

Commissioner Foreword



Welcome to this latest edition of *Common Ground* and the first edition for me since returning from my academic placement with the Queensland University of Technology (QUT).

While at QUT I undertook research into the mysterious world of what is termed “service delivery”, particularly focusing on how my Office delivers its services. Just how we deliver our services and importantly, how we *could* deliver our services into the future, is something worth further exploration, particularly given the community titles sector shows no sign of slowing its growth. *Common Ground* will be one way I will keep in touch with people about this work.

I'd also invite any *Common Ground* subscribers with ideas or feedback about our service delivery to get in touch with me via the bccm@justice.qld.gov.au email address. There are likely to be many great ideas out there and I'm keen to see your input.

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



Frequently Asked Questions – Debt Recovery

It's no surprise, given we're talking about dollars and cents, that issues about body corporate levies and debt recovery are commonplace. We've attempted to compile some of the more frequently asked questions below, with answers. As always, it is not legal advice and is provided as a guide only.

Q1. I am 2 months late with my body corporate levies. Can the body corporate charge me interest?

Yes. The body corporate may decide, by ordinary resolution, to apply penalties to levies if they are not paid by the due date. A penalty must be at a set rate of no more than 2.5% for each month the levy is in arrears.

Any penalty amount that has been adopted by the body corporate must be stated in the contribution notice that is sent out at least 30 days before the amount is due.

Q2. How does the body corporate apply a discount to lot owners' levies? If we all pay on time and everyone gets a discount we won't have enough money to cover expenses.

Similar to the previous question, the body corporate may decide, by ordinary resolution, to apply discounts to levies that are paid early. A discount must be at a set rate of no more than 20% of the amount of the instalment and must be stated in the levy notice, the same as a penalty amount.

In the event that the body corporate does not have enough funds to cover a certain expense, a special levy can be raised by ordinary resolution.

A special levy is a one-off payment (though it can be paid in instalments) which is raised by the body corporate to cover a certain expense that was either not anticipated, or was not adequately budgeted for.



Q3. I agreed for the body corporate to arrange for gutter cleaning on my behalf. I pay separately from my normal body corporate levies but I forgot to pay the last instalment. They are saying I cannot vote at the AGM and cannot be elected to the committee. Is that correct?

The legislation provides the following definition for body corporate debt:

body corporate debt means a following amount owed by an owner of a lot to the body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

Examples of another amount—

- an annual payment for parking under an exclusive use by-law
- an amount owing to the body corporate for lawn mowing services arranged by the body corporate on behalf of the owner

Missing a payment for an agreed service supplied by the body corporate, such a gutter cleaning, means that a person owes a body corporate debt.

A person who owes a body corporate debt does not have the right to vote at a general meeting and is also ineligible to be a committee member.

Q4. The owner of lot 5 is 3 years in arrears with his body corporate levies. Can the body corporate still attempt to recover the debt?

Yes. From the date that a contribution becomes outstanding, the body corporate has 6 years to commence debt recovery proceedings.

This is in line with the *Limitations of Actions Act 1974* and was confirmed in a Court of Appeal decision in 2018 ([BC for Mount Saint John Industrial Park CTS v Superior Stairs & Joinery Pty Ltd \[2017\] QCA 173](#)).

Q5. I am off work having treatment for a serious illness. I have not been paying my body corporate levies. In fact I am behind in all my bills and suffering financial hardship. Can the body corporate waive my levies?

The body corporate does not have the authority to waive your levies.

The legislation provides that the body corporate “may allow discount, or waive the penalty or recovery costs in whole or part” if satisfied there are special reasons. This may for situations such as illness or financial hardship.

Q6. I have asked the body corporate to waive the penalty interest and recovery costs on my late body corporate levies. My spouse has just passed away and I just need a few months breathing space. The committee has said no. Can I dispute that decision through the Office of the Commissioner for Body Corporate and Community Management (BCCM) as I feel they are not being reasonable?

As with the previous question, it may be reasonable for the body corporate to waive penalty amounts and/or recovery costs in the event of a family death.

If the body corporate makes a decision that an owner considers to be unreasonable, that owner can apply for conciliation through the BCCM.

However, if debt recovery action has been started in a court (such as the Queensland Civil and Administrative Tribunal), the dispute cannot be conciliated. If debt recovery action is started after a conciliation application is lodged, the conciliation application must end.



Q7. The body corporate says I am behind \$500 on my levies. I do not agree. Can I lodge a dispute application through BCCM?

Yes. An owner can apply for conciliation through BCCM to determine a dispute about a debt.

However, if debt recovery action has been started in a court (such as the Queensland Civil and Administrative Tribunal), the dispute cannot be conciliated. If debt recovery action is started after a conciliation application is lodged, the conciliation application must end.

Q8. I am a new owner. The body corporate held a general meeting and set a special levy after I received the information certificate about fees but before settlement of the lot. Do I have to pay the special levy even though I knew nothing about it when I purchased?

A body corporate debt attaches to the lot. The liability for a body corporate debt is enforceable jointly and severally against a person who was the owner of the lot at the time the debt became payable and a person who becomes the owner of the lot before the debt is paid.

It is important for people wanting to purchase a lot in a community titles scheme to do appropriate searches before they settle on the property. This may include searching minutes of previous meetings which occurred from the time between the signing of the contract and the settlement of the contract. You may wish to obtain independent legal advice regarding your specific circumstances.



Pest control in a community titles scheme

A common enquiry for our Office is about the responsibility for pest control, particularly in relation to termites. This is not surprising, given the amount of damage a pest can cause. There have also been adjudication orders regarding pest control. As always, this information is not meant to be legal advice and our Office certainly has no expertise in pest control—please seek qualified advice as necessary.

Who's responsible for preventing pests?

Working out who is responsible for pest prevention in a community titles scheme can sometimes be tricky.

An adjudicator considered the issue in [Pannorama \[2011\] QBCCMComr 461](#), as it related to termites:

Owners are normally responsible for their own termite management when schemes are registered under a standard format plan, and the body corporate is normally responsible for termite management when schemes are registered under a building format plan.

However, the division of legislative responsibilities ... mean[s] the individual configuration of schemes can affect this.

The division of legislative responsibilities that the adjudicator refers to are as follows:

- an owner's duties to maintain the following things in good condition:
 - their lot
 - any areas of common property over which their lot has exclusive use rights, excluding
 - common property utility infrastructure (e.g. plumbing and electrical wiring), and
 - any other things that the by-law establishing the exclusive use area identifies as the body corporate's responsibility.

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- The body corporate's duties include to maintain the following things in good condition:
 - common property
 - the following elements of building format plan lots:
 - railings, parapets and balustrades on (or for all intents and purposes on) the boundary of a lot and common property
 - doors, windows and associated fittings in a boundary wall separating a lot from common property
 - roofing membranes that provide protection for lots or common property

The body corporate must also maintain the following elements of building format plan lots in a structurally sound condition:

- foundation structures
- roofing structures providing protection
- essential supporting framework, including load-bearing walls.

According to the adjudicator in [Tea Tree Grove At Hendra \[2010\] QBCCMCmr 518](#), maintenance responsibilities extend beyond the rectification of damage, to include work that may be reasonably expected to minimise the need for future maintenance. Therefore, it includes a responsibility for reasonable pest prevention, as well as rectification of any damage caused by pests.

Who's responsible for fixing damage caused by pests?

As you've seen, it can be difficult to work out who's responsible for maintaining things that pests might damage, let alone who's responsible for rectifying any damage caused by pests. Having said this, there are generally only three alternatives.

1. The party with the maintenance responsibility

The party that is responsible for the maintenance of the part of scheme land that has been damaged will generally be responsible for fixing it, where:

- they could have prevented the damage by doing reasonable maintenance
- no reasonable maintenance could have prevented the damage
- reasonable maintenance was done by everyone with a responsibility to do it, but the damage occurred anyway
- no-one else will repair the damage and it needs to be repaired to fulfil their maintenance responsibility. (Note: this does not stop them pursuing another party for all or part of the costs.)

2. Another party

Another party may be held responsible for fixing damage caused by pests, where:

- they failed to do something that they had a legal responsibility to do, and that failure directly caused the damage (e.g. an owner failed to take reasonable steps to maintain a tree on their lot, and termites from that tree ended up damaging common property—see: [Tea Tree Grove At Hendra \[2010\] QBCCMCmr 518](#)).
- they intentionally did something that caused the damage (e.g. encouraging pigeons to roost in common areas by continually feeding them—see: [Mosman Court \[2005\] QBCCMCmr 393](#)).



3. More than one party

Where multiple parties have contributed to the damage caused—whether by failing to do something they had a responsibility to do, or by intentionally doing something—those parties may all be held responsible for fixing it. The proportion of their responsibility should be calculated by referring to the extent to which their actions caused the damage.

As an example, in [Regency Place Lakeside \[2002\] QBCCMCMr 702](#), the adjudicator noted that:

An owner might be considered to have contributed to termite damage if [they] fail ... to notify the body corporate of evidence of internal termite infestation. In the case of a non-resident owner, this requires that [they] ensure that internal inspections of the lot are undertaken on a regular basis ... If there was evidence of termite damage to a lot over a sustained period of time which was not reported to the body corporate, I would have no hesitation in finding a form of contributory negligence on the part of the owner of [that] lot, and determining compensation accordingly.

These orders provide guidance, but it is important to remember that each case is different and depends on its merits. You might also like to consult the [Queensland Building and Construction Commission](#) for some further information.



BCCM update

We are back from our trip up north where we visited Mackay, Rockhampton, Cairns and Townsville. Thank you to everyone who attended these events and helped make them successful. It was great to get out of the office, meet some people and hear firsthand about some of the issues northern bodies corporate are having. Back in the Office we have been busy preparing some new information products for you.

New fact sheet

Video surveillance may be an issue that some of you and your bodies corporate know very little about. With the cooperation of the Queensland Police Service (QPS) and some information from Legal Aid Queensland we have produced a fact sheet about video surveillance in a body corporate. The fact sheet will explain your rights and responsibilities in relation to video surveillance generally and in a body corporate context.

[Video surveillance in a body corporate](#)

Webpages

We get many questions in the Information and Community Education Unit relating to bodies corporate that are in a layered scheme arrangement. We have developed 4 new webpages to help you understand what a layered scheme is, how to create a layered scheme and how to run a layered scheme. There is also a page offering help if a dispute arises in layered scheme.

[What is a layered scheme?](#)

[Creating a layered scheme](#)



[Running a layered scheme](#)

[Disputes in a layered scheme](#)

Webinars

We conducted our first webinar in August. The topic of accessing body corporate records was well received. It was great to see over 200 registrants and appreciate everyone's support in our new venture into the world of webinars. Hopefully this new initiative continues to be popular because we find it an effective tool to communicate with our customers—we hope you did too.

The ability to ask live questions of our Senior Information Officer was a really popular function. We have taken on board the feedback received and will be answering the questions at the end of the presentation in future. We are hoping to have a copy of the webinar to download soon on our website. You can already download a copy of the slideshow presentation.

Our next webinar on Body corporate finances will be conducted on Tuesday 13 November 2018 at 2pm. Please [register](#) if you'd like to attend. Attendance will be limited to the first 100 registrants.

Common Ground

You can now download [Issue 17](#) and [Issue 18](#) of the BCCM *Common Ground* e-newsletter from our website.



Body Corporate and Community Management www.qld.gov.au/bodycorporate 1800 060 119

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