

Common Ground

Issue 16 – October 2017

Commissioner Foreword



Welcome to this latest edition of *Common Ground*.

One of the challenges my Office faces is how we can best reach Queensland's substantial – and expanding – community titles sector. At last count, for example, there were more than 45,000 schemes, all of which presumably might, at some stage, need some information or clarification about body corporate legislation.

Common Ground is just one of the methods we use to try to reach this audience. In this edition, we cover a range of recent developments in our world. I hope that we can get our *Common Ground* editions out more regularly in future, to give that immediacy and currency to our subscribers which will help them in their day-to-day dealings.

At the same time, my Information Services team is working on a range of other initiatives, including things such as webinars, which will increase our reach and get our information out to a broad cross-section of clients. We're also looking at enhancing our website to ensure it is best meeting the needs of our customers. Stay tuned for more developments.

Chris Irons,

A handwritten signature in black ink, appearing to read "C. Irons".

Commissioner for Body Corporate and Community Management.

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What's new?

My Information Service has been busy creating new webpages to provide you with more body corporate information. I encourage you to take the time to have a read of the ones that may interest you.

Statutory easement rights

What is a statutory easement? This page will tell you, as well as your right of entry to a lot in which a statutory easement benefits your lot.

Buying a body corporate property

Since the discontinuation of the BCCM Form 14 there has been a gap in the information available for people who are looking to buy a lot in a community titles scheme. This webpage will give insight into the things to look out for and the searches prospective owners may wish to consider before signing on the dotted line.

Entering a lot or exclusive use area

If you have ever wanted to know when the body corporate can enter your lot and what they have to do before they are able to lawfully enter your lot - this webpage is for you.

Animal by-laws

Queries about animal by-laws are one of our most 'popular' topics. Disputes about animal by-laws are one of the top 5 matters that my conciliators deal with. To avoid getting to the dispute stage it may be a good idea to read this page.

Disputes about animals in a body corporate

This page is geared specifically at the steps involved in the event that efforts to resolve a dispute about animals have not succeeded. It will give you information on how adjudicators may deal with a pet issue should a conciliation agreement not be reached.

Coming very soon is a page that is specifically written for those owners who live in a layered body corporate situation. It will give information on the running of layered schemes and how to deal with disputes in a layered scheme.

Practice directions

The [Body Corporate and Community Management Act 1997 \(PDF, 2MB\)](#) (the Act) allows for me to make practice directions for internal dispute resolution (self resolution) and my dispute resolution service.

The practice directions give more information about the Act and specific issues. They complement the legislation. They do not replace the legislation or my ability to decide what is needed for a particular dispute.

Practice directions are guides to help explain the rules for body corporate disputes and the steps you must follow before lodging a dispute application with my Office.

I can reject a dispute application if the applicant does not, without a reasonable excuse, comply with one of my practice directions about internal dispute resolution.

An example of where I can reject a dispute application is if a Notice to the body corporate of a contravention of a bylaw (BCCM Form 1) has not been issued by an applicant to the committee prior to lodging a dispute about a contravention of a by-law.

Currently there are 34 Practice Directions. You can download them [from the website](#). I suggest that, before lodging a dispute application with my Office, you read the appropriate Practice Direction.

Fee increases

As of 1 July 2017 the fees for BCCM Office services have increased, in accordance with the consumer price index (CPI). Full details of all new fees are available on the website however the main fees are:



<i>Application for conciliation</i>	\$79.20
<i>Application for adjudication – final orders only</i>	\$79.20
<i>Application for adjudication – interim and final orders</i>	\$166.30
<i>Search of adjudicator's orders – collected in person</i>	\$17.80
<i>Search of adjudicator's orders – mailed</i>	\$20.70
<i>Search of adjudicator's orders – faxed</i>	\$26.70
<i>Inspection of submissions – for each hour or part of an hour</i>	\$17.25
<i>Inspection of submissions – maximum fee payable per day</i>	\$67.70
<i>Copies of submissions – for less than 20 pages</i>	\$1.95 p/page
<i>Copies of submissions – for 20 to 50 pages</i>	\$1.60 p/page
<i>Copies of submissions – for more than 50 pages</i>	\$1.20 p/page

CPI increases to fees able to be charged by bodies corporate under their regulation module for the provision of information have also increased, with the following fees now applying:

<i>Inspection of body corporate records – by a lot owner</i>	\$16.65
<i>Inspection of body corporate records – other</i>	\$32.05
<i>Copies of body corporate records</i>	\$0.65 p/page
<i>Body corporate information certificate</i>	\$61.75
<i>Plus a priority fee if required within 24 hours</i>	\$23.20
<i>Plus a fee if the certificate is to be faxed</i>	\$16.00

Online applications and payments



Just a reminder that you can complete your dispute application online!

The online [conciliation](#) and [adjudication](#) application forms have been designed to guide customers through each section of their application and should help them name the correct parties and ensure they've meet their self-resolution requirements.

All fees payable to this office can be paid online at qld.gov.au/bodycorporatepayments.

Community titles sector statistics

There has been continued growth in the community titles sector in Queensland. The latest figures from the Titles Registry Office can be seen below. These figures are as at 30 June 2017.

As at end of June 2017:

Number of community titles schemes = 46,990
Number of individual lots = 459,169

The number of schemes* which are registered under the 5 different types of regulations:

Standard	29,272
Small	9,729
Accommodation	3,853
Specified Two Lots	2,179
Commercial	2,040

* Please note, the Titles Office are aware of the discrepancy in the total number of schemes.



We have seen a steady increase in the number of two lot schemes adopting the *Specified Two Lot Scheme Regulation 2008*. This may be from a combination of newly registered community titles schemes as well as existing schemes opting for a less regulated body corporate.

Further breakdown of CMS Stats as at end of June 2017:

Summary	Number of Schemes*	Number of Lots
6 Lots and under	33,003	106,436
7 to 10 Lots	5,689	47,352
11 to 20 Lots	3,892	56,441
21 to 50 Lots	2,781	89,799
51 to 100 Lots	1,151	80,880
Over 100 Lots	474	78,261
TOTAL	46,990	459,169

We continue to receive updates on community titles schemes by local authorities.

Top 6 Local Authorities by Number of Lots:

Brisbane City	156,573
Gold Coast	122,706
Sunshine Coast	38,006
Moreton Bay	24,455
Cairns	20,424
Logan	15,565

BCCM statistics

When I am at meetings, events, seminars and similar, people will often say to me of my role “that must keep you busy” or words to that effect.

In this article, I will attempt to quantify just how “busy” my Office is, by providing some statistics about our work in 2016-17, along with some commentary about what these statistics might mean.

In doing so, I hope to be able to provide some context and perspective about the community titles sector in Queensland and the services my Office provides to the sector.

We provide two main services: an information service and a dispute resolution service. With the exception of some contractual-type matters, the dispute resolution service is an exclusive jurisdiction, which means that apart from that exception, my Office resolves all body corporate disputes in Queensland.

Disputes are resolved by either departmental conciliation or departmental adjudication.

In 2016-17, there were 1,478 applications for dispute resolution lodged with my Office.

These were comprised of 594 applications for conciliation and 884 applications for adjudication.

To put these figures into perspective, in 2015-16 there were 1,423 applications lodged for dispute resolution. So the 2016-17 figures are a 4% increase on the preceding year.

That increase may be attributable to a number of factors. It may, for example, correspond to a growth in the number of community titles schemes in Queensland. As more people own or live in community titles schemes, they will acquire more knowledge of their rights and responsibilities which may in turn lead to more situations which give rise to a dispute.

Here are the 'top 5' categories of dispute for both conciliation and adjudication (in descending order):

Conciliation:

1. By-laws: animals
2. Maintenance
3. By-laws: others
4. Improvements by owner
5. By-laws: vehicles

Adjudication:

1. General meetings: motions
2. General meetings: procedures
3. Maintenance
4. By-laws: animals
5. Improvements by owner



The different types of dispute resolution methods help to explain the differences in the top 5s. Conciliation is about bringing disputing parties together to try to reach a voluntary, workable solution and so it makes sense that by-law disputes – which are largely about how people conduct themselves on a scheme – would feature prominently.

On the other hand, adjudication is a more formal process in which legally-enforceable and appealable decisions are made based on written submissions. Disputes about general meetings and how they are run often involve a number of technicalities and formalities, so it stands to reason that such disputes would be resolved by adjudication.

In relation to my Office's information service, in 2016-17 we had a total of 24,982 requests for information. This can be further broken down as follows:

- 17,572 telephone contacts via the 1800 free callback service;
- 2,639 written correspondence; and
- 2,471 personal contacts, which include attendance at public seminars and meetings.

To put these figures into perspective, in 2015-16 there were 26,620 information requests in total. So the 2016-17 figures are a 6% decrease on the preceding year. While the actual numbers are a decrease, I can report that in general, information enquiries are becoming more complex, with telephone calls generally taking longer on average. Our clients are coming to us with a more diverse range of queries, which may reflect that in a challenging housing market, people are wanting to be more informed about their legal rights and responsibilities.

For written responses, we continue to meet (and in many cases, exceed) our service standard of a written response to an enquiry within 14 days.

We were part of 39 public seminars and forums in 2016-17. This is an aspect of our information and education role that I am particularly pleased with, as getting out and meeting people to hear about emerging issues is an essential part of my role and also helps to ensure that my Office is reaching its clients with targeted information and services.

As you can see from all of these statistics, my Office continues to indeed be “very busy” in providing its services to the community titles sector.

Insurance in small schemes

Insurance is a topic on which my Office receives a considerable number of enquiries and dispute applications.

The level of interest stems from two main areas. Firstly, a desire on the part of both owners and bodies corporate to ensure they are putting into place all of the insurance cover necessary for the scheme.

Secondly, it’s quite likely that with the many types of insurance products in the marketplace, there might be confusion or uncertainty about insurance obligations.

This scenario gets magnified when we think about small schemes (six lots and under) or two-lot schemes (often referred to as ‘duplexes’).

For parties in either of these scheme types, the fact that they might be smaller in size may lead to queries about whether all of the usual legislative requirements apply or if there are ‘scaled down’ obligations in force.

To address these issues, let’s firstly take a step back and think generally about insurance in the body corporate context.

The compulsory insurance requirements for a body corporate include cover for:

- common property;
- body corporate assets;
- public risk; and
- every building which contains a lot.

These obligations are further qualified by whether the standard or building format plan is applicable. There are then further requirements for insurance valuations and for details of insurance policies to be an agenda item at the annual general meeting.

One of the fundamental concepts of body corporate insurance is that it is a shared expense and distinct from insurance cover that a lot owner takes out for their own needs, for example, home and contents cover or landlord insurance.

It sometimes therefore happens that a new lot owner in particular may wonder why they are having to consider paying for insurance when they have already taken out policies of their own.

In smaller schemes, where there is less obvious common (shared) property, owners may also query the need to contribute to body corporate insurance.

I commonly hear of owners and bodies corporate in smaller schemes saying things such as *“But we don’t have a pool or lifts, what do we need insurance for?”*

The fact remains that by definition, a community titles scheme is comprised of both individual lots and common property. In other words, if you’re in a registered community titles scheme, then you’ve got common

property and if you have common property, there needs to be insurance cover as this is a shared responsibility.

This discussion is magnified for two-lot schemes (duplexes). It is sometimes difficult enough for the two owners in such schemes to recognise they are in a scheme and thus, have a body corporate in existence, let alone that there might be insurance cover required that they need to share the expense of.

Unfortunately this then translates into disputes. My Office commonly sees disputes lodged by the owner of a lot in a duplex in which they claim that the other owner is refusing to pay their share – half – of the necessary insurance premium.

This is obviously a difficult situation because it might mean that the body corporate (both owners, in other words) are left vulnerable to being not appropriately covered by insurance and particularly if there is a big event, such as storm or flooding.

My Office can provide dispute resolution for situations such as this. That said, the most immediate thing which can be done is for one owner to pay the entire premium owing and then pursue the other owner's share through dispute resolution. This at least ensures that coverage is maintained.

This is an admittedly brief overview of some specific body corporate insurance issues and there are quite a few more insurance matters of relevance. For now, though, here are a couple of quick, final points to consider:

- While it may be more convenient for committees to have their body corporate manager source an insurance policy on behalf of the body corporate, the committee remains free to make their own enquiries and obtain quotes;
- My Office does not maintain a list of insurance companies which provide cover. Like many regulated services, insurance exists in a competitive marketplace and every insurance product will have its pros and cons; and
- Insurance might be compulsory (and in some cases, expensive), but there is never any substitute for risk mitigation. By this I mean that there are usually always steps a body corporate can take to ensure that the risks on their scheme that give rise to insurable events are reduced or even eliminated. A good example is when we approach storm season. Cover for storm damage or flooding as a result of a significant weather event is both necessary and useful. That said, it is equally important to ensure that guttering is clean, loose debris is secured, trees and gardens trimmed to prevent large branches from causing damage. Then there are the regular inspections (such as fire safety or workplace health and safety) which can be carried out to highlight risks so that the body corporate has a chance to address them.

My Office produces a storm-season specific article (and section on its website) each year and approaching the start of the season.

Some useful insurance-related resources we also publish include:

- Insurance Council of Australia: for general information about insurance – www.insurancecouncil.com.au; and
- The Financial Ombudsman Service Australia: for disputes about determination of claims – www.fos.org.au.

For further information about the body corporate legislation please contact our Information Service on **1800 060 119**, or visit our website www.qld.gov.au/bodycorporate.

Bullying, harassment and abuse in community titles schemes

I recently wrote an article about bullying, harassment and abuse for the *Resort News* publication, but it is unfortunately a perennially relevant topic about which my Office receive a number of enquiries.

If you feel bullied, abused, or harassed by a neighbour, your first reaction might be to take it to your body corporate manager, building manager, or the committee.

Unfortunately, they may be unable to help you, as the BCCM Act and its regulation modules do not explicitly refer to bullying, harassment or abuse anywhere in their several hundreds of pages.

Given this dearth of reference to the phenomenon in the legislation, this article aims to give you information about the possible ways in which you might be able to deal with bullying, harassment or abuse (BHA) in your community titles scheme.

Dealing with BHA through your body corporate

Many tend to think of BHA as a 'nuisance'. Although nuisance is prohibited by body corporate legislation, and sometimes also by a scheme's by-laws, treating BHA as a nuisance may not be the most effective way of responding to it. This is because of important differences between the everyday and the legal definitions of nuisance.

In *Diamond Hill [2013] QBCCMCmr 131*, an adjudicator from this Office considered whether a particular scheme occupier's behaviour constituted a legal nuisance. In arriving at her decision, the adjudicator noted that:

"Private nuisance is an unlawful and unreasonable interference with an occupier's use and enjoyment of land"

and it must be

"of such volume or frequency that it would interfere unreasonably with the life of another lot owner of ordinary sensitivity"

Because of the requirement to take volume and frequency into account, and because of the reference to land use, it can be difficult to prove that BHA has caused a nuisance, not least of all because of the evidence required and the difficulty in obtaining it.

Where bullying, harassment or abuse are causing immediate stress or fear for a person living in a community title scheme, other approaches might be more suitable. Indeed, in her above decision, the adjudicator further noted that:

"The enforcement of [nuisance] by-laws is not an effective means of addressing threats of violence to a person or property"

"Any resident with genuine fears in this regard may wish to seek legal advice regarding their options, which could include applying ... for an order [of] Peace and Good Behaviour"

"If a resident considers that a crime has been committed they should contact the Queensland Police."

When to contact the police

According to [Legal Aid Queensland](#), threats, abuse and harassment can be criminal offences.

If you're receiving threats of violence, or are being verbally abused or harassed, you can report it to police.

If it's an emergency, you can call [Triple Zero](#) (000). You should only call 000 if a crime is underway, or if a life or property is in immediate danger.

For all non-urgent police reporting, you can contact [Policelink](#).

If someone is harassing you online, you can [report it to the Australian Cybercrime Online Reporting Network](#), who can pass it on to the relevant enforcement agency.

When to take legal action

In some situations you may be able to [apply for a peace and good behaviour order](#).

If you need protection from domestic or family violence, you can [apply for a domestic violence order](#).

Legal Aid Queensland also publishes information on what legal action you might be able to take if you have been [sexually harassed](#) or [stalked](#) by a neighbour.

Other alternatives

If none of the above options are suitable and if talking with your neighbour hasn't worked, or things have deteriorated too far, [neighbourhood mediation](#) might help.

The Queensland Government's [Dispute Resolution Centres](#) offer free mediation to help you manage disputes with neighbours without going to court.

Mediation involves you attending a face-to-face meeting with your neighbour and one or two mediators. The mediators act as an impartial third party to guide you through a structured mediation process. They help you decide what you want to achieve and keep the discussion on track, ensuring both sides get a fair hearing.

The solution is one that you and your neighbour agree on. It is not imposed on you by anyone else.

When you reach an agreement, the mediators write it down and read it back to you.

Mediation for neighbourhood disputes is free and confidential, but it only works if both sides are willing to participate.

Support services

Even when there might not be much that can be done about BHA (or especially when this is the case), it can affect your mental health. It is important in these circumstances to take steps to protect your wellbeing.

If you are distressed or anxious, and want to talk with someone about the situation, visit this website to [find a mental health service](#). The website includes information about how to seek support from a health professional, and details about how to contact organisations such as Lifeline and Beyond Blue.

For further information about the body corporate legislation please contact our Information Service on [1800 060 119](#), or visit our website www.qld.gov.au/bodycorporate.

Update your subscription details

As a result of our survey and to help us meet your needs, it is necessary for my Office to learn more about you - our customers. Therefore I ask you to [update your subscription details](#) so that we can gather further

details such as your geographic location, age group, gender, status (committee member, owner) etc. this will then enable us to utilise our subscription list more effectively by distributing targeted information and invitations to specific subscribers in the future.

When doing so you details must match those that you subscribed with. For example, if you subscribed using the name Doug then you will need to amend your details with that name; not an alternate such as Douglas as it will not recognise your details.

You can now access the subscription links and all past issues of Common Ground at www.qld.gov.au/commonground. Save this link for the future!

Frequently asked questions

In this Issue, we've decided to devote our FAQs to the topic of conciliation.

If you find yourself in dispute with another owner or occupier, or with the body corporate about a decision made at a committee meeting, it is quite possible that you will be a party invited to attend conciliation.

Here are a few of the most common questions asked by such parties.

Q – What happens at conciliation?

A – The parties named in the application will be invited to attend the conciliation meeting. This can be held face to face, by telephone, or by video conference (depending on the circumstances).

Before the meeting, the Conciliator will call the parties and introduce themselves. They will explain the process in broad terms and explain the ground rules the parties are expected to follow.

At the meeting, the Conciliator will allow both parties an opportunity to explain their situation and concerns, as well as what they would like to see as a result of the meeting.

The Conciliator will also discuss the rights and obligations of the parties under the BCCM Act, the regulation module that applies to their scheme, and the by-laws.

The Conciliator can also provide examples of successful strategies used to resolve disputes in similar circumstances.

Usually the Conciliator can assist the parties to come to a mutually acceptable agreement. If the parties do not reach an agreement, the Conciliator will explain the next available steps in the dispute resolution process.

Q – Who is the Conciliator??

A – The Conciliator is an independent person who has no involvement with your body corporate. They will be a trained mediator with a strong knowledge of the BCCM Act and its regulation modules. They have a role in helping and encouraging parties to resolve their dispute, but they cannot allow the parties to agree to anything that is contrary to the BCCM Act, the regulation module applying to the scheme, or the scheme's by-laws.

Q – Who can attend the Conciliation Meeting?



A – The Conciliator can decide who attends the conciliation meeting. Usually, the parties named in the application are invited to attend the meeting.

Legal representation is not allowed unless there are specific reasons to do so, and the other party agrees. Interested parties can also be invited to attend at the discretion of the Conciliator.

If someone is attending a conciliation meeting on their own they can seek approval from the Conciliator for a support person to accompany them. The support person cannot actively participate in the conciliation meeting; their role is to provide moral and actual support to the party in dispute, not to represent them.

A body corporate can be represented by no more than 2 people, each of whom should be a voting committee member or the owner of a lot, and who should be authorised by resolution of the committee to make decisions on behalf of the committee, for the purposes of the meeting.

Q – What if the other party doesn't turn up for the meeting?

A – If the applicant fails to attend the conciliation meeting, without providing a reasonable excuse, the Commissioner may decide that the matter cannot progress until a conciliation meeting has been held. The applicant will then have to lodge (and pay for) a new conciliation application in order to commence dispute resolution through this office.

If the respondent does not attend the conciliation meeting, without providing a reasonable excuse, and the applicant lodges an adjudication application, the applicant can ask the adjudicator for the costs of the application/s as part of the adjudication outcomes sought.

The Conciliator will take every step to contact both parties prior to the conciliation meeting in order to encourage their participation in the conciliation process.

Q – Do I have to conciliate before adjudication?

A – The Commissioner decides on a case by case basis whether conciliation must be attempted first.

Some issues under dispute will be able to be resolved by a decision of the committee. These matters are usually suitable for conciliation. If the issues in question can only be resolved by a vote at a general meeting, however, conciliation may be less likely to work. Even in these cases, it may be that an agreement can be reached with the committee to call and hold a general meeting to resolve the issue/s, so conciliation could still be appropriate.

In all cases, the Commissioner may reject an adjudication application if the applicant has not satisfied Practice Direction 23, which requires internal dispute resolution to have been attempted in before an application is made.

A Conciliator can also refer an application back to the Commissioner if they feel that the matter is no longer suitable for conciliation.

It is important to remember that the Commissioner will make a decision about which dispute resolution process is most suitable for the circumstances of a dispute.

For further information about the body corporate legislation please contact our Information Service on [1800 060 119](tel:1800060119), or visit our website www.qld.gov.au/bodycorporate.

