

Body Corporate and Community Management

Common Ground Issue 13

Welcome to issue 13 of *Common Ground*, the bi-annual e-newsletter for the Office of the Commissioner for Body Corporate and Community Management.

Commissioner's Office update

In the last edition I reported that Robert Walker was on secondment to another part of the Department of Justice and Attorney-General. I can now inform you that, after four years as commissioner, Robert has accepted a permanent position in the Office of the State Coroner. We wish Robert well in his new role and look forward to welcoming a new commissioner in the near future.

The 2013-14 financial year was yet another busy one for the Commissioner's Office. In this edition I have included a snapshot of the information and dispute resolution services that we provided. I commend the hard work of every member of our small team which has enabled us to continue to meet our service targets despite increased caseloads and other challenges.

I am pleased to advise that we are now able to offer online payment for all dispute resolution services (keep reading for more *details*). If you are involved in a dispute in the Commissioner's Office, we hope you will find this a more convenient and secure way to pay.

After our successful series of information seminars for south-east Queensland earlier in the year, we are looking forward to heading to Cairns on 9 October for the next installment. Read on for more details of this event and how to register.

Finally, a reminder that we have a wealth of information online about our services and the body corporate legislation – go to www.justice.qld.gov.au/bccm and www.qld.gov.au/bodycorporate. And as always, we encourage you to call us on freecall 1800 060 119 if you would like information about a body corporate issue, or 3227 7654 if you have a query about a current dispute resolution application.

Ingrid Rosemann
Acting Commissioner

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Information Seminar in Cairns



Anyone from Cairns and surrounding areas is warmly invited to attend our information seminar on **Thursday 9 October**, 10am-12pm. It will be held at the Holiday Inn Cairns, on the corner of The Esplanade and Florence Street.

We have already had a great response so far – so go [online to register](#) if you are interested in coming along.

Like the well-attended seminars held earlier in the year, this session will provide general information about bodies corporate and how to avoid and resolve disputes, an overview of the dispute resolution application process and the developing trends in by-laws. We will also provide some information on the Government's property law review and the One-Stop-Shop initiative.

The Commissioner's Office in 2013-14

Our **Information Service** had a very busy year, responding to a record 28,225 requests for information in 2013-14. We also conducted 5 information seminars (which were attended by about 500 people) as well as participating in many more community education and professional development events organised by industry groups. In addition, our staff have been hard at work developing significant new on-line educational content and services.



For our **Dispute Resolution Service**, in the last financial year the Commissioner's Office received 1,384 new dispute resolution applications (up from 1,373 in 2012-13) and finalised a record 1,392 applications (up from 1,339 in 2012-13). This reflects a clearance rate of 101%.

We finalised 587 conciliation applications. About 70% of disputes where a conciliation session was held resulted in a written agreement, and 87% of conciliation applications did not proceed to adjudication. We maintained high levels of positive feedback for the conciliation service, with 84% of conciliation survey respondents recommending conciliation to resolve future disputes.

This year 805 adjudication applications were finalised. Our service targets were achieved with over 93% resolved within 6 months of the date of lodgment. Less than 1% of orders were overturned or altered on appeal.

Conciliation of disputes

You may have noticed from the service statistics for 2013-14 that conciliation is often a very successful means of resolving a body corporate dispute. In most situations, conciliation is the mandatory first step in the formal dispute resolution processes provided by the Commissioner's Office.



However some disputes might not be suitable for conciliation. In that case a matter may need to proceed straight to adjudication. For example, where a dispute resolution application relates to a dispute about a decision at a general meeting of a body corporate, conciliation may not be an effective means of resolving the dispute. If an applicant is challenging the validity of a motion or resolution, the representatives of the committee could not change the general meeting decision (although they could agree to take the matter back to a further general meeting). For this reason disputes about a general meeting decision will often proceed directly to adjudication. However each application is assessed in the context of its particular circumstances.

The question of whether a dispute must be conciliated cannot be properly assessed until an application and all supporting documentation has been lodged. There are a range of factors that the commissioner may consider in deciding whether to waive the usual requirement that an applicant attempt to conciliate a dispute. [Practice Direction 9: Internal dispute resolution](#) sets out some of the factors that may be considered. Our information service staff can also give general information about the types of applications where the requirement to conciliate may be waived. But the requirement to conciliate will not automatically be waived simply because the application is of a certain type.

Frequently applicants seek to avoid conciliation because they don't think the respondent will agree to what they are seeking, or they have been unsuccessful in attempts to resolve the matter directly. The reality is many conciliations are able to reach agreement.

The following are some comments on what participants liked about their conciliation process:

Both parties were encouraged to express their point of view.

The conciliator provided excellent skills & knowledge of BC matters. He was a mine of information on questions put to him.

The logical and straightforward manner in which the whole process is conducted.

Having a third party impartial to chair the process. It also compelled the body corporate to deal with my issue after "stonewalling" for 2-3 months.

It brought me to the point of my problem where I would liked to have been 3 yrs ago.

If an applicant applies for conciliation, and the matter is deemed to be not suitable for conciliation, the application fee for a subsequent adjudication application can be waived. Similarly, if an adjudication application is lodged and it is determined that conciliation is required in the first instance, the application fee for the conciliation application can be waived.



Prospective applicants should remember that while the commissioner may determine that a matter is not suitable for conciliation, all applicants must demonstrate that they have made reasonable attempts to resolve a dispute by internal dispute resolution (see [Practice Direction 23: Internal dispute resolution](#) for more information).

Online payments for dispute resolution services



You can now pay for dispute resolution services provided by the Commissioner's Office online by credit card. Just go to www.qld.gov.au/bodycorporatepayments

If you are lodging a **dispute resolution application**, pay the application fee online and then send us the receipt number with your application. If you have lodged the application without a fee, include your application reference number when you pay online.

If you want to inspect or obtain copies of **application documents** (such as the submissions received about an application), contact our office to confirm the total cost of those. Pay that cost online, and include the application reference number.

While online payment is the most convenient and secure way to pay, you can still make payments to the Commissioner's Office by the following:

- Credit card payment over the phone (call 3227 7654)
- [Credit card payment](#) by mail or fax using the *Credit card payment authorisation form* (BCCM Form 21). This form must not be emailed.
- Cheque or money order made payable to BCCM
- EFTPOS at the BCCM reception counter
- Cash at the BCCM reception counter

And a reminder that if you are requesting a 'search of adjudicators orders', you can:

- request and pay by credit card for a '[search of adjudicators](#)' orders online or
- use the [BCCM Form 3](#) and pay by one of the other payment options above.

Fees applying under the body corporate legislation increased in line with CPI on 1 July 2014. Please check [online](#) for the current fees.

Community titles scheme statistics

Growth in the community titles sector in Queensland continues.

As at June 2014 there were 43,242 registered community titles schemes (up 2.8% since June 2013), with 405,102 lots (up 2.9% since June 2013).

More than 70% of registered schemes have 6 or fewer lots, and about 3% of schemes have more than 50 lots.

Of the registered schemes:

- 66% are registered under the Standard Module
- 21% are governed by the Small Schemes Module
- 7.5% are under the Accommodation Module
- 4% are Commercial Module schemes
- and 1.5% are under the Specified Two-Lot Schemes Module



Frequently asked questions

The following are some common questions to our Information Service:



- 1. *My body corporate's contract with our body corporate manager has ended. Can the body corporate manager close the bank account that they opened for the body corporate and give the body corporate a cheque for the contents of the account?***

A body corporate must open a bank account in its name (*section 151(2)* of the *Body Corporate and Community Management Act 1997*). This account can be opened by a body corporate manager or committee member, but only with the consent of the body corporate.

If a body corporate manager's contract authorises the body corporate manager to operate the body corporate's bank account, the body corporate manager may do so (*Act, section 151(3)*). However the operation of the account is subject to the direction of the body corporate, for example a committee or general meeting decision to authorise spending.

If the body corporate manager's contract comes to an end, the Act provides (*section 151(5)*) that the body corporate can give the financial institution written notice (BCCM Form 2) to remove the authority of the body corporate manager (or their associate) to operate the account. Committee members may then be authorised to operate the bank account.

There is no legislative capacity for a body corporate manager to decide to close a body corporate bank account - the account can only be closed with the consent of the body corporate. If an outgoing manager is concerned about the ongoing operation of a bank account, they can remind the committee to notify the financial institution of the changed operational arrangements.

- 2. *I am looking at buying a unit in a community titles scheme. The seller still owes money to the body corporate for levies. What happens if that is not paid before I sign a contract to purchase?***

If a lot owner has not paid any part of their contributions by the due date, or a penalty (interest) for unpaid contributions, or another amount associated with a lot (such as the cost of services arranged by the body corporate on behalf of the lot owner), the lot owner will owe a 'body corporate debt'.

A body corporate can enforce the liability to pay a body corporate debt against either or both the person who was the lot owner when the debt became payable, and a person (including a mortgagee in possession) who becomes the owner before the debt is paid. So if the seller has not paid all amounts owing before they sell, the new owner can become liable for the debt. The new owner will also bear the non-financial consequences of owing a body corporate debt – including not being able to vote at a general meeting and not being able to nominate for committee membership.

The Queensland Court of Appeal (*Westpac Banking Corporation v Body Corporate for the Wave Community Title Scheme 36237* [\[2014\] QCA 73](#)) has confirmed that a mortgagee who had taken possession of a lot after the lot owner's bankruptcy was liable for the body corporate debt as well as debt recovery costs. The same would apply to a new owner.

Usually, outstanding levies are settled between the seller and the purchaser at the time of settlement of a lot. It is important for anyone considering purchasing a lot to obtain an 'information certificate' from the body corporate to find out whether there is a body corporate debt existing for that lot.

Although it can take debt recovery action earlier, a body corporate must take action if contributions have been outstanding for 2 years (Standard Module, *section 145*). The body corporate may commence a proceeding to recover a debt through the Queensland Civil and Administrative Tribunal (QCAT) or a court, and the debt can be challenged in that forum. There is no jurisdiction under the Act for an adjudicator in the Commissioner's Office to determine a dispute about a debt. Debt disputes can be the subject of a conciliation application in the Commissioner's Office. But if a body corporate starts a proceeding to recover the debt in QCAT or a court, the conciliation will end.

3. I think the annual levies for my body corporate are too high. I can't afford them. What can I do about it?

The body corporate must consider an administrative fund budget and a sinking fund budget at each annual general meeting. The budgets are adopted by ordinary resolution at the meeting. The administrative fund budget estimates the reasonable and necessary expenditure for the financial year for maintenance, insurance and other recurrent expenditure. The sinking fund budget covers capital or non-recurrent expenditure for the financial year along with a proportional amount necessary to be accumulated to meet anticipated expenditure over at least the next nine years.



After the budgets are adopted, the body corporate must pass an ordinary resolution to set the contributions to be levied on each owner based on the budgets, and when they are due. Notices must then be sent to owners setting out the contributions owing for the lot and the date for payment.

Levies are an important part of a person's legal obligations as a lot owner. If any owner disagrees with the budgets or the levies owing on the lot, it is not appropriate to simply refuse to pay the levies. This could result in a loss of a discount for paying on time, the loss of voting and other rights, and financial penalties including interest charges on late payments, and debt recovery costs if action is required by the body corporate to recover the unpaid contributions.

If an owner believes the budgets or levies are too high, they can vote 'no' to the motions to approve them. They could also submit alternative budgets setting out what spending they believe is reasonable and necessary. They could consider lodging an application to challenge the budgets if they can demonstrate that the amounts set are unreasonably high and that they have tried to resolve the issue.

If an owner believes their levies have been incorrectly calculated, they should contact the committee to raise their concerns. They could apply for conciliation if they cannot resolve the issue directly.

G20 Summit



As most readers will know, the G20 Leaders Summit will be held in Brisbane on 15-16 November. Friday 14 November will be a public holiday for people who work in the Brisbane local government area.

For those who might be affected by the Summit, Queensland Police have produced an information brochure. Click on the icon below to download a copy or go to www.police.qld.gov.au/g20.

The Commissioner's Office will be closed on Friday 14 November, otherwise it will be business as usual for our office during the week leading up to the summit. However, in light of increased security and potential transport and traffic impacts, we encourage clients to avoid non-essential visits to our office in the Brisbane Magistrates Court that week.



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www.qld.gov.au/bodycorporate

1800 060 119

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