

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

**Submission No:** 94  
**Submitted by:** Andrew Christie  
**Publication:** Make submission and name public  
**Attachments:** See attachment  
**Submitter Comments:**

Hi, I hope this late suggestion can be considered please.

Can the BCCM Act or at least the Accommodation Module (Reg 200) be amended so that the cost of a community painting project can be levied and gradually collected over time (eg. 10 years).

Our body corporate is aware that the committee is currently forbidden to collect levies for a community painting project that covers all the individual houses in a Standard Format Plan at the same time. There may be dozens of houses with a common architectural theme.

This prohibition is explained in the BCCM newsletter, Common Ground Issue 31. An excerpt is also attached.

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.publications.qld.gov.au%2Fckan-publications-attachments-prod%2Fresources%2F8eb86a8d-6e72-43ef-b911-5b154b61da98%2Fissue-31-common-ground-updated-titles-ref-jan-2023.pdf%3FETag%3Dddd2e30a4ef9c43602d4909bb41c30f57&data=05%7C01%7Cclasc%40parliament.qld.gov.au%7Cc92ea8e3853648ae284308dbaf502e5d%7C234f33c1f5a34c5d8628a50c061ce055%7C0%7C0%7C638296531297159434%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=3%2F8PNnzhR0vtONhg4A0peM6NBDITbR1JROmTTi41Fr8%3D&reserved=0>

It would be a great advantage if such a levy was possible, because when the time comes to repaint, many of the owners simply cannot afford to do so. As with many issues, they do not even bother to reply to requests for input from the committee, particularly the landlords. The consequence is that some houses in the complex deteriorate and devalue the entire complex.

It is also a great advantage if all the houses (78 in our case) can be painted together as part of a single contract. A significant reduction in cost can be achieved (at least 50% per house) and the colours and quality of workmanship can be maintained throughout the complex. Minor external repairs are investigated carried out prior to painting.

It is also simply much more convenient than negotiating multiple individual contracts on behalf of multiple owners (particularly landlords) who often do not respond to any communication from the committee. Even when the issues are specific in the CMS bylaws. "Forcing" an owner to repaint an entire house under the general maintenance provisions is awkward, to say the least.

There are several different types of house, with different numbers of walls needing to be painted (eg. 2, 3, 4). This could be reflected in the size of the levy, via the Contribution Schedule. Although the owners all contributed equally to a previous painting project and were content with that approach, as everyone gains when the entire complex is well maintained.

It could possibly be done quite easily through a specific provision in Reg 200 of the Accommodation Module. Similar could be amended in the Standard Module.

I am an owner living in the complex, but no longer on the CQ committee. They may be making a separate submission, but I doubt it.

Yours sincerely  
Andrew Christie



### Common questions around responsibility for maintenance

These are some examples of particular elements of a building and the responsibilities for maintenance.

#### Exterior walls

There is a common misconception that the body corporate should pay for maintenance of the exterior of the building from the sinking fund. As the walls are within the boundaries of the lot, an owner is responsible for painting, or maintaining rendering or cladding, or otherwise maintaining the exterior surface of the walls under [Section 211](#) of the Standard Module.

Adjudicators have made it clear the body corporate cannot use sinking fund money or vote to raise a special levy to pay for maintenance of owners' lots in a SFP.

In [Bayshore Central \[2017\] QBCCMCmr 550 \(8 November 2017\)](#), the adjudicator held:

[25] Owners are responsible for all aspects of the maintenance of all parts of their lots, including the exterior surfaces of buildings constructed on their lots. Adjudicators have consistently confirmed that a body corporate cannot take responsibility for painting and other maintenance of lots in a SFP.

[26] If an owner fails to comply with their obligation to maintain their own lot in good condition, a body corporate can carry out the work itself and recover the reasonable cost of that work from the owner. The body corporate, as always, would need to act reasonably in doing so, including in determining whether a lot was not in good condition and whether the owner was on notice of the alleged need to undertake maintenance.

Bodies corporate are not permitted to accumulate money in the sinking fund for painting the owners' buildings. An adjudicator ordered that the monies were to be refunded in [Somerset Park \[2017\] QBCCMCmr 412 \(24 August 2017\)](#), finding:

[23] Motion 13 of the AGM of 26 October 2016 proposed that the body corporate agree to repaint the buildings ... with the costs incurred to be met from the existing funds in the sinking fund. The motion was lost with 48 votes against and 23 in favour. In my view, Motion 13 should have been ruled out of order by the chairperson. It proposed to authorise work financed from the sinking fund that is the responsibility of lot owners under section 168(2) of the Accommodation Module (now Section 201 of the Accommodation Module).



[24] It is apparent that owners have been contributing toward the cost of repainting the buildings in the scheme via contributions to the sinking fund. This is contrary to law and the question now arises as what should be done with the contributions that have been accumulated for that purpose.

#### Shared common walls

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**From:** Andrew Christie [REDACTED]  
**Sent:** Thursday, 7 September 2023 6:21 PM  
**To:** Legal Affairs and Safety Committee  
**Subject:** Re: submission about painting of SFP lots - BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2023

I just had another thought for the previous submission, which was done in haste sorry.

The painting levy would probably need to be paid into a painting fund, separate from the sinking fund, and protected. In case the committee tries to dip in for other purposes, or a litigant sees a pot of gold.

The painting fund would also need provision to divy up in proportion to actual contributions, not necessarily the CMS contribution schedule or the CMS interest schedule (which are not the same in our case). In case the fund needs to be dissolved and paid back fairly to the owners for some remote reason.

Thanks  
AndrewC