

Commissioner Foreword



Dear Subscribers,

Hello and welcome to this edition of *Common Ground*. An important update from our office since our last edition is that Commissioner Chris Irons resigned his role in January 2020. While this brings change to any organisation I assure you we will continue to provide excellent service and support for the sector. We appreciate your patience and support while a recruitment process is undertaken for a new Commissioner. We wish Mr Irons well in his new ventures.

In the interim, I have been asked to be the acting Commissioner. For those who do not know me, I have worked with the Department of Justice and Attorney-General for more than 16 years. I have been with the Commissioner's office for 12 years principally as the Conciliation Manager.

I recently attended the Australasian College of Strata Lawyers 2020 Conference. This year's conference was held in Noosa Heads and it gave great insight into challenges faced by strata lawyers across Australia and New Zealand. There were also a number of presentations from academics and researchers in the strata jurisdiction. One topic I found of particular interest was presented by Dr Jemma Green on the "*Democratisation of Energy Movement in Strata Schemes*". Microgrid technology – energy trading software – is becoming increasingly available and is something to watch with interest in terms of sustainable energy usage.

At present, I do not have a firm date about when the proposed amendments to the Regulation Modules will be commenced. However, the Office of Regulatory Policy (ORP) inform me they are in the final stages of drafting. ORP appreciate the contributions made during drafting consultation and a number of changes have been made in response to stakeholder feedback.

I will be presenting at the Strata Community Australia (QLD) 2020 Conference on 12 and 13 March 2020. Also, senior managers from our office will be in attendance. We are looking forward to hearing from our stakeholders about their issues and concerns as we deep dive into 2020.

Topics covered in this edition include keys in community titles schemes and water efficiency. These topics are often cause for dispute so I hope you find the articles informative and assist you in some way. If you have any feedback or suggestions for future *Common Ground* topics, please let us know.


Jane Wilson
Acting Commissioner
Office of the Commissioner for Body Corporate and Community Management



Frequently asked questions - Keys, fobs, swipe cards, security access and issues

The Information and Community Education Unit gets many queries about keys, fobs, swipe cards and security access to body corporate buildings or scheme land.

The legislation does not deal specifically with keys, fobs or swipe cards. It is important to note there is no explicit entitlement or 'right' under the *Body Corporate and Community Management Act 1997* (the Act) or any of the



Regulation Modules, for access to these items.

The information provided in response to the questions is based on various adjudicators' orders that have dealt with issues about keys, fobs, swipe cards and security access. Adjudicators' orders provide a guide only and are not precedents. Each dispute relates to the individual circumstances for that scheme and the exact issue being disputed.

Only body corporate legislation is considered. There may be requirements under other legislation, such as [tenancy legislation](#) that also need to be considered. You may wish to make enquiries with relevant agencies in that regard.

Can an owner change the lock and therefore the key on their door?

If the door is in a boundary wall between the lot and common property in schemes registered under a building format plan of subdivision, the maintenance of a lock would usually be the body corporate's responsibility. An owner would usually need body corporate approval to change the lock, as it would be an owner's improvement to common property benefiting their own lot. Owners should also check if there are any recorded by-laws regarding locking devices. The owner would be responsible for future maintenance of their improvement unless excused by the body corporate. The body corporate can set reasonable conditions when authorising an improvement. For example, the body corporate could impose a condition that the new lock complies with fire safety regulations.

Adjudicators have also concluded that owners cannot be prevented from installing a lock on the door to their lot that is not master-keyed. See for example: [Hedges 252 \[2014\] QBCCMCmr 210 \(11 June 2014\)](#) and [Burleigh Beach Tower \[2009\] QBCCMCmr 163 \(24 April 2009\)](#)

My unit is not managed by the onsite caretaker. Are there different rules in regards to keys that apply to the occupiers whose units are managed by the onsite caretaker?

Some schemes may have policies that treat occupiers in the caretaking service contractor's letting pool differently from occupiers not in the letting pool keys.

For example, where a scheme required re-coding of keys on a regular basis for security reasons and had different arrangements for some occupiers, an adjudicator found that scheme could not have a security card policy that treated externally-managed lots differently from letting pool lots.

You can read more about this in the following order:
[Turtle Beach II \[2010\] QBCCMCmr 440 \(24 September 2010\).](#)

My body corporate has a by-law that allows the caretaker to make decisions about deactivating keys which allow for access to the common property. Is this allowed?

An adjudicator declared by-laws purporting to delegate power to caretaker as void. The by-laws included, but were not limited to, giving the caretaker the power to:

- deactivate keys and make decisions about an owner or occupiers use or access to shared facilities,
- enforce by-laws and
- impose a cost in the by-law for replacement keys.

For more details read the order:
[3113 Surfers Paradise Boulevard \[2013\] QBCCMCmr 273 \(2 July 2013\)](#)



I lost the key to my unit. I have asked the body corporate to replace it. Do I have to pay or does the body corporate?

We regularly get asked who has to pay for replacement keys.

Adjudicators have stated that, in schemes registered under a building format plan, the associated fittings for a door includes the lock and a key. The body corporate is usually liable for the maintenance of locks and so will be responsible for the provision of keys for the original installation or when maintaining or improving the lock system in a manner that requires new keys.

However, the body corporate is generally not liable to provide extra keys above the original number supplied or replacement keys where the loss is the fault of the holder. You can read more about this in order [Clover Court \[2000\] QBCCMCmr 71 \(15 February 2000\)](#).

An owner can ask the body corporate to provide additional keys but will usually need to pay for the extra keys.

I have just purchased a 3 bedroom unit. I have been given 3 keys, however I have 4 tenants renting my property and I also need a key for my rental agent. Can I ask my body corporate for 2 additional keys?

It may be reasonable for the body corporate to limit the number of keys allowed for each lot in the scheme for security reasons. If individual owners or occupiers request a higher number of keys, they may be able to demonstrate it is reasonable in the circumstances for the body corporate to approve extras. It may be that the extra keys are only needed for a certain time period or until the number of occupiers change. Different sized lots may have a requirement for more keys.

Adjudicators have stated that reducing the number of keys already held by an owner is a restricted issue for the committee, as it is changing the rights or privileges of an owner.

Disputes about keys often relate to the legislative requirement on a body corporate to make reasonable decisions. In such disputes, the onus is on an applicant to demonstrate how the body corporate's decision was unreasonable. The body corporate must act reasonably when making decisions and each request for extra keys should be decided on a case-by-case basis. The body corporate could set reasonable conditions on the approval.

The following orders may give you more information on how an adjudicator decided whether the body corporate's decision to refuse extra keys was reasonable:

[Melton Crest Apartments \[2012\] QBCCMCmr 307 \(5 July 2012\)](#)

[Club One \[2017\] QBCCMCmr 174 \(11 April 2017\)](#)


[Horizons \[2003\] QBCCMCmr 354 \(28 January 2003\)](#)

[Alba Lodge \[2000\] QBCCMCmr 606 \(23 November 2000\)](#)

I live on level 10 of my unit block. I have friends who have a unit on level 5 of the same building. The body corporate has programmed everyone's key so that they can only access their own floor. I have to go to the ground floor and use the intercom so that my friends can let me in. Can the body corporate do that?

There have been adjudicators' orders made stating that a decision to restrict access to parts of common property is void.

This could potentially apply to limiting access to foyers or lobbies on each level of the building. This is usually done by programming keys to restrict access to floors via a lift or other common property doors.



The body corporate usually cannot limit access to common property where there are no exclusive use by-laws in place. Unless there is a recorded exclusive use by-law, all owners and occupiers have the same rights to use the common property under Section 35 of the Act.

This order may give some more information about this issue:
[The Sands \[2010\] QBCCMCmr 424 \(10 September 2010\)](#)

I work shift work and was in bed asleep when I was woken up by the caretaker entering my unit. He says he was there to check on a suspected leaking pipe. Does the body corporate have to have a master key?

Many people believe the body corporate or building manager needs to have a master key. Sometimes the reasoning is the need for emergency access.

The need for urgent access to a lot is a rare occurrence. A body corporate has the power to enter the lot in an emergency without written notice ([section 163 of the Act](#)). If there is a fear for a person's safety, for example, then emergency services should be called and they can enter the lot under the relevant emergency services legislation.

The caretaking service contractor may be able to enter the lots that are part of their letting pool under the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.

In [Burleigh Beach Tower \[2009\] QBCCMCmr 163 \(24 April 2009\)](#) the adjudicator considered the argument that a master key system was necessary to comply with fire safety regulations. The adjudicator found that as there was no statutory requirement under fire regulations nor under the Act that a caretaker be given access to all units, then there is no requirement for a master key system. The adjudicator went on to say that both the Act and fire safety regulations already allow for emergency access without a master key.

When there is no emergency, even if the body corporate has a master key to a lot, correct notice under [section 163 of the Act](#) is required to be given to owners and occupiers. Only those people authorised by the body corporate can access a lot. An occupier is not able to obstruct entry to a lot when notice has been given.

Can the committee decide to master key all the locks in our building?

The committee cannot change the rights or privileges of owners, as it is a restricted issue. Adjudicators have found that the decision to remove existing locks and replace them with master keyed locks would require a general meeting resolution.

Adjudicators have also found that a body corporate cannot master key the locks fitted the door of a lot unless the lot owner agrees in writing, even if there is a general meeting resolution.

You can read more about these issues in the following orders:

[Trafalgar Towers \[2003\] QBCCMCmr 285 \(11 December 2003\)](#)
[Trafalgar Towers \[2004\] QBCCMCmr 153 \(23 March 2004\)](#)
[Mercantile-Dalgety Place \[2006\] QBCCMCmr 313 \(19 June 2006\)](#)

Lot owner's security – who can hold a copy of a lot owner's key?

Owners can choose who they give a copy of their keys to and can control who can access their lot, subject to provisions of the body corporate legislation requiring access to a lot.



Are garage door remotes treated the same way as keys?

Garage remote controls are treated like door keys. In a building format plan, the doors, windows and associated fittings situated in a boundary wall separating a lot from common property are usually the body corporate's responsibility to maintain. If a garage door is in a boundary structure in building format plan, it will usually be a body corporate responsibility.

If the body corporate has to replace garage doors, it would be responsible for supplying new remote controls to the owner. The owner would be responsible for paying for replacements of lost or damaged remotes or extra copies after that.

For further information, please contact the Information and Community Engagement Unit on 1800 060 119.



Water efficiency in a body corporate

With summer in full swing and many areas of Queensland suffering from drought, everyone should be mindful of using water wisely. Bodies corporate, as well as owners, occupiers, committees and onsite managers are reminded of their obligations under the body corporate legislation when it comes to maintaining common property and lots.

We're providing this information with input from SEQ Water, who are a statutory authority responsible for water management.

The body corporate must maintain common property, including utility infrastructure which is common property, in good condition ([section 159](#) of the Standard Module regulation). Owners must maintain their lot and the utility infrastructure within the boundaries of their lot in good condition ([section 170](#) of the Standard Module regulation).

A great deal of water can be lost due to poorly maintained or faulty plumbing fixtures, leaking pipes or fittings. By carrying out maintenance, bodies corporate can do their best to ensure that water isn't wasted.

What do you do if you notice a leak on the common property? If you notice a water leak on the common property, you should notify your body corporate so that they can attend to the issue. You can write to your committee asking them to engage a plumber or other professional to take a look at the problem and provide a quote.

Some leaks may be harder to identify. Here are some things that you can look out for that might indicate a leak:

- unexplained wet or soggy areas on the common property
- pool levels dropping more than expected
- hissing noises coming from a toilet cistern long after flushing

Did you know that a continuously leaking toilet can waste up to 60,000 litres of water a year? That is a lot of water wasted that could be avoided by looking out for signs such as water running down the back of the toilet bowl long after flushing.

If you as the owner or occupier of a lot notice a leak within your lot, you should do what you can to try to fix it as soon as possible. If you are renting the lot (i.e. an occupier, under body corporate legislation), you may need to notify your letting agent or landlord about the problem. As well as ensuring that maintenance is carried out when required, the body corporate, owners and occupiers may also consider other ways to save water.



Below are a few tips from SEQ Water:

For the body corporate, as well as onsite managers:

- ensure taps on common property are turned off firmly when not in use
- avoid watering common property gardens when rain is predicted
- sweep common property walkways and paths rather than hosing them
- if you have an irrigation system on common property, adjust the timing to ensure it meets the water needs of the season
- link your irrigation system to a moisture or rain sensor to avoid watering during or just after rain
- if the body corporate has a water feature, ensure that it recirculates the water and is turned on only when needed
- water the common property before 8am and after 4pm to avoid the heat of the day and loss of water to evaporation

For owners and occupiers:

- wash full loads in the washing machine and reduce half loads
- take shorter showers and use a timer
- install water efficient devices such as dual-flush toilets
- if you have a garden or lawn, water it before 8am and after 4pm
- turn off the tap when brushing your teeth

Not only might these measures go a long way towards ensuring efficient water usage when it is currently scarce, but they might also end up saving owners, occupiers and bodies corporate money.

Not all bodies corporate have individual water meters installed, therefore it is important for everyone to get on board with these measures so that all owners and occupiers can benefit from potential savings.

Remember too that in a body corporate, decisions are made at either committee level or a meeting of all owners (a general meeting), depending upon the amount of money involved, what is being decided upon or whether it involves changes to common property or an owner's lot.

For more information and tips about saving water, you can also visit the SEQ Water webpage www.seqwater.com.au.

For general body corporate information, contact the Commissioner's Office on 1800 060 119 or www.qld.gov.au/bodycorporate.




BCCM update

Need to contact our office?

If you contact our office on freecall 1800 060 119 there are two options to choose from:

- Option 1 allows you to leave a message for the Information and Community Education Unit. A Senior Information Officer will generally return your call within two hours
- Option 2 is for people who have a current dispute application. If you have questions about your application or are providing further information please have your reference number ready



Please do not select option 2 if you require general information about the legislation. Our administration team will not be able to answer your question and they will transfer you back to the 1800 number for you to select option 1 and leave a message.

What's the topic for our next webinar?

We're hopeful our next webinar will be about the changes to the regulations. Once the new regulations come into force we will advise you when you can register for this webinar through our e-newsletter. You can also check updates on our website [here](#).

Where are our previous webinars?

We have up-loaded, to our website, the PowerPoint slides for our recent webinars about how to complete dispute resolution application forms and dealing with difficult people. You can view them and other previous webinars [here](#).

Want to lodge an application for dispute resolution?

A hot tip from our dispute resolution team when lodging a dispute resolution application with our office:

“Remember to stop before you lodge and consider: Have I raised this issue with the person/entity I have a dispute with (the respondent), and have I asked them to fix it?”

The best rule of thumb is to take all of the outcomes you want to achieve through conciliation/adjudication, and check that you have asked the respondent to do or permit each one of them.”

What are the stats so far for 2020?

The most popular day for people searching our website this year was 17 February.

We had over 19,500 users of our website in February.

More women than men used our website in February.

Other than our landing pages our most popular pages in February were:

- [Committee's role](#)
- [Access the body corporate legislation](#)
- [Role of the body corporate](#)
- [Building format plan maintenance](#)
- [Disputes in a body corporate](#)

Community titles schemes statistics


These statistics are current as at January 2020

Number of Community Titles Schemes	49,821
Number of individual lots	497,903



The number of schemes registered under each regulation module:

Regulation module	Total number of schemes
Standard	29,700
Small Schemes	10,171
Accommodation	4,271
Commercial	2,197
Specified Two-lot	3,573



Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

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