

Office of the Commissioner for Body Corporate and
Community Management

SCA (Qld) Webinar Series October 2016

Role of the Commissioner's Office

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Topics

- Context – setting the scene
- Legislation – providing authority
- Information Service
- Dispute Resolution Service
- Body corporate manager's interactions with Commissioner's Office

Firstly – some context

As of end of June 2016:

- Number of Schemes as at end of June 2016 = 45,663 (approx. increase of 2.8% from June 2015).
 - Number of Lots as at end of June 2016 = 435,887 (approx. increase of 3.8% from June 2015).
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- Standard 29009
 - Small 9513
 - Accommodation 3606
 - Commercial 1996
 - Two-Lot 1623

Statistics con't.

| | No. of schemes | No. of lots |
|---------------|----------------|-------------|
| 6 and under | 32,126 | 104,135 |
| 7-10 lots | 5,599 | 46,624 |
| 11 – 20 lots | 3,780 | 54,692 |
| 21 – 50 lots | 2,654 | 85,590 |
| 51 – 100 lots | 1,081 | 76,366 |
| 100+ lots | 423 | 68,480 |
| TOTAL | 45,663 | 435,887 |

Statistics cont.

Top 6 Local Authorities by Number of Lots

| | |
|----------------|---------|
| Brisbane City | 141,749 |
| Gold Coast | 119,514 |
| Sunshine Coast | 36,626 |
| Moreton Bay | 22,840 |
| Cairns | 20,359 |
| Logan | 15,077 |

Statistics cont.

Commissioner's Office 2015-16:

- 1,423 applications lodged
- 26,620 client contacts
- 72.8% of conciliation applications resolved by agreement
- 0.7% of adjudication orders overturned or altered on appeal
- 87% of adjudication applications resolved within 60 days of referral

The legislative framework

- *Body Corporate and Community Management Act 1997*, plus regulation
- Five Regulation Modules: Accommodation; Commercial; Small Schemes; Specified Two-Lot Schemes; Standard
- Other: specified Acts (e.g., *Integrated Resort Development Act 1987*) and also *Building Units and Group Titles Act 1980* (BUGTA)

The legislative framework (cont'd)

- Points to note re BCCM legislation:
 - Policy, legislation are decisions of government
 - Commissioner's Office operates according to provisions of Chapter 6
 - Legislative objectives give guidance
 - 'Interpretation' of legislation is just that...

Information Service

Legislative obligation to provide an Information Service

Based on *Body Corporate and Community Management Act 1997* and the 5 associated regulation modules.

Information Service (cont'd)

- Telephone call back service
- Written enquiries
- Yearly seminars
- Participation in stakeholder seminars
- Writing and updating website

Information Service (cont'd)

We do not:

- provide legal advice
- interpret the legislation or provide rulings
- interpret the meaning of bylaws
- interpret contracts
- take complaints about owners, occupiers, the committee, body corporate managers or caretaking service contractors
- provide information on the Building Units and Group Titles Act 1980 (BUGTA)

Information Service (cont'd)

Our website: www.qld.gov.au/bodycorporate

General information arranged by topic + forms + everything below.

Online enquiry: www.qld.gov.au/bodycorporatequestion

Online training: www.qld.gov.au/bodycorporatetraining

Subscribe to common ground and access past issues:
www.qld.gov.au/commonground

Online payments: www.qld.gov.au/bodycorporatepayments

Search of orders: www.qld.gov.au/searchofadjudicatorsorders

Seminars: www.qld.gov.au/bodycorporateseminars

Getting the most out of the Information Service...

- Look at the legislation – www.legislation.qld.gov.au
- Any adjudicators' orders of assistance? www.austlii.edu.au
- Look at the website – www.qld.gov.au/bodycorporate
- Have relevant information at hand - Building format? Standard format? Module?

Dispute resolution

- Legislative requirement to self-resolve first
- Commissioner's Office has exclusive jurisdiction
- On initiation of a party:
 - Onus on them at all times to make their case and identify breach of legislation
 - Outcome sought must be within the scope of the Act

Dispute resolution (cont'd)

- We look for 'resolution'
- Unique nature of body corporate disputes – remembering the 'community' aspect
- Dispute resolution means winners and losers
- Key themes: impartiality; fairness; natural justice

Dispute resolution (cont'd)

- Top dispute types:

| Conciliation | Adjudication |
|--|---|
| <ol style="list-style-type: none">1. Maintenance2. By-laws – animals3. By-laws – other4. Improvements – owner5. By-laws – vehicles | <ol style="list-style-type: none">1. GM – motions2. GM – procedures3. Change financial year¹4. Maintenance5. Improvements – owner6. By-laws – other² |

1 - Not technically a dispute

2 - Does not include animal by-law matters

Dispute resolution (cont'd)

- Requirement to self-resolve first
- Commissioner's office dispute resolution:
 - Conciliation:
 - Guided mediation
 - Also has an educative component
 - First step in majority of instances
 - Adjudication:
 - On the papers
 - Submissions process
 - Legally enforceable and appealable

Conciliation – key points

- Goodwill agreement – voluntary
- Sessions subject to discretion of the conciliator
- Caters for interstate and overseas parties
- Role of representatives and agents
- Be prepared to participate – can be consequences otherwise

Adjudication – key points

- Involves a legally-binding order: ‘winners and losers’
- Types of adjudication applications
- Independence of adjudicators – conciliation details not part of adjudication
- Case management function
- Distribution, submission, reply
- Adjudicators’ investigative powers
- No ability to review an order – only appeal

Role of BCM in dispute resolution

- Referral and providing information
- Conciliation: office-bearer details
- As a party to a dispute
- As an affected party
- Distribution of application
- Responding to requests for further information
- Acting on an order

In conclusion (1) : Summary of Commissioner's Office dos and don'ts

| (What we) DO | (What we) DON'T DO |
|--|---|
| <p>Information Service:</p> <ul style="list-style-type: none">- General legislative provisions- Phone and written (online enquiry)- Website and online services- Engagement (seminars)- Search of adjudicators' orders | <ul style="list-style-type: none">- Rulings- Interpretation- Advocacy- Complaints-handling- BUGT Act information |
| <p>Dispute Resolution Service:</p> <ul style="list-style-type: none">- Conciliation- Adjudication- Case management- Inspection and copies | <ul style="list-style-type: none">- Complex (contractual) disputes- Investigations (other than adjudicator investigative functions)- Enforcement- Proactive compliance activities- Licensing- Policy and legislation |

In conclusion (2): key contacts

- Commissioner's Office:
 - 1800 060 119 (Freecall)
 - www.qld.gov.au/bodycorporatequestion
 - www.qld.gov.au/bodycorporate