

## Commissioner Foreword



Dear Subscribers

This edition of *Common Ground* comes at a time of impending change. As you'd no doubt know, amendments to all the Regulation Modules are currently out for public consultation, a product of the government's Property Law Review.

While the idea of 'regulation change' may not seem terribly exciting to some of you, the proposed amendments will, if passed, have some significant – and positive – implications for bodies corporate across the State. I encourage everyone to have their say and stay tuned to *Common Ground* for further updates in the process.

In the meantime, life goes on for not just bodies corporate but for our Office as well and with that in mind, this *Common Ground* contains content across a mixed bag of topics. One of those topics is the sometimes-misunderstood issue of tenant (occupier) rights and responsibilities in a body corporate.

As always if you have feedback about or suggestions for future *Common Ground* topics, please let us know.

**Chris Irons**  
**Commissioner**  
**Office of the Commissioner for Body Corporate and Community Management**



## Frequently Asked Questions – Renting in a body corporate


Do tenants have the same rights as the owners in a body corporate and what are they? These are common questions of both tenants and owners to the Commissioner's office. Below are some common enquiries to help you understand your obligations. Keep in mind that obligations and rights of tenants and landlords also fall under the Residential Tenancies Authority, you can contact them by visiting their website [www.rta.qld.gov.au](http://www.rta.qld.gov.au). The below information is in relation only to the *Body Corporate and Community Management Act 1997* (the BCCM Act) and its regulation modules.

### **Q1. Do the by-laws in our scheme apply to both tenants and owners?**

Yes, both tenants (occupiers, as they are known under body corporate legislation) and owners must abide by the body corporate's by-laws.

### **Q2. I am a tenant in a body corporate, my neighbour has loud parties all the time which are becoming a nuisance. I know there is a by-law about nuisance, what can I do?**

As an occupier of a lot, you can take steps to ask the body corporate to enforce the by-laws. You can complete a [BCCM Form 1](#) and give it to your body corporate committee asking them to enforce the by-laws. Refer to [Practice Direction 6](#) for more information about by-law enforcement applications.



**Q3. I am a landlord and have given approval to my prospective tenant to have a pet but the body corporate has said no. They are good tenants and I don't want to lose them, what can I do?**

If the by-laws for the scheme allow a pet on approval and your body corporate has said no to the pet application, you should first attempt self-resolution to resolve the dispute. You should go back to the committee and ask why it rejected the application. The committee may provide reasons which your tenant could accommodate. If self-resolution is not successful, you can make a dispute resolution application to our office, listing the tenant as an affected person, if you think the decision is unreasonable.

When renting a lot in a body corporate, tenants need to be mindful that they need both the landlord AND the body corporate's approval.

**Q4. I am a tenant and I want to install lattice inside my balcony. The owner said that I can, do I need approval of the body corporate?**

The body corporate may have a by-law about changing the appearance of your lot. You should check the by-laws for your scheme to see if you need approval. If you do, then write to the committee seeking the approval.

If the committee says no you can ask it for reasons. If self-resolution is not successful, you can make a dispute resolution application to our office if you think the decision is unreasonable.

**Q5. I am a tenant and have been given a contravention notice by the body corporate, what happens next?**

The body corporate can issue you with a contravention notice if it reasonably believes that you have breached a body corporate by-law. If you have been given a continuing contravention notice ([BCCM Form 10](#)) then you should cease contravening the by-law within the timeframe provided on the notice. If you have been given a future contravention notice, then you should not repeat the contravention within the notice period – three months or a lesser time provided in the notice. If you do not comply with the notice, the body corporate may make a dispute resolution application with our office or start proceedings with the Magistrates Court to enforce the notice.

If you do not believe that you have been breaching the by-law, you could respond to the body corporate advising your reasons why you do not believe you are contravening the by-law.

**Q6. I am a tenant, the body corporate says they can enter my lot. I thought only the landlord's property manager could enter the lot, is this correct?**

No, the body corporate is authorised to enter the lot under [section 163 of the BCCM Act](#). However it can only enter for the purpose of inspecting the lot to find out whether work the body corporate is authorised or required to carry out is necessary, or to carry out that work. It must give you seven days' written notice, unless it is in an emergency. If you are given a notice under section 163 you must not obstruct the authorised person from entering the lot, otherwise penalties can apply.

**Q7. I am a tenant in a body corporate, there is a gate leading to the mailboxes that has been broken for months. The body corporate hasn't done anything about it, what can I do?**

The body corporate must maintain the common property in good condition. You can write to the body corporate and ask it to fix the gate. As an occupier you are not able to submit a motion to be considered by the body corporate, however the owner – your landlord – can. If the committee does not respond to your request you could try to get the owner to put forward a motion.

If these options fail, you may be able to lodge a dispute resolution application with our office.



**Q8. I am an owner/occupier in a body corporate, there is a tenant that lives next door to me who parks their car in a visitor car space. The committee says they have contacted the property manager and they can't do anything more. Is this correct, surely the committee can take action?**

If an occupier is parking their car in a regulated parking area, this is likely a breach of your scheme's by-laws. The body corporate is responsible under the BCCM Act for enforcing its by-laws not the landlord's property manager. You should give a [BCCM Form 1](#) to your body corporate asking that it issue a contravention notice to the tenant. If it does not respond to you within 14 days advising that it has issued a contravention notice, or it advises that they will not be issuing a notice, you may be able to lodge a dispute resolution application with our office. Refer to [Practice Direction 6](#) for more information about by-law enforcement applications.

You may need to ask for a copy of the body corporate roll to find out the name of the tenant. More information about accessing body corporate records can be found on our [website](#).

**Q9. I am a tenant, the body corporate refuses to communicate with me. They say that I can only contact them through my landlord or property manager/letting agent, is this true?**

No, there is no reason why you cannot have direct contact with the body corporate committee. Ask your letting agent for the contact details of the body corporate manager if there is one. Or if you already have the details of the committee, talk or write directly to it. There is nothing in the body corporate legislation that prohibits this.

**Q10. Can our body corporate restrict tenants from using certain parts of the common property by putting in a new by-law? We as owners think we should have more rights!**

No, a by-law cannot discriminate between types of occupiers (see [BCCM Act, section 180](#)).

**Q11. I am an owner/landlord and I have been asked to breach my tenants because they are not complying with the by-laws. Is this correct, I thought the body corporate enforced the by-laws?**

It is the body corporate's responsibility to enforce the by-laws. The BCCM Act does not obligate you to do so. The body corporate can issue your tenant with a contravention notice. If it does, it must also give you a copy of the notice.


For this reason it is important that you update the body corporate roll if you have tenants with a lease of six months or more. This is a requirement under section [193 of the Standard Module](#).



## Engaging a body corporate manager in place of a committee

Life is busy. It can be hard enough managing your own affairs without being elected to a committee of a body corporate and being expected to manage the affairs of a community titles scheme. Even so, it is considered best practice to have your body corporate represented by those who have an emotional and/or financial interest in the scheme. Sometimes however, it is not always possible.

A committee under the Standard and Accommodation Modules must contain a minimum of three eligible individuals. The three executive member positions of chairperson, secretary and treasurer must also be filled. Non-voting members of the committee are not counted to make up the minimum of three members.



If your body corporate is not able to find enough people to fill the executive positions on the committee or enough people to fill to the required number of three, the body corporate must consider engaging a body corporate manager in place of the committee. This is often referred to as a 'Chapter 3, part 5 engagement'.

This means that even if you have been able to fill two executive member positions or a number of people are willing to be ordinary members of the committee, your body corporate has not fulfilled the minimum requirements under the legislation (Standard and Accommodation Modules) and a body corporate manager must be engaged.

A body corporate manager engaged under these circumstances is authorised to carry out all the functions of a committee and exercise all committee powers. This means the body corporate manager makes all the decisions that your committee normally would, including things such as pet approvals and spending up to the committee's spending limit.

The body corporate has three different opportunities to engage a body corporate manager under these circumstances.

Firstly, at an annual general meeting (AGM) if at least one executive member position on the committee is not filled or the total number of voting members of the committee elected is less than three. Bodies corporate often choose to include a motion about a Chapter 3, Part 5 engagement on the agenda at the AGM when year after year they fail to achieve three individuals on the committee. Lot owners also may have made it clear that they do not intend to nominate so a motion is put on the agenda at the AGM just in case. This is more common for smaller schemes.

If the motion passes at the AGM to engage a body corporate manager under Chapter 3, Part 5, it will save the body corporate the expense of calling another general meeting.


Secondly, at an extraordinary general meeting (EGM) called after an annual general meeting where at least one executive member position on the committee is not filled or the total number of voting members of the committee elected is less than three. Sometimes it is not always obvious that the body corporate will not be able to fill the committee positions to the required number at the AGM. If that is the case, the body corporate must call an EGM within a month to make a last attempt to fill the committee and also propose a motion to consider engaging a body corporate manager in place of the committee.

While there is added expense to the body corporate to do it this way, it can be a good idea to allow lot owners another chance to nominate for the committee. Often when owners receive the minutes and realise that not enough people have been elected to the committee they may change their mind once they weigh up the expense of a body corporate manager engaged under Chapter 3, Part 5 and the added responsibility of being a committee member.

Thirdly, at an EGM called to fill a casual vacancy on the committee and at least one executive member position on the committee is not filled or the total number of voting members of the committee is less than three.

Sometimes committee members resign or sell their lots and are no longer eligible to be on the committee. If this happens, the body corporate must fill the vacancy within one month. If the number remaining on the committee is still above the original quorum amount, the committee can vote to fill the vacancy. If the number of members remaining on the committee are less than the original quorum amount, the remaining members must call an EGM to attempt to fill the vacancies. If, because of the vacancy, the numbers on the committee have fallen below three or one of the executive positions remains unfilled the body corporate must consider a motion to appoint a body corporate manager under Chapter 3, Part 5.

Regardless of the type of general meeting at which a motion to appoint a body corporate manager is considered, it must always be the last item of business on the agenda. This allows the body corporate to make all attempts to fill the committee positions.



Engagement of a body corporate manager under these provisions must always be in writing and state that the body corporate manager is authorised with the powers of the committee and each of the executive members of the committee. It must also state the basis for how the payment for the body corporate manager's services is worked out, for example an hourly rate, a rate per lot or a rate for each service provided.

This type of engagement ends 12 months after the engagement begins or at the end of the body corporate's next AGM held after the general meeting where the engagement was approved. The engagement may be terminated in the same manner as other service contractors – by mutual agreement, conviction of offences such as fraud or assault and failure to comply with a remedial action.

During the period of the Chapter 3, Part 5 engagement the body corporate is not able to elect a committee. A report is provided to the members of the body corporate to keep them up to date with the decisions and spending of the body corporate manager.

Being a committee member is often a thankless task with a lot of responsibility. Outsourcing that responsibility to an external party is tempting; however, it is not a decision that the body corporate should make lightly. It might be a good idea for the body corporate to question why there is a lack of interest in committee membership. Are there some underlying issues for the body corporate to resolve?

If the majority of those interested live offsite, for example, the body corporate could encourage the use of electronic attendance at meetings. If the problem is being inundated with owner requests, the body corporate could consider implementing a by-law to manage owner communications. It may be just a feeling of committee members of not being valued and perhaps the body corporate could consider paying a small remuneration to its committee members. Body corporate legislation sets out what remuneration is permissible. Our Office can provide information about all of these circumstances on 1800 060 119 (freecall).



## BCCM update

### Webinars

We have up-loaded the PowerPoint slides for our recent webinar about dispute resolution application forms to our website. You can other previous webinars [here](#).

Our Office together with the Dispute Resolution Branch (DRB) of the Department of Justice and Attorney General will present a webinar on dealing with difficult people. The webinar will outline the limited jurisdiction our office has in dealing with the situations arising in bodies corporate from having to deal with difficult people. One of our colleagues from DRB will provide some best practice tips to assist those in the community titles sector who have to communicate effectively with others as a part of their role.

Given the complexity and highly emotive issues people have within community titles schemes dealing with difficult people, we will be actively managing questions after the session to ensure they are appropriate for this forum.

When: Monday 2 December 2019 at 2pm

You can [register here](#) to attend.



## Seminars

We have completed our last round of seminars where we provided information about the proposed amendments to the Standard Module Regulation. Thank you to all those who attended. It was great to get out and about and hear first-hand some of the issues that people are experiencing in community titles schemes across Queensland.

If you missed out on attending you can view the [PowerPoint slides](#) on our website under the heading seminars conducted.

## Legislation amendments

Consultation on the new regulation modules continues. The opportunity to provide feedback on all the regulations has been extended until 1 December 2019.

You can provide feedback [here](#).



## Body Corporate and Community Management

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

1800 060 119

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