

## Body Corporate and Community Management and Other Legislation Amendment Bill 2023

**Submission No:** 71  
**Submitted by:** Garth McNeil  
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**Submitter Comments:**

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000.

## E-ALERT! BCCM legislation amendments

I received this email notice from the BCCM Department of Justice today, 28/08/2023, outlining the invitation by the LASC to have your say by making a written submission.

I am ever grateful for the opportunity to put forward a written submission relating to one of the proposed amendments under consideration by the Queensland Parliament that has been referred to the LASC who are responsible for conducting an inquiry into the legislation.

The item under consideration by the Queensland Parliament that I wish to put forward a written submission about is the Insertion of new section 163A, extract below.

### **163A Towing motor vehicles from common property**

*(1) Nothing in this Act prevents a body corporate for a community titles scheme from towing a motor vehicle from the common property for the scheme under another Act or otherwise according to law.*

*(2) If a motor vehicle owned or operated by the owner or occupier of a lot included in the scheme and parked in contravention of a by-law for the scheme is towed by the body corporate, the body corporate is not required to comply with a requirement under chapter 3, part 5, division 4.*

It comes as a welcome relief that the Queensland government is taking under serious consideration an area of legislation that would be, without a doubt, the single most troubling issues for Body Corporates and their Committees throughout Queensland Strata complexes.

If any of our government members who will be instrumental in the consideration of this one amendment, have ever lived in a Strata complex in Queensland and perhaps would have had any involvement with the Body Corporate Committee and the administration thereof, would have first-hand knowledge of the constant daily frustration faced by management and the Committee surrounding the management of illegal parking on common property including visitor car spaces by owners and occupiers of the complex. It is the number 1 problem in Strata Complexes throughout Queensland.

Understand, Committee members are all volunteers in their role as Committee members and offer their time and effort freely and are also required under the Act, as representing the Body Corporate, to enforce the By-Laws of the Community Management Scheme.

The current requirement under chapter 3, part 5, division 4 of the BCCM Act 1997, when it comes to illegally parked vehicles on common property, is such a long drawn out process for any Committee to commence and follow the procedure laid down in the Act, that by the time the process has reached Conciliation with the offending owner/occupier, or Adjudication from the BCCM Commissioner's office, the offending vehicle has long gone, only to repeat the offence again at some time in the future.

Many adjudicators throughout the years have commented that they acknowledge that the current legislation is flawed and that it is a slow process that is unlikely to result in the immediate removal of a car from the common property or visitors' car parks.

### **EXTRACT: Body Corporate and Community Management Act 1997**

#### **Chapter 1 Preliminary Part 1 Introduction**

#### **Part 2 Object and achievement of object**

#### **2 Primary object**

The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of **freehold land**, having regard to the secondary objects.

### 3 How primary object is to be achieved.

For the achievement of its primary object, this Act provides for—

- (a) the establishment of community titles schemes; and
- (b) the operation and management of community titles schemes.

### 4 Secondary objects

The following are the secondary objects of this Act—

- (a) to balance the rights of individuals with the responsibility for self-management as an **inherent aspect** of community titles schemes.
- (b) to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes.
- (c) to encourage the tourism potential of community titles schemes without diminishing the rights and responsibilities of owners, and intending buyers, of lots in community titles schemes.
- (d) to provide a legislative framework accommodating future trends in community titling.
- (e) to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes.
- (f) to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes.
- (g) to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes.
- (h) to ensure accessibility to information about community titles scheme issues.
- (i) to provide an efficient and effective dispute resolution process.

As can be seen from the very first page of the BCCM Act above, the Act itself says, in essence, that the objects of the Act are to provide a framework for the effective, responsible, self-management and control of the common property with the flexibility needed in accommodating changing circumstances within community titles schemes.

Part(i) of the Secondary Objects of the BCCM Act states – “to provide an efficient and effective dispute resolution process”.

Without detracting from the well-meaning of the authors of this item “**Secondary Objects (i)**” in the BCCM Act, the dispute resolution process can, in quite a number of instances, work very well, however, when it comes to the efficiency and effectiveness of the dispute resolution process involving breaches of car parking by-laws, it falls down quite remarkably in that by the time a Form11 is issued and worked its way through the process, it can take several weeks, if not many months, before any real action can be taken by the Body Corporate in seeing the offending vehicle removed, only to have the vehicle return again the very next day and park illegally again in the visitor’s car park, and the whole process commences again.

### **A SOILD IMMEDIATE DETERRENT IS WHAT IS REQUIRED!**

On the surface of it, allowing the Body Corporate to have the power to have an offending vehicle to be towed off the premises goes a long way to assisting the Body Corporate with this issue, however I believe there a few things for a Body Corporate to consider when towing, what is believed to be an offending vehicle from a Body Corporate complex.

Under the current Queensland Government Towing and Parking rules, (link below), there are a number of areas in this document that may require the Committee to consider before going down the path of towing someone’s vehicle.

<https://www.qld.gov.au/transport/safety/rules/road/parking#:~:text=Tow%20truck%20drivers%20must%20carry,vehicles%20parked%20on%20the%20property.>

In a Body Corporate complex there are common property areas as well as visitor car parking spaces. Under the By-Laws of most complexes in Queensland, both areas do not allow vehicles of owners/occupiers to park at any time in these areas without the written consent of the Body Corporate Committee.

A situation arises for the Body Corporate in determining whether or not a vehicle parked in a visitor car space is in fact an owner's or occupier's vehicle or a genuine visitor who would be legally allowed, under the by-laws to park their vehicle in a visitor's car space.

In these circumstances it would seem appropriate, if not a requirement for a Body Corporate to have and maintain a register of all owner's/occupier's vehicle's details. Make; model; registration etc. If it was law for a Body Corporate to have and maintain an up-to-date owner's vehicle register, it would be very easy to implement and go a long way to helping Body Corporate's to determine who owns the offending vehicle, that maybe parked illegally. . Say perhaps an official government form an owner or occupier would be required to fill out and submit to the Body Corporate upon taking occupancy of a Lot in the complex.

If a vehicle is found to be an owner/occupier's vehicle parked illegally, the process of having it towed may be made a little easy to implement. Otherwise, a situation could arise where the Body Corporate could become liable for towing a vehicle that belonged to a bona fide visitor.

I firmly believe that the thought of having their car towed away would be, for most people, a huge incentive not to park on common property or in a visitor's car space, and in that vein, I strongly support anything the government can do to help Body Corporate's with this continuing problem all Body Corporate's face with regards to illegal parking.

As I stated before, a solid deterrent is what is needed here and something that will leave no doubt in peoples minds that if they breach the by-laws there will now be genuine immediate consequences, and this proposal will help Body Corporates tremendously in administering the common property for the benefit of all owners.

Taking owners rights into consideration, I believe there should be consideration given to include informing an owner/occupier of a breach of the by-laws surrounding parking on common property in the form of a one-time only warning notice to the owner/occupier stating that their vehicle is illegally parked and ask them to remove it immediately or face having the vehicle towed. Also, that Photos and Details of their vehicle have been recorded and if the offence is again repeated in the future no further notice is required to be issued by the Body Corporate and a tow truck operator will be engaged to remove the vehicle.

Further things to consider: **Entering into contracts with a selected tow truck operator.**

Body Corporates, I believe, need to be made aware that they will have to enter into a contract with a tow truck operator in Queensland to legally carry out the task of towing a vehicle from the complex.

A Fact Sheet published by the Department of Transport and Main Roads (links below) explains what a private property owner needs to do to put this scheme in place and I would hope that the same procedure would be an acceptable legal method for Body Corporates to adopt.

[file:///C:/Users/HP/Downloads/Fact-Sheet-Occupiers%20\(5\).pdf](file:///C:/Users/HP/Downloads/Fact-Sheet-Occupiers%20(5).pdf)

<file:///C:/Users/HP/Downloads/Fact-Sheet-Motorists.pdf>

Taking into account a person's property rights when having their vehicle towed, under current legislation a tow truck operator and their drivers must be accredited under the legislation, and therefore a Body Corporate would have to ensure that they choose an operator who is licensed with the Department of Transport and Main Roads (TMR) and that they employ accredited drivers and assistants using licensed tow trucks.

Any licenced and accredited tow truck operator would, at its own expense, arrange and keep in place at all times, adequate insurance cover in respect of the services, to cover accidental damage of a vehicle that was being removed from a Strata Complex.

**FURTHER:** Item 1 under **163A Towing motor vehicles from common property – IT States**

**(1) Nothing in this Act prevents a body corporate for a community titles scheme from towing a motor vehicle from the common property for the scheme under another Act or otherwise according to law.**

Is this taken to mean that this new inclusion into the Act, overrides all other Sections of the Act, another Act, or other laws?

It would be a very clear understanding for Body Corporates if it did, as it would make it very simple, and remove all doubt or third-party interpretations, impeding the Body Corporate for carrying out their responsibility of enforcing their by-laws.

**FURTHER:** Under Chapter 3, Management of community titles schemes, Part 1 Management structures and arrangements, Division 1 Body corporate's general functions and powers, Item 95:

**95** Body corporate's general powers

(1) The body corporate for a community titles scheme has all the powers necessary for carrying out its functions and may, for example—

(a) enter into contracts.

I would trust that this Item 95 (a) is sufficient and strong enough not to be challenged by a third-party citing **Item 97:** No delegation of body corporate's powers. A body corporate cannot delegate its powers.

I would also trust that Section 180 Limitations for by-laws.

(6) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme, does not apply?

Considering the welcome proposals surrounding Towing of Vehicles, I believe it would be deemed necessary for a Body Corporate to include a separate By-Law in their CMS to inform owners and occupiers that Illegally parked vehicles will be towed, assuming they already have by-laws in place prohibiting any owner's/occupier's vehicles to be parked on common property or in visitor's car spaces.

A separate By-Law such as:

Parking of Vehicles:

If an owner or occupier of a Lot in the Scheme breaches the By-Laws, then the Body Corporate have the right to have the vehicle towed away.

**FURTHER:** Along with the appropriate By-Law in place, signage throughout a Strata complex would be paramount to "remove all doubt" and the claim of "ignorance of the fact" that if you park illegally on common property or in visitor car spaces, your vehicle would be subject to being towed off the premises at your expense to recover said vehicle.

**FURTHER:** To be as clear as possible and again "To remove all doubt", I believe the law needs to state that the offending vehicle's owner would be liable for the costs of recovering their vehicle with no liability upon the Body Corporate whatsoever.

Thank you for your time with this very urgent and long awaited, welcomed change for Queensland Strata Complexes.

Regards

Garth McNeil

██████████  
Body Corporate Secretary

████████████████████  
Mermaid Beach

Gold Coast

Queensland 4218

Email: ████████████████████

Mobile: ██████████

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