

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Submission No:	75
Submitted by:	Robert Cartledge
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Attachments:	See attachment
Submitter Comments:	

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

lasc@parliament.qld.gov.au

Dear Sir/Madam

**Body Corporate and Community Management and Other Legislation Amendment Bill
2023 (the Bill). SUBMISSION**

On 24 August 2023 the Attorney-General introduced a Bill to the Queensland Parliament to make further, significant changes to the Body Corporate and Community Management Act 1997.

Whilst the changes are well intended, of concern to many is the lack of opportunity owners generally had to make submissions. I raised this with the Attorney-General on 26 August 2023 and on 28 August 2023 I was pleased to receive an email from the BCCM, Department of Justice advising *'The LASC invites you to have your say by making a written submission. The closing date for written submissions is 5:00pm Saturday, 2 September 2023.'*

With respect to all concerned, given the emphasis within the changes to the BCCM Act, on whether something is or is not reasonable, allowing such a limited time in this instance is respectfully, not considered sufficient.

In keeping with the stated policy objective *to modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters* – particularly in relation to the transparency of body corporate administrative and financial affairs, submissions by owners, who are directly and the most effected persons, do not have access to the resources of others to develop comprehensive submissions or the time to do so.

On behalf of all owners, I seek an extension of time to make submissions.

Modernising and improving the operation of the BCCM Act in relation to by-laws and other governance issues

Second-hand smoke in community titles schemes

Amendment of s.167 (Nuisances)

The amendment to section 167 (Nuisances) of the BCCM Act to provide *'that an occupier contravenes the section if the occupier regularly uses, or regularly permits an invitee to use, a smoking product . . . and an occupier of another lot or an invitee of the occupier of the other lot, or a person who is lawfully*

‘regularly exposed to’ unduly raise or imply that there is a safe level of exposure to the smoking product . . . whereas the Australian Government, Department of Health and Aged Care has advised ‘*There is **no safe level** of passive smoking*’ and ‘*Studies show that second-hand smoke can harm you even if you’re exposed for just a moment.*’ (See attached)

Inclusion of the word ‘regularly’ will inevitably invite challenges to what that ‘regularly’ actually means and disputation – both in terms of how regularly an occupier uses or how regularly the user exposes other persons to smoke.

There would be far greater certainty concerning the intent of s.167(2) if the word ‘regularly’ was omitted entirely, and the section state:

- (2) Without limiting subsection (1), the occupier contravenes this section if—
 - (a) the occupier uses, or permits an invitee to use, a smoking product on the lot or the common property of the scheme; and
 - (b) an occupier of another lot or an invitee of the the occupier of the other lot, or a person who is lawfully on the common property, is exposed to the smoke or emission from the smoking product—
 - (i) in the other lot; or
 - (ii) on the common property.

Keeping or bringing of animals on a lot or on common property

While there is no explicit guidance in the BCCM Act about how a body corporate may regulate animals, the Bill acknowledges that decisions of adjudicators, QCAT, and courts have resulted in a well-established body of interpretation about how the general provisions about by-laws in the BCCM Act and the requirements for bodies corporate to act reasonably apply in relation to animals.

The Bill also that while these decisions have established that by-laws that prohibit pets, or restrict the size, type or quantity of pets, are unreasonable and that to act reasonably, bodies corporate must consider each request to keep an animal on its merits, considering all relevant facts and circumstances and ignoring irrelevant factors, the Bill acknowledges and effectively ‘saves’ the existing legislative framework as interpreted by adjudicators, QCAT, and courts appropriately balances the rights and liberties of owners and residents who wish to keep pets against those owners who want to live without disturbance that may be caused by pets.

By saving existing legislative framework, committees, which are predominantly responsible for formulating body corporate by-laws, should be well placed to do so.

Body corporate towing of vehicles

Whilst body corporate owners will welcome the clarity the amendment proposed in the Bill will bring but it is noted that, whilst the changes will assist bodies corporate to manage parking issues removing the impediment to bodies corporate towing a motor vehicle owned or operated by an owner or occupier of a lot in a timely manner, the problem of removing/towing vehicles **which are not owned or operated by an owner or occupier**, have not been addressed either directly or by reference to other legislation.

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.
- (3) In this section—
motor vehicle see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

R B Cartledge

[REDACTED]

Mobile: [REDACTED]

2 September 2023



About passive smoking

Passive smoking is when you breathe in the smoke from other people's cigarettes, cigars or pipes. It is a serious health threat — being exposed to tobacco smoke for just a moment can cause harm. Unborn babies, children and people with breathing problems are most at risk.

- [What is passive smoking?](#)
- [Is passive smoking ever safe?](#)
- [Effects of passive smoking](#)
- [Laws on second-hand smoke](#)

What is passive smoking?

Passive smoking is when someone breathes in second-hand tobacco smoke.

Second-hand smoke is made up of:

- the smoke that smokers breathe out
- sidestream smoke — the smoke from the end of lit cigarettes and cigars

Second-hand smoke is also known as environmental tobacco smoke.

Is passive smoking ever safe?

There is **no safe level** of passive smoking.

Studies show that second-hand smoke can harm you even if you're exposed for just a moment.

If someone smokes indoors, the harmful chemicals in tobacco smoke can stay in the air for hours. You cannot reduce the smoke to acceptable levels, even if you ventilate or filter the air.

Only 100% smoke-free environments can protect you from the effects of passive smoking.

Effects of passive smoking

Second-hand smoke is a serious health threat:

- For every 8 smokers who die from a smoking-related disease, 1 non-smoker dies from second-hand smoke exposure.

- Non-smokers who live with a smoker have a 25% to 30% greater risk of developing heart disease.

Second-hand smoke can cause or worsen a range of conditions and diseases including:

- [cancer](#)
- [heart attacks](#)
- [heart disease](#)
- respiratory infections such as [pneumonia](#)
- [asthma](#)
- [diabetes](#)

Passive smoking is especially risky for:

- unborn babies
- children and young people
- people with breathing problems

Unborn babies

Smoking tobacco or breathing in second-hand smoke when pregnant or breastfeeding can:

- affect the growth and health of your baby
- affect how your baby's lungs develop
- increase the risk of stillbirth
- increase the risk of premature birth
- increase the risk of complications and illness for both you and your baby

Find out more about [smoking and pregnancy](#).

Children

Children are at risk if they're exposed to second-hand smoke.

If they live with someone who regularly smokes in their home, they breathe in the same amount of nicotine as if they were smoking 60 to 150 cigarettes a year. This amount:

- is enough to be considered an occasional smoker
- increases their risk of lung cancer by 20% to 30%
- doubles the chance of them becoming a smoker later in life

Find out more about how [smoking affects children](#).

Laws on second-hand smoke

State and territory governments are responsible for [smoke-free laws](#).

3 September 2023

Kathryn O'Sullivan
Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

lasc@parliament.qld.gov.au

Dear Kathryn

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

My wife and I are owner occupiers in Southport Central Residential Body Corporate. As a retired solicitor I have maintained an active interest in body corporate matters, especially in relation to the transparency of body corporate administrative and financial affairs.

Southport Central Residential is one of the largest high rise complexes on the Gold Coast. In the light of a recent decision in the Office of the Body Corporate Commissioner, which exposed the extent to which certain individuals failed to maintain proper or any records and approved transfers of large amounts of money without proper approval, make the objective of the Bill *to modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters*, is all that more relevant.

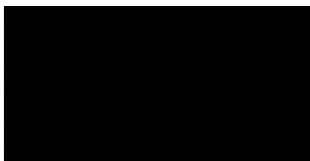
I thank the LASC for affording me an opportunity to make a written submission and would be pleased to respond to any questions arising from my submission.

I confirm that I have no objection to my submission and my name being made public (noting contact details will be redacted but my name and the content of the email will be seen on the committee's website).

Please advise if I can be of assistance.

Regards


Robert (Bob) Cartledge BA, LLB, GDLP, A/Dip (Bus)



Body Corporate and Community Management and Other Legislation Amendment Bill 2023

CONTENT OF SUBMISSION

Second-hand smoke in community titles schemes

Keeping or bringing of animals on a lot or on common property

Towing motor vehicles from common property

Section 205 Information to be given to interested persons

Code of conduct for body corporate managers and caretaking service contractors

Licensing and registration of Body Corporate Managers **NEW**

Sinking Funds and Trust Accounts

Second-hand smoke in community titles schemes

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Inclusion of the word ‘regularly’ will inevitably invite challenges to what that ‘regularly’ actually means – both in terms of how regularly an occupier uses or how regularly the user exposes other persons to smoke.

There would be far greater certainty concerning the intent of s.167(2) if the word ‘regularly’ was omitted entirely, and the section state:

- (2) Without limiting subsection (1), the occupier contravenes this section if—
- (a) the occupier uses, or permits an invitee to use, a smoking product on the lot or the common property of the scheme; and
 - (b) an occupier of another lot or an invitee of the occupier of the other lot, or a person who is lawfully on the common property, is exposed to the smoke or emission from the smoking product—
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While there is no explicit guidance in the BCCM Act about how a body corporate may regulate animals, the Bill acknowledges that decisions of adjudicators, QCAT, and courts have resulted in a well-established body of interpretation about how the general provisions about by-laws in the BCCM Act and the requirements for bodies corporate to act reasonably apply in relation to animals.

The Bill also states that while these decisions have established that by-laws that prohibit pets, or restrict the size, type or quantity of pets, are unreasonable and that to act reasonably, bodies corporate must consider each request to keep an animal on its merits, considering all relevant facts and circumstances and ignoring irrelevant factors, the Bill acknowledges and effectively 'saves' the existing legislative framework as interpreted by adjudicators, QCAT, and courts appropriately balances the rights and liberties of owners and residents who wish to keep pets against those owners who want to live without disturbance that may be caused by pets.

By saving existing legislative framework, committees, which are predominantly responsible for formulating body corporate by-laws, should be well placed to do so.

Body corporate towing of vehicles

Whilst body corporate owners will welcome the clarity the amendment proposed in the Bill will bring but it is noted that, whilst the changes will assist bodies corporate to manage parking issues removing the impediment to bodies corporate towing a motor vehicle owned or operated by an owner or occupier of a lot in a timely manner, the problem of removing/towing vehicles **which are not owned or operated by an owner or occupier**, have not been addressed either directly or by reference to other legislation.

163A Towing motor vehicles from common property (as drafted)

- (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.
- (3) In this section—
motor vehicle see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

Section 205 Information to be given to interested persons

The present and proposed amendment specify that *'Within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module the body corporate must permit the person to inspect or be given a copy of the requested record.'*

A common impediment to inspecting or obtaining a copy of a record kept by the body corporate, is the delay in 'advising' the interested person, of the cost involved - often being a week or more.

A further impediment to providing a timely response to a written request, is the uncertainty or lack of clarity in respect of precisely what record the interested person wishes to inspect or be given a copy of. This uncertainty often appears to exist because of the naivety of interested persons or the jargon used in relation to body corporate matters. Acknowledging receipt of the request in a timely manner also affords the body corporate to confirm whether or not it has possession of the records requested.

The 7 day timeframe should be retained but to address these 'delay issues' it is recommended that *'the body corporate must acknowledge receipt of the request and advise the interested person of the costs within 3 days of receiving a written request'* and *'within 4 days of paying the prescribed fee the body corporate must permit the person to inspect or be given a copy of the requested record.'*

Schedule 2 - Code of conduct for body corporate managers and caretaking service contractors

Whilst the Explanatory notes refer to *'enhancing the code of conduct for body corporate managers and caretaking service contractors by **prohibiting** body corporate managers and caretaking service contractors from 'unfairly influencing' the outcome of motions and committee*

elections’; the proposed amendment does not expressly ‘prohibit’ such conduct as it merely states:

- (3) A body corporate manager or caretaking service contractor must not unfairly influence, or attempt to unfairly influence, the outcome of a motion to be decided by the body corporate.

The term ‘unfairly influence’ is vague and uncertain, is not defined by way of example and does not amount to a prohibition. That the Explanatory notes refer to **prohibiting** *body corporate managers and caretaking service contractors from ‘unfairly influencing’* the outcome of a motion presumably refers to the outcome of voting on a motion, strongly suggests that prohibition was considered, even if not mentioned in the final wording of the above clause.

Further, the proposed amendment omits any mention of the holders of body corporate management rights, by whom some caretakers and rental agents are employed. The holder of the management rights of a body corporate is thus in a position able to influence owners and the outcome of motions to be decided by the body corporate – and protect or enhance its own position.

The Code of Conduct would be enhanced if body corporate managers, caretaking service contractors, the holder of body corporate management rights and their employees (including rental agents), were prohibited from engaging in any form of lobbying in favour of (or against) persons nominating for the positions on body corporate committees or influencing the outcome of motions and committee elections.

The issue of lobbying or campaigning has been considered in a number of dispute resolution applications. Adjudicators have correctly pointed out that this is not specifically regulated by the Act or the Regulation Modules.¹ Almost without exception lobbying disputes have referred to instances where owners have objected to lobby by follow owners. In *St. Tropez*,² the adjudicator stated “*if an owner disputes decisions made by the Committee majority, they should lobby owners to vote against the motions . . . It is then for owners to decide which approach they prefer.*”

The issue here however is not questioning the right of owners to lobby or campaign in respect of a general meeting motion or a matter otherwise under consideration by the committee or a matter of concern to certain owners. The issue is whether non-owners, such as body corporate managers, caretaking service contractors, the holders of body corporate management rights and their employees (including rental agents) should be permitted to lobby owners, exploit their access to owners and information gleaned as ‘service contractors’ to influence owners to benefit the said service contractors.

There are instances where such persons have gone so far as to pre-filling voting paper and asking owners to insert their name and signature and submit the voting paper³ (wherein the Adjudicator

¹ Ipomoea Court [2007] QBCCMCmr 49

² [2007] QBCCMCmr 445.

³ Bayview Residences [2014] QBCCMCmr 187

determined 'If an owner simply signs a voting paper when someone else has ticked 'yes' or 'no' against each motion then the owner is not completing their voting paper themselves.') and/or advising owners how they should complete their voting papers – as demonstrated in Annexure 'B' (redacted for privacy reasons).

To minimise the prospect of non-owners being unduly and inappropriately influenced by service contractors in pursuit of their own vested interests, it is recommended that Schedule 2, Section 2 state:

3. A body corporate manager, caretaking service contractor, the holder of body corporate management rights and their employees, including rental agents, are prohibited from engaging in any form of lobbying in favour of (or against) persons nominating for the positions on body corporate committees or influencing the outcome of motions and committee elections.

Licensing and qualifications of Body Corporate Managers

At present, body corporate managers do not need to be licensed in Queensland. There are no formal training requirements or qualifications needed to be a body corporate manager.

[Body corporate manager | Your rights, crime and the law | Queensland Government \(www.qld.gov.au\)](http://www.qld.gov.au/body-corporate-manager-your-rights-crime-and-the-law)

The objectives of the Bill are to modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters – particularly in relation to the transparency of body corporate administrative and financial affairs.

Members of body corporate committees are usually unpaid volunteers with limited or no experience in body corporate matters or knowledge of the body corporate legislation or framework within which they operate. The body corporate manager is the 'paid professional' to whom owners generally and committee members particularly turn to for advice and rely on to provide administrative guidance, and to maintain the body corporate records and manage the finances of the body corporate.

Although the Body Corporate Manager can only lawfully do what the body corporate asks them to do, the 'asking' is very much in the hands of the Committee, which, as mentioned above, is usually comprised of unpaid volunteers with limited or no experience in body corporate matters or knowledge of the body corporate legislation or framework within which they operate.

There has apparently been no attempt to address in the present review, the long standing issue concerning the need for body corporate managers to be licensed and trained notwithstanding that in medium to large bodies corporates, the annual budget regularly exceeds millions of dollars.

Whilst most body corporate managers perform their duties in a professional manner, given that they operate with a great deal of autonomy, they should possess professional qualifications and

the skills relevant to the job, professional indemnity insurance (at least equal to the value of the funds held in the body corporate administrative and sinking funds), undergo police records checks (to ensure that they have no convictions for serious offences within the past five years or pecuniary penalties arising from civil offences) - and engage in Continuing Professional Development (CPD) programs to keep pace with changes in legislation and regulatory requirements.

Licensing and the question of qualifications for Body Corporate Managers, have been addressed in varying degrees across Australia, as described in Annexure 'C' to this submission, produced by ACE Body Corporate Management. Whilst these requirements have not been mandated in Queensland, it would appear that Strata Community Australia (SCA), with Government support, could take the lead in this area.

The decision of the Body Corporate Adjudicator on 22 September 2022 concerning Southport Central Residential⁴ brought into sharp focus the need for a professional approach to body corporate management and to ensure that management practices comply fully with the requirements of body corporate legislation particularly in relation to the transparency of body corporate administrative and financial affairs.

It is recommended that the current passage of legislation include a requirement for Body Corporate Managers to be licensed and that there be a transition period of (say 2 years) to allow those currently working in the industry to obtain the prescribed qualifications.

Sinking Funds and Trust Accounts

Despite the fact that many large bodies corporate have millions of dollars in their Sinking Funds, these monies are often simply deposited in fixed term deposit accounts with the major banks. Such monies should be subject to more stringent oversight and managed through Trust Accounts, as applies in the case of law firms and property agents.

Trust Accounts should be subject to mandatory annual 'independent' audit and the minimum requirements of such audits should be more comprehensive than merely '*auditing of statements of accounts*' as prescribed in s.150(2)(j) of the BCCM Act – which is generally seen as a superficial bean-counting exercise.


Robert (Bob) Cartledge

⁴ Southport Central Residential [2022] QBCCMCmr 346



About passive smoking

Passive smoking is when you breathe in the smoke from other people's cigarettes, cigars or pipes. It is a serious health threat — being exposed to tobacco smoke for just a moment can cause harm. Unborn babies, children and people with breathing problems are most at risk.

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- [Is passive smoking ever safe?](#)
- [Effects of passive smoking](#)
- [Laws on second-hand smoke](#)

What is passive smoking?

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- the smoke that smokers breathe out
- sidestream smoke — the smoke from the end of lit cigarettes and cigars

Second-hand smoke is also known as environmental tobacco smoke.

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If someone smokes indoors, the harmful chemicals in tobacco smoke can stay in the air for hours. You cannot reduce the smoke to acceptable levels, even if you ventilate or filter the air.

Only 100% smoke-free environments can protect you from the effects of passive smoking.

Effects of passive smoking

Second-hand smoke is a serious health threat:

- For every 8 smokers who die from a smoking-related disease, 1 non-smoker dies from second-hand smoke exposure.

- Non-smokers who live with a smoker have a 25% to 30% greater risk of developing heart disease.

Second-hand smoke can cause or worsen a range of conditions and diseases including:

- [cancer](#)
- [heart attacks](#)
- [heart disease](#)
- respiratory infections such as [pneumonia](#)
- [asthma](#)
- [diabetes](#)

Passive smoking is especially risky for:

- unborn babies
- children and young people
- people with breathing problems

Unborn babies

Smoking tobacco or breathing in second-hand smoke when pregnant or breastfeeding can:

- affect the growth and health of your baby
- affect how your baby's lungs develop
- increase the risk of stillbirth
- increase the risk of premature birth
- increase the risk of complications and illness for both you and your baby

Find out more about [smoking and pregnancy](#).

Children

Children are at risk if they're exposed to second-hand smoke.

If they live with someone who regularly smokes in their home, they breathe in the same amount of nicotine as if they were smoking 60 to 150 cigarettes a year. This amount:

- is enough to be considered an occasional smoker
- increases their risk of lung cancer by 20% to 30%
- doubles the chance of them becoming a smoker later in life

Find out more about how [smoking affects children](#).

Laws on second-hand smoke

State and territory governments are responsible for [smoke-free laws](#).

ANNEXURE 'B'

On [REDACTED] > wrote:

Hi

.....

It is time for the AGM again and we need our owners to vote so that we have a good strong Committee and the gains that have been made this year continue. Would you be happy to vote if you have not already or are you coming to the AGM.

We have completed voting forms and if you are happy to sign, I will scan them to you. I am happy to answer any questions in relation to the voting papers if you have any queries at all.

So much good work has been done this year so far especially the reduction in levies.

Kind Regards

[REDACTED]

Qualifications for Strata Managers

State Licensing for Strata Managers

Just as the strata legislation varies across Australian states and territories, so too does the legislative obligations for Body Corporate Managers; to enable them to practise and manage your client's strata communities.

So just what is required in your region to perform the role of a Body Corporate Manager and how are you supported to deliver professional services?

As trusted advisors to our owners corporations, [ACE Body Corporate Management](#) (ACE) values the importance of providing up to date expert advice and guidance, to help our clients navigate the complexities of strata law and equipping you to administer this same expertise to the management of your properties.

Your clients benefit from knowledgeable application of state-based legislation and are assured of the commitment by all [ACE Managers](#) to continue relevant education and obtain obligatory, as well as optional qualifications, to meet high standards of service delivery.

To this extent ACE strongly advocates for the position of our industry body, Strata Community Australasia (SCA), for standards and qualifications that professionalise the strata industry and our profession itself. Looking to strengthen representation as a united body, consisting of all Australian state, territories and New Zealand counterparts. Continuing to advocate for self-regulation that requires certification, registration, professional indemnity insurance, as well as supporting members' ongoing dedication to Continuing Professional Development (CPD) programs.

You're therefore assured of ongoing access to knowledge and best practice to offer your clients peace of mind, knowing all ACE's Managers are members of their relevant SCA state/territory/chapter and adopt the SCA Code of Conduct. Each ACE Manager holds professional indemnity insurance, undergoes police checks; and maintains CPD, with many pursuing and holding optional nationally recognised post nominals.

All of which, is in addition to ACE's commitment to our own internal training and ACE programs; including formal ACE inductions, routine seminars and workshops as well as biennial conferences and mentoring programs.

You'll also find that almost all ACE Managers hold our industry's qualification, the Certificate IV in Strata Community Management and are recognised Certified Strata Community Managers. In fact, this remains the case even where licensing is not mandated.

The qualification is readily accessible via the Australian College of Professionals (ACOP), who conduct a full on-line strata qualification program for you to undertake an in-depth study of the entire strata and community management process. It is a practical-based course, underpinned by State/Territory legislation and is currently available in NSW (for licensing purposes), Qld, WA and Vic. It's also being developed for future release in the other States and Territories. You can find out more about the course [here](#) and take advantage of the discount offered as a member of the Ace family when you enrol.

Now while the above information reflects our national position, the details below outline the minimum requirements for Strata Managers in your state and territory. We look forward to welcoming you to the ACE family and are excited by the opportunity to support you develop [your career in strata](#); a dynamic and booming industry.

Strata Management in ACT

Under the Agents Act 2003, an Owners Corporation Manager is required to register with Access Canberra (formerly Office of Regulatory Services) to practise as an Owners Corporation Managing Agent in ACT. While there is an intent for qualifications to apply, these qualifications are yet to be determined. The licence is to be held by the person running the business, while those working for a licensed owners corporation manager, are exempt.

You can find out more particulars here

[Owners corporation managing agent licensing](#)

[Guide to the obligations of Owners Corporation Managers](#)

Strata Management in New South Wales

In NSW an Agent in Strata Management is required to have a license and/or Certificate of Registration and be registered with the Office of Fair Trading in NSW.

Licences are issued as either:-

Class 1:

Being the person nominated as a licensee in charge of a business and requiring among other work experience, completion of the Diploma of Property (Agency Management) (CPP51119), or Diploma of Property Services (Agency Management) (CPP50307).

Class 2:

Being those managing (under, but not, the licensee in charge) and in addition to work experience, must complete the Certificate IV in Strata Community Management (CPP40516).

Assistant Agent:

Being the title given to all Certificate of Registration holders, who must be employed and supervised by a Class 1 or 2 licence holder, and must complete 7 units from the Certificate IV in Strata Community Management (CPP40516).

You can find out the finer details here

[Applying for a licence or certificate](#)

[Licence requirements](#)

As a Member of SCA, an Agent in NSW is also a member of the Professional Standards Scheme. You can find out what this means to you and your clients' strata communities here

Or access the following link to find out more about licensing in NSW [here](#).

Strata Management in Northern Territory

A professional Corporation and/or Body Corporate Manager in NT is required to have a license under the NT Agents Licensing Act 1979. The registration is held with the Department of Industry, Tourism and Trade. To obtain the license, as the business manager you must successfully complete the Diploma of Property (Agency Management) and hold Professional Indemnity Insurance. Qualifications are not required for those working under the business owner's licence.

You can find out more about your NT Body Corporate Manager [here](#)

[Dealing with a body corporate](#)

And more on licensing [here](#) and [here](#).

Body Corporate Management in Queensland

Currently Queensland Body Corporate Managers are not required to be licensed, or hold any formal training or mandated qualification.

ACE Managers however, are self driven and supported to participate as a member of our industry's peak body, SCA. As such, they uphold their obligation to enrol and complete industry training, including but not limited to, the SCA Strata Starter course, the internationally recognised A100 Introduction to working, owning and living in a Strata Community, as well as the nationally recognised qualification, the Certificate IV in Strata Management. During the initial term all new franchisees are offered the opportunity to operate under a mentoring program with an experienced Body Corporate Manager and/or our qualified ACE Area Development Manager.

You can find out more about your Queensland Body Corporate Manager [here](#).

Strata Management in South Australia

At present Body Corporate Managers in South Australia are neither required to hold a license to operate, nor hold a mandated qualification. ACE Body Corporate Managers however, hold membership with SCA and commit to ongoing Continuing Professional Development. This includes regular training, staying up to date with legislative obligations and upholding ethical practises.

Internal and external training accessible to you not only keeps you in the know but also offers support and guidance while you acquire the knowledge and experience you need.

You can find out more about Body Corporate Managers in SA [here](#).

Strata Management in Tasmania

Currently there are no licensing requirements to be a Body Corporate Manager in Tasmania, nor any mandated qualifications to uphold. ACE Managers however, are members of SCA and commit to ongoing Continuing Professional Development. This includes regular training, staying up to date with legislative obligations and upholding ethical practises.

Internal and external training accessible to you not only keeps you in the know but also offers support and guidance while you acquire the knowledge and experience you need. Internal and external training accessible to you not only keeps you in the know but also offers support and guidance while you acquire the knowledge and experience you need.

You can find out more about Strata Living in Tasmania [here](#).

Owners Corporation Management in Victoria

In Victoria, Body Corporate Managers are called Owners Corporations Managers and must be registered with the [Business Licensing Authority](#). Registration may be held by the management firm and/or the individual. There is no minimum or mandatory qualification necessary. A registered Owners Corporation Manager cannot carry out the functions of a Manager for a fee or reward without registration and without holding current Professional Indemnity Insurance that meets their legislative obligations.

ACE Owners Corporation Managers also hold membership of SCA and through participation in the Continuing Professional Development program, they gain the support they need to remain committed to ongoing education, staying up to date with legislative obligations and adhering to ethical practises. Many Managers are also driven to hold post nominals, to recognise their years of membership, experience and training undertaken.

You can find out more about Strata Managers in Victoria [here](#).

Strata Management in Western Australia

Currently, there are no licensing requirements to be a Strata Manager in Western Australia nor minimum qualifications to be held. However, new reforms say that strata managers have to complete their Cert IV by 05/2024.

All ACE Strata Managers however become members of SCA and participate in the Continuing Professional Development program which requires attendance at training events and evidence of current professional indemnity insurance and offers Accreditation for varying levels of experience and qualifications held. Our ACE Managers, as a commitment to their SCA Membership are bound by a Code of Ethics which sets out an acceptable standard of behaviour and helps you stay on track while gaining the experience and expertise required to perform strata management duties.

You can find out more about strata management in WA [here](#).

12 September 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

lasc@parliament.qld.gov.au

Dear Sir/Madam

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

I refer to the 'Call for submissions', acknowledge that the closing date for written submissions was Saturday, 2 September 2023, and that any submissions received after the close date may be considered by the committee at their discretion.

I would be pleased if the Committee would consider this supplementary submission.

I would welcome the opportunity to elaborate on any aspect of the submissions below.

I confirm that I have no objection to my submission and my name being made public (noting contact details will be redacted but my name and the content of the email will be seen on the committee's website).

Yours faithfully



Robert (Bob) Cartledge BA, LLB, GDLP, A/Dip (Bus)



Adjudicator's orders

Whilst Section 274 deals with the issue of to whom a copy of an Adjudicator's order must be given, and subsection (1)(c) includes *'the body corporate for the community titles scheme'*, subsection (3) merely states *'... the adjudicator need not give a copy of the order to each owner or occupier individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all owners or occupiers or all members of the class.'*

Division 3 Adjudicator's orders

274 Notice of order to be given

- (1) The adjudicator for an application must give a copy of an order made under this chapter to—
 - (a) the applicant; and
 - (b) the respondent to the application; and
 - (c) the body corporate for the community titles scheme; and
 - (d) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application.
- (2) The copy of the order must be—
 - (a) certified by the adjudicator as a true copy of the order; and
 - (b) accompanied by—
 - (i) a statement of the adjudicator's reasons for the decision; and
 - (ii) an outline in the approved form of the appeal rights available under part 11.
- (3) If the order is a declaratory or other order affecting the owners or occupiers of the lots included in the scheme generally, or a particular class of the owners or occupiers, the adjudicator need not give a copy of the order to each owner or occupier individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all owners or occupiers or all members of the class.

There is no specific obligation on the part of the body corporate committee to ensure that Orders are brought to the attention of all owners. Orders often identify, for example, failures to comply with provisions of the BCCM Act or modules or inappropriate conduct on the part of certain persons. Given that the body corporate (owners) have borne the often substantial costs of legal representation in relation to bringing or defending adjudication applications, the outcome of which will, one way or the other, impact on all owners, it imperative that owners be aware of the orders and are thus informed when making future decisions, for example when appointing committee members and body corporate managers.

IT IS RECOMMENDED, to ensure transparency in relation to disclosure of adjudicator's orders, that Section 274(3) be amended to read:

- (3) *Within 14 days of receipt of adjudicator's orders, the body corporate must give a copy of the Orders, in a way that ensures, as far as reasonably practicable, they come to the attention of all owners.*

PROVISION OF INFORMATION - DISCLOSURE DOCUMENTS

At present there are two provisions in the BCCM Act, Sections 205 and 206, which relate to giving financial and other information about a lot included in the scheme to prospective buyers.

The Property Law Bill 2023 aims to replace the Property Law Act 1974 and will introduce a new statutory disclosure regime for property sellers in Queensland, including contemporaneously amending Section 205 and omitting Sections 206-209 of the BCCM Act.

(Refer to the Property Law Bill 2023 for details of the amendments to section 205)

Section 205(4) currently states:

- (4) The body corporate must, within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, issue a certificate (a **body corporate information certificate**) in the approved form applying to the scheme giving financial and other information about the lot.
Maximum penalty—20 penalty units.

The **Information Certificate** referred to in Section 205 is provided by the Body Corporate, or more specifically the Body Corporate Manager if one has been appointed.

The Department of Justice and Attorney-General provides BCCM Form 13 which may be used as a template for the purpose of providing an Information Certificate.

The Certificate includes:

Part A Scheme details

1. Annual contributions to Administrative and Sinking Funds
2. Special contributions
3. Other amounts payable to the body corporate
4. Summary of amounts due but unpaid

Part B Regulation module applying to scheme

Body Corporate assets

Any improvement to the common property for which are for the benefit of the lot and which the owner must maintain.

A person who obtains a certificate under subsection (4) may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate.

Statutory fees apply:

Currently the fee for an Information Certificate is \$71.75.

There is an extra fee of:

- \$18.55 if the Information Certificate is faxed to the applicant
- \$27.00 priority fee if the Information Certificate is wanted within 24 hours.

If the Information Certificate is not provided within 24 hours, the priority fee must be refunded.

It remains however that neither the present BCCM Act, BCCM Act Amendment Bill 2023 nor the Property Law Bill 2023 impose an obligation on the body corporate to disclose:

- Information concerning any pending adjudication applications before the Office of the Body Corporate Commissioner and unresolved appeals to Queensland Civil and Administrative Tribunal (QCAT) or courts of competent jurisdiction.
- Unpaid invoices, rendered by service providers ('contingent liabilities') and/or demands for payment **irrespective of the body corporate views as to the merits of such liabilities.**

In both instances, standard 'searches' by prospective buyers, may not reveal the existence of these matters notwithstanding the impact the outcome may have on a body corporate and the decision of a buyer to proceed with a purchase. The current Form 13 contains a statement 'Section 205(5) of the Act provides that the person obtaining this certificate may rely on it against the body corporate as conclusive evidence of the matters stated, except for errors reasonably apparent.' – which, with minor amendment, would capture the matters mentioned above and enhance disclosure.

There are instances where massive debts, in the form of unpaid invoices, may explain why apartments are being sold off at significantly discounted prices and/or impact on the financial circumstances of body corporates.

IT IS RECOMMENDED THAT, concurrent with the amendments to section 205, proposed in Property Law Bill 2023, there be included new provisions in the Body Corporate and Community Management Act to provide for disclosure of:

- Information concerning any unresolved adjudication applications before the Office of the Body Corporate Commissioner and unresolved appeals to Queensland Civil and Administrative Tribunal (QCAT) or courts of competent jurisdiction.
- Unpaid invoices, rendered by service providers ('contingent liabilities') and/or demands for payment **irrespective of the body corporate views as to the merits of such liabilities.**