

Does the BCCM Act dispute resolution process resolve disputes?

UOAQ Policy

The easiest way to improve dispute resolution is to address the root causes of the disputes. The imposition by the state of caretakers with long term costly contracts into owners' buildings creates significant tensions in strata communities and the failure of any effective dispute resolution services i.e., BCCM Office and QCAT, compounds the problem. This requires change. The legislated dispute resolution process needs to be refocused on more quickly achieving an agreed resolution of the dispute by providing appropriate information, rather than the current focus of legally defined outcomes.

UOAQ Owner Survey:

- 55% of respondents reported they are happy with the current management of their building, 36% indicate they are unhappy.
- 65% of respondents reported they would prefer 3-year building management contracts, with a further portion requesting 1 year or less.
- 65% of survey respondents indicate they have been subject to or witnessed interpersonal conflict such as bullying, harassment, defamation, bias within their building. This level rises to 95% for respondents who report that they live in an unhappy or toxic community.
- 75% of respondents who have served on a committee have received no formal training regarding the committee process or the provisions of the BCCM Act, leaving them ill equipped to understand their common law duty of care to other owners.
- A major portion of the respondents reported that they were unaware of the dispute resolution provisions within QCAT and the BCCM Office, which may be a good thing.
- Owner survey comments regarding dispute resolution are mostly not positive, including comments regarding costly, drawn out, favour caretakers etc.

Current Situation

- Some strata legal firms report that over 50% of their revenue is derived from disputes.
- Aggressive lawyers are used to intimidate owners who are requesting performance improvements for their caretaking contracts. A strategy to divide and conquer the owner community is adopted. Any committee members requesting improved performance are intimidated and discredited within the owner community, resulting in the loss of their committee position at the next annual general meeting.
- A simple reading of the BCCM legislation might conclude that the interests of the businesses that manage buildings appear to be more important than the interests of the owners of those buildings.

- The UOAQ recommends to its members not to go to QCAT with a dispute with their caretaker. There is no provision to achieve a resolution to a dispute in the legislated dispute process. It is either terminating the contract or nothing. Commercial interests would like to keep it that way. Over the last 13 years, there have only been two successful terminations of the caretaker's contract obtained via the legislated dispute resolution process, and these cases were only successful when appealed to the District Court. This fact raises significant doubt on the impartiality of QCAT judgements. There is no attempt made to provide dispute resolution. QCAT conciliation is aimed at getting owners to back down. It is an incredible stain on the reputation of the justice system. We are just talking about lack of performance for what should be simple cleaning and maintenance contracts.
- Both bodies corporate and service contractors have spent millions of dollars in this process that does not deliver fair or balanced outcomes. Counsel defending bodies corporate have admitted after the legal proceedings have concluded, that adjudicators consider it is too harsh a penalty to deprive a contractor of his livelihood for the sake of minor cleaning and maintenance issues. Common law has well established the depth and importance of contract compliance and the penalty that ensues. Any bias in these circumstances allows poor performance with impunity. This fairness of proper process is not available under the BCCM Act.
- The BCCM dispute process is focused on obtaining a legally binding outcome, rather than providing a process with sufficient information to more quickly provide information relevant to the resolution of disputes. Both owners and committees do not have the required knowledge to make it through the lengthy and complex BCCM dispute process to resolve simple disputes. Rarely is a legally enforceable resolution required.

Benchmark with Other States

- No other state has 25-year management rights contracts and the resulting conflict that these long-term unfair contracts create.
- People will always have disputes. The legal constraints and cost impositions by the legislation in other states may not be as severe as in Queensland.
- The UOAQ has been informed that a review of QCAT decisions under the BCCM Act has been completed by the Queensland Law Society and should be made available to the Legal Service Commission, the members of the CTS Working Group and the Department of Justice.
- The Government needs to do this benchmarking work.

An Alternative Model

- The elimination of buying, selling, and extending management rights (**MR**) will focus service providers on the delivery of highly effective, cost competitive building services. The level of tricky, dishonest contract conditions designed solely for the benefit of the caretaker will be minimised.
- Removing the debt burden many caretakers require to purchase their positions, will benefit all and lessen the requirement for expensive lawyers to run disputes, intimidating owners, creating tensions in a community.



- Short-term contracts of a maximum term of 3 years allows regular competitive review of the building services delivered by their caretaker, eliminating the need for expensive legal processes for termination or other dispute processes.
- The model of short-term contracts (3 year) needs to be included in the BCCM legislation to inform Queensland owners that this short-term model is also a community norm, to eliminate potential bullying of owners by existing contractors and their legal supporters to “gift” new 10 or 25 year contracts to existing MR holders.
- The restructure of committee election and membership structures and the requirement for formal committee member training will promote better management by committees, eliminating many minor disputes.
- The provision of more structured dispute information materials will promote better problem and solution identification at an earlier stage in the dispute process. These materials can be developed from existing case law outcomes to cover the major areas of dispute between owners and committees. While the practice directions have useful information, these documents do not provide relevant information regarding the typical types of disputes. A simple summary of the relevant provisions of the BCCM Act and how these provisions have been interpreted in various adjudication decisions could inform protagonists regarding a likely outcome, leading to quicker resolution of the dispute. These papers could be sent to owners who call the BCCM advice line as guidance for further discussions with the complainants.
- Proper support from body corporate managers, who in most cases are the only professions in attendance at committee meetings, including providing professional guidance. The guidance should be minuted in committee minutes for owner review to demonstrate the need for proper information for committee members.

Transition:

- Change the committee structure.
- Mandate committee member training in the BCCM Act and committee processes and common law duty of care responsibilities to avoid ill-informed committee members from causing problems.
- Create owner information and training.
- Ban the sale of management rights by developers.
- Change the legislation to include a model which enables three-year contracts, an employed manager if necessary and does not allow buying or selling the contracts.
- Ban the extension of current management rights contracts to avoid exploitation of owners.
- The building managers for the 55% of happy survey responders may transition with minimal disruption to their business. Owners who wish to review their contracts are not required to accept the lowest price, just be given a choice. The other 36% would have to lift their game or leave the industry.
- Develop information packages regarding the main types of disputes to inform industry participants of the likely outcomes under a judicial process to promote resolution prior to entry into a formal conciliation or dispute process.



- Provide a more comprehensive advice line service to include the provision of information packages to promote the understanding and the resolution of disputes.
- Change the BCCM conciliation and adjudication process to promote and ensure dispute resolution akin to an informed dispute mediation rather than achieving a legal judgement.
- Review the existing set of QCAT decisions and request Legal Services Commission review of the outcomes as a guide for future Members. The UOAQ has been informed that such a review has been completed by the Queensland Law Society and should be made available to the Legal Service Commission, the members of the CTS Working Group and the Department of Justice.

