



### VISITOR CARPARKING

Frank Higginson of Hynes Lawyers recently published a good article about visitor parking in complexes such as ours, concentrating on just who is a genuine visitor. As a group we are to be congratulated about being very considerate with parking in the visitor's carpark, however there are peak times when some of us might push the boundaries just a little.

Please have a read of the following and decide if you are a visitor, or if you or yours, might actually be considered in the eyes of the law, closer to a temporary resident than a regular visitor. It makes for interesting reading. Just a heads up, we have had our by-laws reviewed so that we are compliant with the current legislation.

### VISITOR PARKING - WHO IS A VISITOR?

By [Hynes Legal](#) on June 29th, 2019 in [News](#)

## Visitor Parking – Who is a Visitor?

You might wonder why the question of who is a visitor matters, and if you do, you are in the strata minority. The ostensible abuse of visitor car parking privileges is the trigger for an enormous amount of body corporate angst.

Interestingly enough, the BCCM Act does not define who a visitor is, so we are left with dictionary definitions and adjudications (and perhaps even a dose of common sense, as scary as that may seem to be).

Let's start with the basics.

You need to have a lawful visitor parking by-law. A simple example is set out in [Schedule 4](#) of the BCCM Act. If you don't have that, you have nowhere to go, and that means you should send us your CMS for a free [by-law review proposal](#), where we will tell you some of the other by-laws you are missing too.

### Dictionary definition

A [visitor](#) is someone who (obviously enough) [visits](#) which includes:

1. to pay a call on as an act of friendship or courtesy;
2. to reside with temporarily as a guest;
3. to go to see or stay at a place for a particular purpose;
4. to go or come officially to inspect or oversee.

### Adjudications

As you would expect, there have been quite a few adjudications over the years. Some of the passages we have found illuminating (and our takeaway from each) include:

#### [Picture Point \[2004\] QBCCMCmr 384](#)

This was a dispute about short and long-stay occupants using the visitor car parks.

*'There does seem to be some uncertainty about who constitutes a genuine visitor to the scheme and will be entitled to use the visitor car parks.*

*There seems to be a general understanding that occupiers of the scheme are not entitled to use the visitor car parks.*

*However, the distinction between an occupier and a visitor may not always be completely clear. As a general rule:-*

- *persons letting a unit for a week (including family or friends accompanying those persons for the majority of the period let) would be classed as occupiers.*
- *persons just visiting for one or two nights of that period would normally be classed as visitors.*
- *similarly, if the relative of an owner/occupier regularly visits for one or two nights every month then that relative would normally be classed as a visitor.*

*The more difficult questions arise when a person stays with someone for a number of nights or on a very regular basis. In those cases, it will be necessary to look at all the circumstances to determine if they are an occupier or a visitor.'*

Our takeaway: This was an early decision indicating the difficulties in actually deciding who a visitor was and confirmed that it was not as simple as whose name is on the lease.

#### [Summer Waters \[2004\] QBCCMCmr 244](#)

This was one where an occupier's son stayed overnight at his parent's unit for seven nights over a 26-day period.

*'It is not disputed that the ... son periodically visits the scheme land, and on occasion, stays overnight. It is also not disputed that during these periods, the ... son parks his vehicle in an area of common property allocated for visitor car parking.*

*While it is arguable that this shows that the ... son is a regular visitor to the scheme, in my view, regularly visiting the scheme does not make a person an 'occupier' of a lot in the scheme, even if on occasion those visits are on an overnight basis. As a result I am not satisfied that the Respondent's son is an 'occupier' for the purposes of the parking by-law.'*

Our takeaway: Regular visitors who occasionally stay overnight are just that – visitors not occupiers.

Newstead Terraces

Gresham Gardens [2006] QBCCMCmr 355

This was one where an occupier's son stayed overnight in his parent's unit two to three nights a week, every week.

Newstead Terraces

*"The question is whether [the son] falls within the category of "someone else who lives on the lot" or is in the nature of a visitor or invitee.*

*Terms such as 'visitor' or 'invitee' are not defined in the body corporate legislation or the by-laws. However it seems to me that a visitor or invitee in this context refers to a person associated with an owner or occupier who is temporarily present on a lot or common property, with or without invitation...*

*I am of the view that the factors to be considered in this issue are:-*

- *how long the person in question is present at the scheme;*
- *how regularly; and*
- *for what purpose.*

*I do not consider it is necessary that a person stay overnight every night of the week to be an occupant.*

*A person who stays overnight in a residential lot 2 or 3 nights on a regular basis could still be considered an occupier.*

I do not consider that the lot must be the person's principal place of residence for them to be an occupier of the lot. It is conceivable that a person may occupy more than one residential abode.

If someone were to visit regularly but not usually stay overnight, or were to stay overnight for a few nights occasionally, I would not normally consider they were occupying the lot. The key here, I believe, is the combination of two factors. Firstly, the respondent stays overnight for 2 or 3 nights (rather than just visiting during the day or evening) and in addition the respondent is present on a very regular basis (every week, or at least most weeks). Moreover, with the respondent's place of work is nearby, it does not appear to be a temporary arrangement."

Our takeaway: If the person's presence is not temporary or occasional in nature, they may well be an occupier (even when their principal place of residence is elsewhere).

127 Charlotte Street [2015] QBCCMCmr 19

This was one where employees of the resident manager were using the visitor car parks.

*"I consider a 'visitor' would include anyone who is not an occupier of a lot, but who is genuinely visiting a lot or the scheme. I do not consider this is limited to residential or non-commercial visits. While a visitor may be a friend or family member visiting a tenant, they may also be a contractor such as an electrician visiting the scheme to do work.*

*I would consider the employees of the resident manager to be occupiers to the extent that they predominantly or regularly work at the building (as distinct from, for example, an employee who is based elsewhere but visits for an ad hoc meeting). However a cleaning contractor attending to clean one or more lots, would arguably fall within the designation of a visitor."*

Our takeaway: a visitor could be a family member, friend or the electrician appearing as a one-off, but permanent or regular attendees may well not be visitors.

**What does all this mean?**

It depends on the circumstances.

Occupiers are definitely not visitors. We think a person is an occupier if they have a right to use a lot exclusively. In a permanent letting sense this would come from the lease, and in a short-term letting sense this would come from the licence they have to use the lot from the owner.

And before anyone asks, we don't think that an occupier needs to be named on the lease or licence to be that. It is a matter of fact.

Regular attendees to the scheme who use the visitor car parks:

- who definitely reside and work elsewhere are probably still visitors;
- who visit so regularly that they ought to be considered an occupier would not be visitors;
- who have a link with the scheme through work (as employees of someone on site or even locally to the scheme) may not be visitors.

#### Other things you may be interested in

[Can a body corporate tow a car?](#)

[The BCCM review paper on towing](#)

[QUT's recommendations on towing](#)

[By-law enforcement process as published by the Commissioner's Office](#)

*This article was contributed by Frank Higginson – Partner, [Hynes Legal](#)*

#### LATEST COMMON AREA ELECTRICITY BILL – GREAT NEWS

The June electricity bill has just arrived and is just over \$500 less than the May bill, and nearly \$300 less than the March bill. We are on the right track with our electricity saving measures. Well done everyone!

#### ANNUAL GARAGE WASH DOWN. AUGUST 21 & 22 --- Save the date!

Yes; it's that time of year again. For the newest residents to our community- in August each year we take two days to really clean the garage. The ceilings, overhead pipes, walls, drains and floor get water blasted to remove a year's worth of dust and grime. The garage is tackled in two halves across two days. August 21 & 22 are the days for this year's washdown. Cars parked in bays 1-70 excluding 18-21 will be done on 21<sup>st</sup>, the balance on August 22<sup>nd</sup>. This means that you will not have the use of the carpark between 8.00am and 5pm on the day your spot is being cleaned. Please make alternative arrangements, that don't include the visitor's carpark for your day of cleaning. If you park during the wash, your car will get dirty! Cleaning out the drainage system down in the garage gets Mud everywhere, mostly on me!

MORE DETAILED INSTRUCTIONS WILL FOLLOW CLOSER TO THE DATE.

#### ROUTINE INSPECTIONS OF TENANTED PROPERTIES ARE SCHEDULED FOR THURSDAY 15<sup>TH</sup> AUGUST

Great timing this year. There is a public holiday the day before. Just what we need to get all the properties whipped into shape and ready for routine inspections. More details will come in the week prior to the inspections, but please note the date in your calendars.

#### ARAMA TOP AWARDS FOR RESIDENT MANAGER OF THE YEAR

Thanks to everyone for their support in my nomination for the ARAMA Top Awards for long term resident manager of the year. I was a finalist – one of only three. I didn't win, but was highly commended and asked to resubmit for next year. So, I will polish up the submission a little more and try again next year!

### NEWSTEAD TERRACE:- ROAD RESURFACING MAUD ST TO WATERLOO STREET

Our section of Newstead Terrace is scheduled for resurfacing AUGUST 1<sup>st</sup> to Monday 5<sup>th</sup> August. There will be disruption in the street, noise, dirt, traffic diversions and no parking! Get ready...

Newstead Terraces

### UNUSUCCESSFUL ATTEMPT TO GET COUNCIL TO REPLACE THE GRASS ON AUSTIN STREET

Post installation of the new and improved storm water management system in Austin Street, I approached BCC about putting new grass down on the footpath. Unfortunately for us, they had photographed the state of the footpath before they started the work, and our grass was just hanging in there at that stage.

BCC recommend that we get this section of the footpath bitumen to match our other areas. The Leopard trees are not so large that the grass will not grow under them. I am not yet ready to give up the battle of getting the grass to grow!

Have a great August!

Georgina Bishop

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