

12 June 2020

The Hon Anastacia Palaszczuk
Premier
PO Box 15185
CITY EAST QLD 4002
Via Email: thepremier@premiers.qld.gov.au

Dear Premier

RE: COVID-19 Health Direction

Strata Community Association (Qld) ("SCA (Qld)") represents half a million apartments, units and townhouses and the 1.2 million Queenslanders who live in them. We have an interest in assisting these bodies corporate in understanding their obligations during the pandemic and support the government in communicating the compliance requirements.

We are asking you to assist us in obtaining a definitive direction on a few issues that have arisen from the last *Restrictions on Businesses, Activities and Undertakings Direction* published on 31 May 2020. We have enquired with Queensland Health directly, however to date not received any response or been provided with the right avenue to direct our query towards.

As you might be aware, SCA (Qld) is a non-profit, professional organisation for bodies corporate, body corporate managers and suppliers of services to the body corporate industry in Queensland. Our membership consists of 950 individual and 175 corporate members who collectively manage 310,000 of the 500,000 lots in Queensland. Members assist bodies corporate in administrative tasks related to their common property (insurance, maintenance contracts, improvements of properties etc)

We are writing to you as we have been requested by our above members to seek some further information to clarify the following issues for the benefit of all lot owners in Queensland Community Titles Schemes:

Issue 1

The *Restrictions on Businesses, Activities and Undertakings Direction* published on 31 May 2020 states in paragraph 14 that gyms and pools are permitted to re-open. Paragraph 21 specifically states that

Additional requirements for indoor sporting centres, including gyms, health clubs, fitness centres, yoga, barre, spin facilities and dance studios:

- a. *participants must bring their own equipment where possible (for example, gym or yoga mat);*
- b. *frequent environmental cleaning and disinfecting should be maintained for equipment by facility staff;*
- c. *only open if supervised and staff are available to conduct regular cleaning and enforce social distancing;*
- d. *no contact sports or contact skills training (for example, boxing with a partner, tackling or wrestling) unless with a member of your household;*
- e. *no spectators, except for up to one parent/carer per child if necessary;*
- f. *minimise use of communal facilities.*

Notes: shower with soap before and after training or activity at home

Many strata schemes have gyms consisting of exercise equipment that is located on common property. In most cases, these facilities are accessible by a swipe pass and are not a staffed facility. Under the governing legislation, the Body Corporate and Community Management Act (“BCCMA”), bodies corporate are not required to have supervision in place or an extensive cleaning regime. Gyms in strata complexes are there for the private use of residents and guests and are distinctly different from gyms which are open to the public in the fitness industry.

This is because bodies corporate generally do not operate these communal facilities on common property as a commercial undertaking. Bodies corporate (the collective of owners), do not have the budgets available that corporate gyms would have because they do not raise any separate fees for usage of the gym facility. It is not economically feasible to have gyms supervised, however under the BCCMA a strata complex is not empowered to close its communal facilities and therefore many strata schemes find themselves in a risk situation that is virtually impossible to manage. Each of the owners and occupiers in a strata scheme has property rights relating to the use of the common property that are the same as those of an owner of a detached dwelling (who may of course use a home gym in a private residence). Many owners and occupiers in strata schemes have expressed strong opinions on this issue and there is an uneasy undercurrent of tension and dispute rising in many strata schemes throughout Queensland.

Volunteer committees, who do their best to steer their bodies corporate through the ever-changing health directives are often the focal point for this occupier frustration and there is also some potential for these committee members to feel that there is a (real or perceived) risk of being held personally liable for any action or inaction regarding the opening or closing of common property facilities.

SCA (Qld) as representative of the strata sector requests that clarity around this issue be provided to bodies corporate in the way of an express exclusion of non-commercial gyms in strata complexes from the COVID Safe Plan applicable to the fitness industry. Gyms in strata schemes are not corporate enterprises and cannot operate under those restrictions as there is effectively a smaller, known amount of users and a very infrequent use of the facilities. The only mechanism for bodies corporate to manage these facilities is via the powers (if any) in their by-laws which have not been drafted to deal with these types of supervisory requirements in light of the BCCMA provisions.

With the easing of COVID-19 restrictions it appears that it will go back to “normal” eventually however, for bodies corporate it is important to distinguish them from commercially run gyms who have the staff, the resources and the systems in place to manage supervision and cleaning regimes as currently in place. **We request that strata complexes are separated in Stage 3, no longer require supervision and that cleaning is scaled back to a manageable daily cleaning regime, appropriate to the size of the facility and the number of residents.**

Issue 2

The *Restrictions on Businesses, Activities and Undertakings Direction* published on 31 May 2020 state in paragraph 13 that

A person who owns, controls or operates a restricted business, activity or undertaking must keep contact information about all guests and staff for contact tracing purposes, including name, address and mobile phone number for a period of at least 56 days, unless otherwise specified. If requested, this information must be provided to public health officers. The information should be securely stored, not used for any other purpose and deleted after 56 days.

Paragraph 14 then outlines that swimming pools, gyms and common property areas have the limit of 20 people or one person per four square metres, whichever is the lesser.

As explained in Issue 1 above, bodies corporate do not require any staff on site under its governing legislation but are permitted (if not required) to keep these areas open without supervision. This means that it is difficult to monitor usage of the common property area without a huge cost impost which, the majority of bodies corporate will not have the budget for. The only way that bodies corporate are able to obtain the funds to pay for such measures is via the contributions levied upon lot owners. As is contemplated by the recent temporary legislative amendments to the BCCMA via the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020, many lot owners are likely to seek temporary relief from strata levies and many bodies corporate may be required to adjust their sinking fund budget to reduce costs during this time. The increased costs of the above measures are simply not within the financial means of many bodies corporate and their lot owners.

The requirement to keep a register and safely store the information is difficult for strata complexes as there is generally no supervision and therefore no system in place to assist users of the communal areas to achieve this. SCA (Qld) requests that residential strata complexes are exempt from the requirement of paragraph 13 as they are private residences and as such all users are known to the occupants in the complex (as they are either occupiers or visitors of occupiers). In short-term accommodation complexes, data would be on file of who stayed at the complex at what time and SCA (Qld) believes that is sufficient for the purpose of tracing if required.

Both Issues centre around the strata schemes not actually having the necessary powers to enforce the closure of common property facilities like corporate gyms and pools and would have a lack of manpower to practically achieve this in any event. Under the Body Corporate and Community Management Act a body corporate must administer, manage and control the common property and body corporate assets for the benefit of lot owners. The gym, the pool and its equipment fall squarely within that.

There is also a significant liability risk that is an unfair impost upon the volunteer committee members of bodies corporate. We respectfully suggest that there is a need to alleviate the pressure and liability upon strata complexes from this tenuous position they are in and the unmanageable burden upon committee members. This may simply be an unintended consequence of the COVID-19 health measures, caused by the lack of differentiation of types of gyms.

We call on you, dear Premier, to help us facilitate a conversation with the Queensland Chief Health Officer Dr Jeanette Young to resolve this for the 500,000 Queenslanders that live in strata complexes and are unable to enjoy their homes as they normally would. The cost impost on these strata schemes is enormous and we ask to consider this as a serious issue.

We, the bodies corporate and 1.2 million owners and occupiers would sincerely appreciate the opportunity to explore the possibility of alternative measures for bodies corporate which might more appropriately balance the health risks and necessary risk management measures specific to the residential strata living.

FURTHER INFORMATION

We thank you for addressing or forwarding our concerns. Contact us via:

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Sincerely



Executive Officer
SCA (Qld)