

Common ground

Body Corporate and Community Management Newsletter



Issue 4 March 2010

The Commissioner's update

2009 was a year of much change for Office of the Commissioner for Body Corporate and Community Management (the BCCM Office) and 2010 looks set to be equally busy.

We received a record number of dispute resolution applications (1,219) in 2009 and early indications that things are not slowing down in 2010.

The former Commissioner Nicola Doumany has been appointed to a new role as Director of Victim Assist Queensland. We wish Nicola well in running this new service, and look forward to welcoming a new Commissioner in the near future.

In April 2009, we moved to our current accommodation at Level 17 of 288 Edward Street Brisbane. However, this has been a temporary move and we anticipate moving to more permanent offices at the Brisbane Magistrates Court later in the year. While most of our contact details will remain the same with the move, we will advertise our new office address once details of the relocation are finalised.

We are also running our annual seminar series, in late May and early June. Seminars will be held around the State to give members of the community more information on the body corporate legislation. See page 2 for more details of the dates and locations of the seminars.

Of course you don't need to wait for a seminar to get more information on body corporate issues, you can also visit our website www.justice.qld.gov.au/bccm, which has a wide range of publications and online training modules. And you can contact our knowledgeable Information Service staff for individual queries about the body corporate legislation on freecall 1800 060 119 or in writing.

Ingrid Rosemann
Acting Commissioner

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Contact us

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Information Seminars

The BCCM Office is pleased to announce details of information seminars to be held around Queensland in May and June 2010.

The seminars will be as follows:

Brisbane CBD

Date Monday 17 May
Time Lunchtime session: 12-1pm
Evening session: 6-7pm
Venue Cliftons Corporate Training
288 Edward Street

Date Tuesday 1 June
Time Lunchtime session: 12-1pm
Evening session: 6-7pm
Venue Cliftons Corporate Training
288 Edward Street

Cairns

Date Wednesday 19 May
Time 9.30-11.30am
Venue Holiday Inn, Cnr The
Esplanade & Florence Street

Townsville

Date Thursday 20 May
Time 9.30-11.30am
Venue Jupiters Townsville Hotel
Sir Leslie Theiss Drive

Brisbane Northside (Chermside)

Date Friday 21 May
Time 9.30-11.30am
Venue Kedron Wavell Services Club
375 Hamilton Road

Sunshine Coast (Maroochydore)

Date Monday 31 May
Time 9.30-11.30am
Venue Maroochy Surf Club
36 Alexandra Parade

Brisbane Southside (Carina)

Date Wednesday 2 June
Time 9.30-11.30am
Venue Carina Leagues Club
1390 Creek Road

Gold Coast (Currumbin)

Date Thursday 3 June
Time 9.30-11.30am
Venue Currumbin RSL
Currumbin Creek Road

The seminars will focus on providing general information about bodies corporate and how to avoid and resolve disputes, as well as answering attendee queries.

Current and prospective owners, occupiers, committee members and anyone else involved in community titles schemes are welcome to attend. The seminars are free to attendees.

To register your interest in attending one of these seminars, or for more information, please contact by:

- email bccm@justice.qld.gov.au or
- call 07 3227 7899

Body Corporate Industry Expos

The Unit Owners Association of Queensland (UOAQ) is a non-profit organisation representing the interests of owners of lots in community titles schemes.

In 2010, UOAQ is continuing with its highly successful program of industry expos. All current and potential unit owners are invited to attend and hear from a range of industry suppliers and experts. It is an opportunity for owners to learn, listen and ask questions.

Expo details:

Gold Coast

Saturday 17 April 2010
10am to 3pm
Southport Sharks Function Centre
Olsen Avenue, Southport

Morning tea and lunch will be provided free of charge.

Please **RSVP** to UOAQ by three days prior to the Expo with your name and the names of those attending either by:

- email help@uoaq.org.au or
- telephone 07 3220 0959

For more information see the UOAQ website: www.uoaq.org.au

Practice Directions

Section 233 of the *Body Corporate and Community Management Act 1997* (BCCM Act) provides for the Commissioner to make practice directions about the dispute resolution service.

There were 21 practice directions issued in October 2009 to assist parties in conciliation and adjudication applications to understand the dispute resolution process.

These practice directions supplement the array of factsheets and guides published by the BCCM Office, by providing more specific information on policies and procedures applying to specific aspects of the dispute resolution process.

The BCCM Office particularly appreciates the contribution of industry organisations that provided constructive input into the development of the practice directions.

The following practice directions are now available on the BCCM Office website:

General

1. Evidence of a dispute
2. Representation
3. Communication and document management
4. Fees and charges for dispute resolution applications
5. Parties' costs
6. By-law enforcement applications

Conciliation

7. Conciliation process
8. Conciliation applications
9. Matters not appropriate for conciliation
10. Preparing for conciliation
11. Representation and attendance at conciliation sessions
12. Admissibility of information from conciliation

Adjudication

13. Adjudication process
14. Adjudication applications
15. Application time limits
16. Interim order applications
17. Administrator appointments
18. Emergency expenditure applications
19. Expeditable applications

20. Specialist adjudication
21. Adjudicator's orders

New BCCM form versions

In March 2009 changes were made to the Premier's ministerial portfolio arrangements.

As a result, the Honourable Cameron Dick MP, Attorney-General and Minister for Industrial Relations has responsibility for the legislative dispute resolution provisions and the BCCM Office. The Honourable Peter Lawlor MP, Minister for Tourism and Fair Trading has responsibility for all other aspects of body corporate legislation.

With this change, the responsibility for a number of approved forms under the body corporate legislation transferred to the Department of Employment, Economic Development and Innovation.

New versions of certain forms approved under the BCCM Act have been prepared to identify the Department of Employment, Economic Development and Innovation as the department responsible for the forms. All other BCCM forms remain the responsibility of the Department of Justice and Attorney-General.

The new versions are BCCM Forms:

- 1 (version 7)
- 2 (version 5)
- 6 (version 6)
- 7 (version 7)
- 13 (version 7)
- 14 (version 8)
- 18 (version 6)
- 19 (version 5)
- and 20 (version 6).

The new forms were approved to commence on 1 January 2010. Approval for the previous versions of these forms will be withdrawn on 1 April 2010.

All BCCM forms are available on the BCCM Office website by visiting www.justice.qld.gov.au/bccm, and click on the 'Forms and publications' link.

Queensland Civil and Administrative Tribunal

The new Queensland Civil and Administrative Tribunal (QCAT) will have an important role in body corporate dispute resolution.

QCAT commenced on 1 December 2009 providing a single gateway to increase the community's access to civil and administrative justice in Queensland. QCAT amalgamates the jurisdiction of 18 tribunals and will also hear a range of matters previously heard by the Queensland courts or other bodies.

Since July 2007, appeals from adjudicator's orders in body corporate dispute resolution were heard by the Commercial and Consumer Tribunal (CCT). QCAT is now able to determine these appeals.

The CCT also determined what are known in the body corporate legislation as 'complex disputes'. These include applications to adjust lot entitlements and certain contractual matters relating to body corporate managers, caretaking service contractors and letting agents. These disputes will now be heard by QCAT. However, complex disputes will continue to be able to be determined by a specialist adjudicator through an application to the Commissioner's Office, if the parties consent to the appointment of the specialist adjudicator and the payment of the adjudicator's fees.

In addition, QCAT will hear reviews of certain decisions made about dispute resolution applications, such as the decision of the Commissioner to reject an application. Appeals of these decisions were previously heard by the District Court.

All body corporate matters commenced in the CCT but not yet finalised at 1 December 2009 will be transferred to and decided by QCAT. Body corporate matters that were started in court but not yet finalised at 1 December 2009 may be transferred to QCAT by the court in certain circumstances, but will otherwise continue to be heard and decided by the court.

The contact details for QCAT are:

Street address: 259 Queen Street
Brisbane

Postal address: GPO Box 1639
Brisbane QLD 4001

Telephone: 1300 QLD CAT
(1300 753 228)

Fax: 07 3239 0979

Website: www.qcat.qld.gov.au

Sustainable housing initiatives

On 12 November 2009 the Queensland Parliament passed the *Building and Other Legislation Amendments Act 2009*, which was introduced by the Minister for Infrastructure and Planning.

Key elements of the legislation that are of particular interest to the community titles industry commenced on 1 January 2010.

Amendments to the *Building Act 1975* and the BCCM Act now prohibit or restrict new covenants and body corporate by-laws, and in some cases existing by-laws and covenants, from banning energy efficient building elements and features. These laws apply to Class 1 (houses and town houses) and Class 2 buildings (units) that are the subject of covenants or body corporate by-laws.

The amendments will render invalid any new covenants and by-laws which restrict a person from occupying a home before landscaping, driveways or similar work is completed and which prevent owners from using selected sustainable or energy efficient features, such as: light roof colours, window treatments such as tinting, specific types of materials and finishes for external walls and roofs.

New covenants and by-laws will also be unable to require minimum floor areas, minimum numbers of bedrooms and bathrooms, multiple garages, or minimum roof pitches.

New and existing covenants and by-laws will be invalid if they prohibit or restrict the installation of solar hot water systems and photovoltaic cells merely to preserve the external appearance of a building.

There will be some circumstances in which covenants and by-laws may lawfully impose restrictions, for example if the glare from a light roof colour would cause a nuisance to neighbouring owners, or the proposed location for a solar hot water system was inappropriate having regard to structural supports or maximising space for other systems.

These provisions are primarily contained in Chapter 8A, part 2 *Building Act 1975*.

Amendments have been made to the BCCM Act to support those changes. These amendments include two new clauses in section 180 'Limitations for by-laws':

- (7) *A by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the scheme and the use of the common property for the scheme.*
- (8) *A by-law must not include a provision that has no force or effect under the Chapter 8A, part 2 Building Act 1975.*

Another important initiative is the new requirement for a sustainability declaration to be prepared before class 1a (houses, townhouses and duplexes) and class 2 buildings (residential apartments) are offered for sale. The declaration requires disclosure of sustainability features when sellers advertise a home for sale.

More information on these and other changes included in the new sustainable housing legislation can be obtained from the Department of Infrastructure and Planning (DIP) by visiting:

- www.dip.qld.gov.au or
- www.forthegreenergood.qld.gov.au

Alternatively you can email DIP:
buildingcodes@dip.qld.gov.au

Did you know?

As of 31 December 2010 there were 38,570 registered community titles schemes in Queensland, with 358,552 individual lots!

Of those schemes, most (27,123) are registered under the Standard Module. The Small Schemes regulation module applies to 7,101 schemes, the Accommodation Module applies to 2,785 schemes, and 1,598 schemes are registered under the Commercial Module.

The following illustrates the size of community titles schemes in Queensland, with around 70% of schemes comprising six lots or less:

Scheme size	Number of schemes
6 Lots and under	26,907
7 to 10 Lots	4,976
11 to 20 Lots	3,271
21 to 50 Lots	2,249
51 to 100 Lots	855
Over 100 Lots	312

[**Source:** Registrar of Titles, Department of Environment and Resource Management]

Frequently asked questions

The following are a few of the commonly asked questions to BCCM Office's Information Service:

The responses are provided for information only and do not constitute legal advice. As with any matter, general information on the body corporate legislation can be obtained from the Information Service on freecall 1800 060 119. However, if you require advice on a specific matter you should consider obtaining advice from a qualified legal practitioner.

Q. Does a lot owner need body corporate approval to remove carpet and install tiles on the floor of their lot?

The legislation does not specifically address this situation but there are several factors that lot owners should consider.

While generally a lot owner does not need body corporate approval to alter the interior of their lot, the lot owner should consider whether there are any by-laws which may apply. For example, many bodies corporate have by-laws about noise or a specific by-law about floor coverings that may apply.

The lot owner should also have regard to *section 167* of the BCCM Act which provides that an occupier of a lot must not use or permit the use of the lot or common property in a way that causes a nuisance or hazard or interferes unreasonably with the use or enjoyment of another lot or the common property.

There have been numerous adjudications that have dealt with issues of owners installing tiles or other hard flooring in their lots. Each application is dealt with individually based on the by-laws applicable to the scheme and the particular facts presented by the parties.

In some cases, where an owner has laid the tiles directly on to the floor slab and an owner has been able to demonstrate (for example through a professional acoustic report) that there has been a significant increase in the noise being transmitted to the lot below, the adjudicator has ordered the removal and replacement of the tiles with carpet. In other cases, adjudicators have ordered that carpet runners be used in high traffic areas or that acoustic underlay be installed.

Any owner thinking about laying tiles or other hard flooring should consider getting a professional assessment beforehand. They should consider the potential impacts on other lot owners and what steps they should take to minimise those impacts.

Lot owners should also consider informing the owners and occupiers adjacent lots, as well as the body corporate, of the proposed work. If possible provide them with any reports or the scope of the work.

Naturally, if a person believes that they are unduly affected by the alterations they may ask that matter be rectified. If they are not satisfied with the result, they may consider lodging a dispute resolution application with the BCCM Office. In the first instance we would seek to resolve any such dispute through conciliation but if that was unsuccessful and adjudicator would consider the matter based on the facts presented by the parties.

Q. Can a person be banned from smoking in a lot or on common property?

While cigarette smoking is subject to legislative control, it is not illegal.

The *Tobacco and Other Smoking Products Act 1998* is Queensland legislation which prohibits smoking in 'an enclosed space'. However, for residential accommodation comprising lots in a community titles scheme, this prohibition only applies to 'common areas' which includes "an area accessible to all, or a specified class of, residents of, or persons employed at, the accommodation." Examples of a common area may include a TV room, a games room, or shared cooking facilities that are enclosed.

In a recent order, an adjudicator [in *Sun Crest* [2009] QBCCMCmr 303 (18 August 2009)] determined that there was a question over whether an adjudicator has the power to compel a person to stop smoking on their own lot, but also a question of whether smoking on a lot or common property causes a breach of *section 167* of the BCCM Act.

Section 167 provides that an occupier of a lot must not use or permit the use of the lot or common property in a way that causes a nuisance or hazard or interferes unreasonably with the use or enjoyment of another lot or the common property. The onus is on the person complaining about a person/s smoking to demonstrate the nuisance or unreasonable interference.

In the decision referred to above, the adjudicator found that there was a reasonable likelihood that smoking on one lot may have been causing a nuisance or unreasonable interference with an adjacent owner's use or enjoyment of their lot.

However, rather than banning the person in question from smoking on their lot or common property, they made an order that the person take reasonable steps to ensure that their smoking did not cause a nuisance or an unreasonable interference.

Q. Can a body corporate authorise a lot owner to use a visitor parking space?

A key issue is whether the visitor parking spaces are required by the relevant local government authority. There is usually a council requirement for the visitor car spaces at the time of registration of a community titles scheme, and these will remain a continuing requirement.

The body corporate should contact their local council if they are unsure of what council requirements apply to their scheme with regard to visitor car spaces.

If a certain number of visitor car spaces are required by the relevant council, those spaces will not be able to be used for resident parking or any other purpose other than genuine visitor car parking.

In such cases a body corporate could not purport to authorise an owner or occupier to use a visitor car space, even if this appears to be allowed under the scheme's by-laws and even if the spaces are vacant much of the time. This view has been confirmed in previous adjudications, such as the decision in *Kingston* [2000] QBCCMCmr 129 (13 March 2000).

However, in some schemes there may be no council mandated visitor car spaces, or there may be more visitor car spaces located in the scheme than the minimum required by council.

In such cases the body corporate should have regard to any by-laws about car parking and the use of common property to determine whether there is any scope to authorise the use of visitor car spaces beyond those mandated by council. It may be that there is scope under the by-laws for the committee to give consent for visitor car spaces to be used by owners or occupiers, providing the committee acts reasonably in doing so.

In on recent adjudication, for example, [*Sailz Whitsunday* [2009] QBCCMCmr 305 (20 August 2009)] the adjudicator found that the many of the visitor car spaces

were required by council and could only be used by *bona fide* visitors.

However, the adjudicator found that some spaces were not designated visitor car spaces. Under the by-laws applying to the scheme, the adjudicator found that the spaces could be used with the consent in writing from the committee. The adjudicator suggested that the committee could give a "general consent" in writing that the areas may be used by any owner or occupier on a first-come/ first-served basis.

Did you know?

Orders made by adjudicators in regard to a body corporate dispute resolution application are published online.

The Australasian Legal Information Institute (AustLII) publishes these orders online, please visit:

- www.austlii.edu.au/au/cases/qld/QBCCMCmr/

Orders can be searched by date of the order, name of the community titles scheme, or by a word search.

All orders made since January 2000 are available on this database, with new orders normally uploaded monthly.

Publication update

In December 2009 the BCCM Office released an updated version of our introductory publication *Body Corporate: A quick guide to community living*.

This Guide gives a great overview of community titles schemes, including the function of the body corporate, finances, maintenance and by-laws. It is particularly useful for prospective buyers, with information on searches potential buyers should undertake, and a checklist of things new owners should be aware of. It includes contact details for a range of government and non-government organisations relevant to lot owners.

The Guide is also available online in seven languages (English, Spanish, German, Vietnamese, Italian, Greek and Chinese).

Dispute resolution process

The following flowchart describes the dispute resolution process provided for in Chapter 6 of the BCCM Act.

For more information about the dispute resolution process, please contact the BCCM Office's Information Service:

- freecall 1800 060 119

