

The Body Corporate legislation, what a great Act!

Are we kidding? Actually no, the Body Corporate and Community Management Act 1997 (Queensland) is a wondrous piece of legislation and supports the notion of good governance. The benefits of this work of art are not only in the comprehensive provisions but also in what it doesn't say.*

Many might suggest this is a very prescriptive and confusing piece of legislation and only lawyers who eat sleep and breathe this stuff have any chance of understanding much of it. All that is true but when faced with an issue it is often worth examining what the law says and what it doesn't say before leaping to conclusions or action.

So why is it so prescriptive? Section 4 of the Act sets out what is termed the "secondary objects" or purpose of the legislation. Essentially this gives the clues as to why the law and regulations are drafted this way. There are 11 stated objects that boil down to what we believe to be the drafters' philosophy. It clearly suggests that the legislation is intended to: balance and protect the rights of all stakeholders; provide bodies corporate with a structure that gives control of and flexibility to manage common property and; provide for a dispute resolution service.

How does this promote good governance? The highly prescriptive nature of the law means that fewer disputes will arise simply because of the detail of what the law requires. However, we know that human beings, despite being social animals sometimes do not adapt well to community living. The Body Corporate Commissioner is charged with the regulation of the Act and its regulation modules and the Commissioner manages this through the dispute resolution service provided by his office.

There are few civil penalties cited in the Act or Regulations so the Commissioner has no police force, there is no watchdog and this is a critical point to note. Lot owners and contractors either get on with each other or raise a formal dispute. In the adjudication of disputes the Commissioner's staff not only consider the law but also consider "soft" factors such as whether the disputed decision was made reasonably. This is where a smart body corporate committee can exercise good governance by making decisions to effect better outcomes for the body corporate community as a whole. So what kind of decisions can they make?

Here is one example. The BCCM Standard Module (s146(7)) says that money must not be transferred between the administrative fund and the sinking fund. The BCCM Act also suggests that the Administrative Fund levies raised should cover the budgeted amount. However, we all know that budgets are only estimates and what actually happens can, despite our best efforts, result in too much or too little in the Administration Fund. This might mean future levies to cover future budgets (see Standard Module s139(2)(b)) compound an inappropriate surplus of funds. (Note the Sinking Fund is an accumulation fund and the balance is determined in accordance with its long term forecast). What can we do without changing the levies from year to year? (a not very desirable option). We could under or over budget in the Administrative Fund to restore the balance nearer to zero at year end. You may well ask though, if this legal?

We do need to consider what the Act is trying to do and philosophically examine the consequences of making such a decision. Many of the adjudications of the Commissioner's office include consideration of what is reasonable. In the example above we are adjusting our fund balance to closely match our levies to expected expenditure, our decision is in the best interests of the whole body corporate, the decision is reasonable in the circumstances, no-one is disadvantaged and no dispute is likely. Philosophically, we are trying to match our actions to the intent of the legislation.

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**The above refers to the BCCM Act but this reference and the contents of this paper are intended to include provisions in the various regulation modules that are applicable.*

Disclaimer

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