

## Commissioner Foreword



Dear Subscribers,

Welcome to our April edition of Common Ground.

With the new body corporate regulations now “business as usual” for many in the sector, we are shifting the focus of our community education activities to other topics of interest.

This month’s edition of Common Ground looks at debt disputes. A ‘debt dispute’ is a dispute about the recovery of a debt under the Act by a body corporate from an owner. Generally speaking, a body corporate may commence QCAT or court proceedings to recover debts owed by an owner and, while a debt dispute may be brought to our office for conciliation, our adjudicators do not have jurisdiction to deal with debt disputes.

This gives rise to a relatively common question about whether a dispute can proceed to adjudication if the owner has already paid an amount to the body corporate and the owner is seeking reimbursement? Adjudicators’ decisions generally indicate that disputes about reimbursement of an amount that has already been paid by an owner to a body corporate may fall within an adjudicator’s jurisdiction.

However, a 2019 QCAT decision held that an amount paid by an owner to a body corporate may not be recoverable if it was paid voluntarily despite the owner believing they did not owe the amount, or without regard to whether they had a legal obligation to pay the amount. The QCAT decision related to a 2017 adjudication application by a lot owner at The Grove seeking reimbursement of an amount paid to the body corporate for cleaning. The application was considered by the adjudicator and an order made in favour of the owner for the reimbursement. However, this decision was subsequently overturned in QCAT because the owner had paid the amount to the body corporate voluntarily, and not as a mistake.


I encourage you to read the article about The Grove decision below. You can also read more about debt recovery and debt disputes on our website:

- [Practice direction 24 – Debt disputes](#)
- [Debt recovery](#)

In other community titles sector news, the Queensland Government has recently established a legislation working group chaired by the Commissioner for Liquor, Gaming and Fair Trading and consisting of key community titles sector stakeholder representatives to explore a number of community titles scheme issues.

On 14 April 2021 I attended the inaugural meeting of the working group along with stakeholder representatives. A staged approach to the working group’s consideration of issues has been endorsed, with specific Government election commitments (approvals for alternative insurance, responding to relevant ACCC Northern Australia Insurance Inquiry recommendations, seller disclosure issues and scheme termination issues) to be prioritised.

Previous editions of Common Ground have discussed the challenges some bodies corporate face in meeting insurance obligations, and that in some cases I may approve alternative insurance if a body corporate is unable to secure the insurance required under the Act. If your body corporate is unable to secure the insurances it needs, I encourage you to consider the information available in [Issue 22 of Common Ground](#), our [website](#) and in [Practice Direction 28](#) for guidance on the alternative insurance approval process, and to contact our Information and Community Education team at [www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion) if you have further questions.



The working group's discussion about alternative insurance included:

- information about the recent rise in applications for approval of alternative insurance;
- an overview of the current requirements for approval of alternative insurance;
- discussion of alternative forums for relevant decisions; and
- the importance of certainty and streamlined processes.

I look forward to providing you with a further update following the next working group meeting, which is currently planned for July.

Finally, you may remember in the March edition of Common Ground we mentioned that the Government had introduced Bills into Parliament to extend the expiry date of initiatives to assist schemes to manage financial and other impacts of Covid-19. I am pleased to advise that the Bills have passed, and the expiry date has been extended to 30 September 2021. Please visit our website for further information about the COVID-19 initiatives.

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



## Debt disputes – a case study

[\*The Body Corporate for The Grove CTS9356 v Comerford \[2019\] QCATA 172 \(The Grove\)\*](#)

The Grove appeal decision by the Queensland Civil and Administrative Tribunal (QCAT) is one to consider! In what was in essence a dispute over who should pay a cleaning bill, QCAT decided that the owner who had paid the bill could only be reimbursed if the payment had been made 'under a mistake' - and overturned the adjudicator's decision.

### What were the facts?


The owner had done some renovations, causing release of hazardous silica dust. A Queensland Government inspector issued an improvement notice to the body corporate to clean up the dust.

The body corporate cleaned up the dust and then issued the lot owner with a cleaning bill for over \$4000, which he paid, and then later disputed through a Body Corporate and Community Management (BCCM) adjudication application.

In [\*The Grove \[2018\] QBCCMCmr 157\*](#) the adjudicator ordered that the body corporate reimburse the lot owner because it had no basis under the BCCM legislation to charge the lot owner the cost of the cleaning.

### What did QCAT decide?

QCAT agreed with the adjudicator that there was no basis under the BCCM legislation for the body corporate to charge the lot owner the cost of the cleaning. However, QCAT further decided that, as the lot owner had not made the payment 'under a mistake', the adjudicator's order for the body corporate to reimburse the owner should be overturned.




QCAT considered the lot owner's payment of the cleaning bill had been voluntary because he had been prepared to pay the bill either on the assumption that he was obliged to or, regardless of whether this was the case, because the body corporate believed it was entitled to the lot owner's payment. It stated: "A payment which is 'voluntary' will not be recoverable on the ground of mistake. This reflects the policy that the law wishes to uphold bargains and enforce compromises freely entered into. A 'voluntary' payment is one made in satisfaction of an honest claim." [para 26, citations removed]

### Has the decision been applied since?

In [Unison At Waterfront, Newstead \[2020\] QBCCMCMr 86](#), the adjudicator dismissed an owner's dispute application seeking reimbursement for lost discounts, penalty interest and recovery costs for "want of jurisdiction", on the basis that the application amounted to a debt dispute within the meaning of [section 229A of the Body Corporate and Community Management Act 1997](#). However, the Adjudicator did also comment that even if he had not made that finding, he would have considered The Grove decision and "...likely would have dismissed the application anyway...[as] it appears that Mr Wilson voluntarily paid the disputed amount to the body corporate despite his misgivings about whether the body corporate was truly entitled to it." [para 7]

### What does this mean?

This means that if an owner or occupier voluntarily pays an amount that they do not think the body corporate is entitled to charge them, they may not be entitled to later recover the amount. There is now precedent that even where the amount in dispute could never have been claimed under the BCCM legislation, a payment of the disputed amount made voluntarily and not as a mistake may not be ordered to be reimbursed. It's worth considering before you pay.



### Body Corporate and Community Management

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

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