a 'dispute' of the type my Office has jurisdiction to resolve – it is important to know about self-resolution.

In line with the fundamental legislative objective of self-management essential to community living, self-resolution *must* be attempted before lodging a conciliation or adjudication application. Ignoring this critical step may result in your application being rejected from the outset

What is self-resolution?

Self-resolution involves taking reasonable steps to resolve your issue internally without recourse to formal dispute resolution. Sometimes that will involve using body corporate processes such as putting a motion to a general meeting or committee.

What are the benefits of self-resolution?

Internal dispute resolution has two key benefits – efficiency and preserving relationships.


Submitting a formal application to my Office requires a [lodgement fee](#), completion of an application and a waiting period before the issue is considered. However, self-resolution gives owners a chance to settle the issue simply and cheaply by communicating openly about the issue or putting forward a motion to your committee or a general meeting.

Escalating the problem to conciliation or adjudication prematurely may also harm already fragile relationships. In a community living situation, poor relationships can be a source of considerable and ongoing stress. Keeping the matter within the body corporate goes a long way to maintaining a degree of harmony in the scheme.

What is appropriate self-resolution if I don't agree with the committee's decision?

If the committee has the authority to make a decision on your issue, you may wish to submit a written request (referred to as a motion) for their consideration. Some common applications determined by the committee include [keeping of animals](#), [improvements to lots or the common property](#) and [maintenance](#).

If your motion is rejected, sending a letter or email seeking the reasons for their decision is an effective starting point (and evidence of self-resolution if you need to lodge a formal application down the track). Or, if the committee has already provided reasons and you disagree, respectfully provide the reasons why you disagree. When drafting a letter, bear in mind that the purpose is to encourage healthy dialogue towards change rather than point out potential errors.



If your issue remains unresolved you may consider lodging a conciliation application along with evidence of your efforts to resolve the issue with your committee.

Alternatively, if you think the other lot owners may have a different view to the committee, you may wish to submit the rejected motion to a general meeting.

Be mindful that if the motion does not pass at the general meeting, and you wish to pursue the issue, you may need to lodge an adjudication application disputing the reasonableness of the general meeting decision. An adjudication application may take considerably longer to be finalised than conciliation, as a binding determination will need to be made by an adjudicator. If you would prefer to gauge the opinions of the other lot owners before taking this step, you could [access the body corporate roll](#) which contains detailed information about each lot in the scheme, including the name and address for service of lot owners.

What is appropriate self-resolution if I have an issue with another occupier?

Where the actions of another resident are interfering with your enjoyment of your lot or the common property, you may wish to tell them of the impact it is having on you.

Depending on your relationship with the person – you may feel comfortable expressing your concerns in person or over the phone. Remember to document your attempts to resolve the issue verbally, as you may need this for evidence later.

Alternatively, if you are uncomfortable with discussing your concerns in person or over the phone, you may prefer to send a polite informal letter to the person sharing your concerns.

If the issue persists, the next step may be to relay these concerns to your committee. Where the issue relates to a potential breach of the by-laws, you must follow the preliminary requirements for [by-law enforcement](#) before lodging an application. The first step is to provide a [Form 1](#) to your committee, alerting them to the breach of the by-laws. The committee has 14 days from the date of you issuing the Form 1 to make a decision about whether to issue a contravention notice.

If the 14 days has passed and you have not heard from your committee or the committee has notified you they will not be pursuing the matter, you may consider lodging a conciliation application once you have exhausted attempts at self-resolution.

When would submitting a motion to a general meeting be a suitable form of self-resolution?

If you disagree with a motion passed by the other lot owners at a general meeting, you may choose to submit a motion for the next general meeting seeking to revoke the previous motion. The resolution type needed to revoke the motion must be the same as the resolution type that passed the motion initially.

Revoking a motion by submitting another motion may not be appropriate in all cases. For example, if at a general meeting the body corporate passes a motion to engage a particular company to paint the common property, another motion to revoke that previous motion may not be viable, as a binding written contract may already be in place. In these circumstances the body corporate may wish to seek independent legal advice.

If there is a by-law you believe is invalid, you could submit a motion to a general meeting seeking to [amend or remove the by-law](#). There are a number of reasons a by-law may be invalid. Prohibiting animals (or a type of animal), discriminating between tenants and owners, imposing monetary liability, being inconsistent with legislation or being unreasonable are just some of the reasons an owner may seek to change a by-law.

Submitting a motion at a general meeting serves as evidence that you have attempted to resolve the issue internally before lodging an adjudication application.



How to promote self-resolution in our body corporate?

Open communication is vital for promoting a low-conflict body corporate. Of course, *how* you communicate your initial concerns sets the tone. Accusatory or hostile communication is only going to inflame the situation.

An effective method of maintaining control over disputes is for a body corporate to develop its own dispute resolution mechanisms. The committee or an owner may submit a motion to a general meeting to approve these processes. Establishing processes such as mediation or meetings – either formal or informal – may prove especially useful for managing grievances.

In addition, smaller steps like making a particular committee member the first point of contact for residents or setting clear and reasonable timeframes for the committee to respond to requests or concerns may also defuse conflict.

Implementing internal dispute resolution processes means residents who feel aggrieved will have an internal forum for voicing their concerns. Without these mechanisms in place, residents may feel that lodging a formal application is the only avenue for their issue to be addressed, as there is no support within their own body corporate.

Importantly, proof of having participated in these processes within your body corporate may also be used as evidence of self-resolution should the issue remain unresolved.

What if self-resolution fails?

If endeavours to resolve the dispute internally are unsuccessful, the aggrieved person may consider lodging a formal [conciliation](#) or [adjudication](#) application with the Office of the Commissioner for Body Corporate and Community Management.

Conciliation involves an impartial conciliator equipped with knowledge of body corporate legislation assisting parties to navigate their issues – either face-to-face or by teleconference. While the ideal outcome of conciliation is a good faith agreement, an adjudication application results in a binding order. In the majority of circumstances, conciliation must be attempted first. Adjudication is generally appropriate in the first instance if you are disputing a *general* meeting decision.

As emphasised throughout this article, it is critical to remember that lodging a formal dispute resolution application for conciliation or adjudication is a last resort, not a starting point. With that in mind it is important that I stress that self-resolution is mandatory and I cannot waive that requirement. If an application is lodged with my Office without appropriate evidence of self-resolution, it's more than likely it will be rejected.


For further information please contact my Office on 1800 060 119 or www.qld.gov.au/bodycorporate.



COVID-19 and the community titles sector

In the matter of a few short months since 29 January 2020, when the COVID-19 emergency was declared for Queensland, we have experienced dramatic changes to the way we work and live. We have heard many times that “we’re all in this together”. I think this is particularly true for those of us living, working and investing in community titles schemes, and that this will continue to be true as we transition through the easing of COVID-19 restrictions and into a recovery phase.

Shortly after the COVID-19 emergency was declared my office published information and frequently asked questions to provide guidance to bodies corporate considering the impact on COVID-19 and how to



respond. Questions around appropriate steps to take to limit transmission of the virus and to comply with health directives, and impact on usual meeting procedures and budgets and levies have been hot topics. As always, the guiding principle has been and continues to be that a body corporate and committees must act reasonably when balancing the rights of individuals with the needs of other owners and occupiers and the broader community.

The Government's *COVID-19 Emergency Response Act 2020*, which commenced on 23 April 2020, enacted a series of reforms to address the COVID-19 emergency. It included a general power to make regulations to change usual legislative requirements across a range of areas where required, including attendance at places or meetings and other physical presence requirements, making and using documents and statutory timeframes. I will keep you updated if regulations to address these matters in the context of community titles schemes are announced.

Last week, the Government passed the *Justice and Other Legislation (COVID-19 Emergency Response) Act 2020* to effect a second tranche of reforms, including measures to alleviate the financial burden caused by the COVID-19 emergency on community titles schemes.

For community titles schemes under the *Body Corporate and Community Management Act 1997*, the Act includes measures from 25 May 2020 until 31 December 2020 to:

- Allow bodies corporate to, by ordinary resolution, adopt a sinking fund budget for the current financial year that does not meet the usual requirements to provide for capital expenditure for the next 9 years. A body corporate that has already adopted its budget may, by ordinary resolution, adjust it to reduce the amount for capital expenditure for future years, but if it does so, must refund any overpaid amounts to owners.
- Allow committees to extend the due date for payment of levies for a particular owner if the committee is reasonably satisfied the owner is experiencing financial hardship because of the COVID-19 emergency, or for all owners generally.
- Prevent bodies corporate from charging a late payment penalty for overdue levies.
- Allow bodies corporate to delay recovery action for certain unpaid levies until after the end of the emergency period.
- Double the maximum amounts that bodies corporate may borrow by ordinary resolution.

The webpage [COVID-19 in bodies corporate](#) has been updated with these changes.

Pleasingly, we are seeing positive signs that the steps we have taken as a community are working and the restrictions that were introduced to keep us all safe are entering a new transition phase. The landscape for all of us is likely to continue to adjust for some time to come. We will continue to update our [website](#) with new information and frequently asked questions to support you over this period. For the latest information, contact my office on 1800 060 119 or www.qld.gov.au/bodycorporatequestion.



Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

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