

## Commissioner Foreword



Dear Subscribers,

Welcome to the August edition of Common Ground

This month's Common Ground includes an article about a common type of dispute resolution application – applications for declaratory orders about holding a late annual general meeting. The article looks at whether or not these are necessary in order to ensure a valid meeting is conducted.

In addition, we share with you an article summarising some community titles schemes facts and figures to highlight the recent growth in the sector. The article also discusses

the growth in the number of both conciliation and adjudication applications we received in the 2020/21 financial year.

In other news, the work of the Community Titles Legislation Working Group, established to explore some of the issues affecting the community titles sector and possible reforms, has also continued in recent months. The second meeting of the working group was held on 22 July 2021, and continued discussion of issues raised at the first meeting of the group including:

- alternative insurance approvals for schemes unable to secure full replacement insurance.
- recommendations of the Australian Competition and Consumer Commission Northern Australia Insurance Inquiry relating to remuneration of body corporate managers for arranging body corporate insurance.
- recommendations of the property law review conducted for Government by QUT about seller disclosure relating to community titles schemes.

The meeting discussion examined stakeholder submissions received about these issues and focused on refining possible policy approaches. The meeting also discussed recommendations made by QUT's review of property law for the Government about making and enforcing smoking by-laws. Members discussed their views about what areas of a community titles scheme should be covered by a body corporate smoking by-law, appropriate approval thresholds for making smoking by-laws, enforcement of smoking by-laws and other possible options for regulating smoking in community titles schemes. The next meeting of the working group is currently planned for 7 October 2021.

Finally on the reform front, you may also be interested to know that the Queensland Government is reviewing the Queensland Home Warranty Scheme, with a focus on promoting certainty, equity, fairness and transparency in the Scheme's operation.

A survey is open for the Queensland community and the building and construction sector to provide feedback until 5pm, 31 August 2021. Information sessions are also planned online and around Queensland, subject to COVID-19 restrictions.

The survey and further information on the review, including how to register your interest to receive updates or attend an information session, is available at [www.qld.gov.au/HomeWarrantyScheme](http://www.qld.gov.au/HomeWarrantyScheme).

I hope you stay safe during these uncertain times.

**Michelle Scott**  
**Commissioner for Body Corporate and Community Management**

## Community titles sector and BCCM: Facts and figures



### CTS Statistics

The community titles sector continued to grow over the last financial year, as shown by the data from Titles Queensland:

	30 June 2020	30 June 2021
No. of community titles schemes	50,207	50,931
No of lots in community titles schemes	502,823	512,091

Consistent with previous years, more than half of all schemes were registered under the standard regulation module. At the end of the 2020/21 financial year, the number of schemes registered under the various regulation modules stood at:

Regulation module	No. of schemes
Standard	29,781
Small schemes	10,299
Accommodation	4,433
Commercial	2,295
Specified Two-Lot	4,213

There were no significant changes in the relative size of new schemes over the financial year:

No. of schemes	June 2020		June 2021	
	No. of schemes	%	No. of schemes	%
6 lots and under	35,326	70%	35,854	70%
7-10 lots	5,909	12%	5,958	12%
11-20 lots	4,134	8%	4,192	8%
21-50 lots	3,001	6%	3,039	6%
51-100 lots	1,274	3%	1,331	3%
Over 100 lots	563	1%	577	1%
<b>Total</b>	<b>50,207</b>	<b>100%</b>	<b>50,391</b>	<b>100%</b>

No. of lots	June 2020		June 2021	
6 lots and under	112,406	22%	113,745	22%
7-10 lots	49,195	10%	49,610	10%
11-20 lots	60,044	12%	60,905	12%
21-50 lots	96,719	19%	98,005	19%
51-100 lots	89,417	18%	92,184	18%
Over 100 lots	95,042	19%	97,642	19%
<b>Total</b>	<b>502,823</b>	<b>100%</b>	<b>512,091</b>	<b>100%</b>

## Did you know?


In June 2021, the State's titles registry services transferred to the Queensland Future Fund, enabled by the *Queensland Future Fund (Titles Registry) Act 2021*. The titles registry is now Titles Queensland and is separate from the Department of Resources. You can access titles registry activity data, including the above community titles schemes statistics, on the new [Titles Queensland website](#).



## BCCM Services

There has also been an increase in demand for many of our services in the last financial year.

	2019/20	2020/21
Conciliation applications received	663	704
Conciliation applications finalised	629	707
Conciliation clearance rate (target 95%)	95%	100%
Adjudication applications received	1,033	1,146
Adjudication applications finalised	1,015	1,041
Adjudication clearance rate (target 95%)	98%	91%
Total dispute applications received	1,696	1,850
Total dispute applications finalised	1,644	1,748
Dispute resolution clearance rate (target 95%)	97%	94%



In terms of our dispute services, clearance rates compare the number of dispute applications finalised to the number of applications lodged. This shows us the ability of our office to manage the inflow of dispute resolution applications. Clearance rates have generally remained at high levels over the previous four years, from 2016/17 to 2019/20 [\[TN1\]](#) [\[SC2\]](#) [\[SC3\]](#), averaging 99 per cent. However the data for the last financial year shows that we experienced a 9.1 per cent increase in dispute applications. While we also finalised a record number of applications – 1748 – an increase of 6.3 per cent from the previous year, our clearance rate fell slightly below our target, to 94 per cent.

The increase in applications received has translated to delays for some parties. In 2020/21, 75 per cent of conciliation applications finalised were done so in under 14 weeks. This was up from seven weeks in the previous year. Of the adjudication applications finalised in 2020/21, 75 per cent of those finalised by orders were finalised within 24 weeks, an increase from 19 weeks in the previous year. The percentage of adjudication applications that are more than six months old has also increased by 2.1 percentage points, to 8.6 per cent. We are working hard to improve the efficiency of our services and to minimise any delays for parties in the year ahead. I am also pleased to confirm that we have continued to maintain high quality dispute services. In 2020/21, over 80 per cent of clients recommended the conciliation process in post-conciliation session surveys and most matters were either resolved in conciliation or did not proceed to adjudication. Of adjudicators' orders in 2020/21, only 0.2 per cent were overturned or altered on appeal.

In terms of our information and community education services, the high level of demand experienced in 2019/20 continued into 2020/21. We received more than 20,000 email and telephone enquiries over the last year, however more than 99 per cent of these received a response within service standards. This meant that almost all clients received a reply to their telephone enquiries within 24 hours and to their written enquiries within 14 days.

We receive telephone enquiries from a number of different parties in the community titles sector. Some common topics of the enquiries we received included:

- Committee membership, processes and decision-making
- Maintenance and improvements
- General meeting procedures
- Dispute resolution processes
- By-laws

We will be working on the information we provide around these topics in the year ahead to help ensure we are continuing to provide our clients with the information they need, when they need it.

## Declaratory orders – Out of time annual general meetings

An annual general meeting (AGM) must be held within 3 months of the end of a scheme's financial year. For various reasons, bodies corporate are not always able to comply with that timeframe. When this happens, many apply for adjudication, seeking an order such as 'permission to hold the AGM out of time' or 'an extension of time to hold the AGM'.

There is nothing in the *Body Corporate and Community Management Act 1997* (the Act) or regulation modules to suggest that an adjudicator's order is required or will assist when this happens. However, the Commissioner's office received around 150-200 of these applications last financial year. This can consume the resources of the bodies corporate that lodge them, in the form of adjudication application fees and disbursements to body corporate managers, and the resources of the Commissioner's office, as well as increasing waiting times on other matters.

These applications have no respondent and can only be made under section 227(2) of the Act. This section states that an application that seeks a declaratory order about the operation of the Act, by a person who is able to (under section 227(1)(a) to (h) of the Act) is also considered a dispute even if there is no respondent or affected person named in the application.

A declaratory order is simply a statement of the way the legislation works. It does not change the way it works. The body corporate's legal rights and obligations remain the same after the order as they were before. The order simply clarifies matters for the benefit of the parties.

The declaration that is usually made in relation to late AGMs is that they will not be invalid due to their lateness. Review of adjudicators' orders confirms that adjudicators do not give permission to hold the meeting late nor suggest that the body corporate is legally entitled to hold it late. They do not, and cannot, extend the three month timeframe. The adjudicator in [Ciana \[2021\] QBCCMCmr 72](#) restated the legal reality that:

*[7] ...an AGM will not be invalid in its entirety merely because it is held late. There is nothing in the Act to suggest otherwise. If the meeting is otherwise held in accordance with statutory requirements and no one can demonstrate that they suffered any substantive prejudice due to the meeting's lateness, there would be no basis for an adjudicator to find it void if faced with an application of that nature.*


These declarations offer no legal protection for each individual body corporate that applies for them. This was specifically highlighted in [Peninsula \[2021\] QBCCMCmr 131](#):

*I note that this order does not preclude an application for the AGM to be declared invalid for some other reason not presently known to me, nor an application for an order requiring the AGM to be held sooner, if such applications were made.*

And in [Chancellor \[2020\] QBCCMCmr 501](#):

*As of 1 October 2020, the body corporate will be in breach of [former] section 64 of the Accommodation Module. It should act promptly to bring the contravention to an end, notwithstanding that the validity of the meeting might not be at stake*

Given that these declarations simply clarify and restate the legal reality, there is little need for them in most cases. There are hundreds of orders that already make it clear that an AGM is not invalid simply because it is held late. Nothing is gained by having an adjudicator say it again in each case.



The only situation where it might make sense to seek a declaration is if the body corporate is aware of some controversy about the validity of the AGM due to its lateness. In this situation the body corporate may prefer to seek a quick declaratory order to put the issue to rest

Anecdotally, that situation seems rare. We do not see many, if any, applications for an order that an AGM is void solely because it was held late. With some 50,000 community titles schemes in Queensland, that is unlikely to be due to the current practice of seeking declarations. There must be many AGMs held late across the State that are not the subject of a declaration, yet do not result in a challenge to the validity of the meeting.

This does not suggest that bodies corporate may hold their AGM whenever they like. They are required by legislation to hold it within three months of the end of their financial year and should continue to make all attempts to do so.



**Body Corporate and Community Management**

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