

## Commissioner Foreword



Welcome to this latest edition of Common Ground.

We're focussing on the issue of insurance in this issue of Common Ground. I know that insurance can be a very challenging issue for bodies corporate, particularly in the north of the state. So in this issue we try and answer a few common queries about insurance, as well as talk about the concept of alternative insurance. This is probably a good time to remind you that we have collaborated with the Insurance Council of Australia on a fact sheet about insurance, with some tips about how to possibly reduce premiums. You can find the fact sheet [here](#).

**Chris Irons**  
**Commissioner**  
**Office of the Commissioner for Body Corporate and Community Management**



## Frequently Asked Questions – Insurance

The FAQs below provide general information only. More information about [body corporate insurance](#) can be found on our website.

Please note that all responses provided apply to all regulation modules. As always, if you remain in doubt about these issues, we'd recommend you consider seeking qualified legal advice.

### **Q1. What type of insurance must the body corporate have?**

The body corporate must have insurance for common property, body corporate assets, public risk and building insurance (depending on the plan of subdivision).


### **Q2. My lot doesn't share a wall with another lot in my community titles scheme, can I take out my own building insurance?**

If your scheme is registered under a standard format plan of subdivision and you do not share any common walls, you are responsible for insuring your own building. However the body corporate can set up a voluntary insurance scheme to insure buildings that do not have common walls (in a standard format plan). It is not essential that all owners participate, but those that do must tell the body corporate the replacement value of the building and must comply with the decision to set up the voluntary insurance scheme, and the policy. They must also pay their part of the premium.

If your schemes is registered under a building format plan of subdivision, the body corporate must insure the buildings regardless of whether there are any shared walls or not.

### **Q3. What does the building insurance need to cover?**

The building insurance must cover damage to the building caused by an insurable event such as fire, explosion or storm and other costs to reinstate the insured buildings (e.g. professional fees and costs for removing debris).



Under the insurance policy the property must be returned to new condition. The body corporate can take out extra building insurance for things like floods. A motion to do this would have to be passed by ordinary resolution at a general meeting.

#### **Q4. How do we work out how much each owner contributes to the insurance?**

This depends on the survey plan that your scheme is registered under. Under a building format plan the share of insurance is based on the interest schedule lot entitlements.

In a standard format plan, and if the body corporate has had to insure buildings with a common wall, your share of the insurance premium relates to the cost of reinstating the buildings on your lot.

If it is a voluntary insurance scheme in which you take part of, you must pay an amount that relates to the value of your building as a part of the total replacement value of the buildings insured under the policy and what you do on your lot and how that affects the total risk covered by the policy.

#### **Q5. An owner has made an improvement to their lot, does this affect the insurance?**

It is possible that an improvement made to a lot will increase the insurance premium, particularly if the fixtures and fittings are of a higher standard than the fixtures and fittings of other lots in the scheme. The owner must give the body corporate details of the nature and value of the improvement, as soon as practicable after the improvements are substantially completed.

#### **Q6. Who pays the excess and who makes the decision?**

For events affecting only 1 lot, the owner of the lot is liable to pay the excess, unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability.

If the event affects 2 or more lots, or 1 more or lots and common property, the body corporate is liable to pay the excess, unless the body corporate decides it is reasonable for the excess to be shared between all or some of the parties.

The committee is able to make the decision about who pays the excess.

#### **Q7. My scheme is registered under a building format plan, why should I pay the excess for garage door repairs if the body corporate is responsible for its maintenance?**

The regulation module provides that under a building format plan of subdivision the body corporate is responsible for the maintenance of a door leading from a lot to common property. However it does not specifically state that the body corporate is responsible for damage to the door.

If the damage is covered under the body corporate's insurance, the body corporate would generally ask the owner to pay the excess, if the event only affected their lot (see answer to question above).

#### **Q8. Do I need landlord insurance as well as body corporate insurance?**

If you are leasing your lot, you may want to consider landlord's insurance as the body corporate building insurance does not insure things such as:

- temporary wall, floor and ceiling coverings, carpets
- mobile or fixed air conditioning units for a particular lot
- curtains, blinds or other internal window coverings
- mobile dishwashers, clothes dryers or other electrical or gas appliances that are not wired or plumbed in
- loss of rent.



### **Q9. I run a business from home and store flammable materials, do I have to pay more towards the premium?**

What is done on your lot and how you use your lot may affect the insurance premium. Therefore you must give the body corporate details of the use. The body corporate may adjust the contribution payable by you in a way that fairly reflects the proportion of the total risks covered by the policy attributable to the activities carried out, on your lot.

### **Q10. How do I know who the body corporate is insured with?**

You can ask your body corporate to provide you the details of the insurer. The information must also be provided in the notice of each annual general meeting and must include the name of the insurer, the amount of cover, type of cover (summary), amount of premium and the date the cover expires.

### **Q11. A pipe behind my kitchen splashback leaked and damaged the kitchen cabinetry. The insurance covers the damage to the cabinetry but not the costs to fix the pipe or the tiles which were removed to repair it. Is that right?**

Yes, the insurance only covers for an insurable event, one of which is water damage. Insurance does not pay for the maintenance or any damage caused by maintenance therefore your pipe repair and subsequent tile repairs would not be covered.



## **Alternative Insurance**

I know that obtaining the required type and amount of body corporate insurance is proving to be a challenge for some bodies corporate, particularly in North Queensland, where cyclones and other severe weather events are having a major impact on both cost and availability of cover.

For an overview of insurance obligations for a body corporate, please click [here](#). Essentially, a body corporate must insure each building in which is located a lot included in the scheme, for full replacement value.


Where a body corporate cannot comply with this requirement, body corporate legislation provides that I may authorise a form of what is called “alternative” insurance. The relevant provision is section 179(4) of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Standard Module) and there are equivalent provisions in the other Regulation Modules for this.

So what, exactly, might “alternative” insurance look like?

This section of the Regulation Module provides that upon application, I may authorise the body corporate to put in place alternative insurance if I am satisfied that what is being proposed gives cover that is as close as practicable to the cover given by insurance. The section goes on to give an example of alternative insurance as “*giving cover up to an agreed value*”.

While an example in legislation is not necessarily binding, it does nonetheless give guidance on what the section of legislation is intending will occur.

To further answer the question of what alternative insurance is, I will use the example of a very recent alternative insurance approval. In fact, it’s the first application for alternative insurance that I’ve approved – and one of the very few I’ve received - since being appointed Commissioner.



The scheme in question is located in Far North Queensland. As we all know, this region is at risk to severe weather events such as cyclones. This, combined with other factors, made obtaining required insurance cover for this scheme extremely difficult and the best efforts of the body corporate, via its body corporate manager and insurance brokers, had resulted in a situation where a combination of insurers had been able to offer cover less than full replacement value. This combined cover amounted to approximately 70% of the valuation of the scheme building. In other words, the body corporate had sourced approximately 70% of full replacement value.

Importantly, the body corporate was able to provide evidence to support its application, including:

- A copy of the building valuation;
- A written statement, outlining the efforts they had made to source cover;
- Written advice from its insurance broker about the situation, including potential consequences of no cover and also of the proposed alternative insurance; and
- A copy of the vote outside of committee meeting which authorised the lodgement of the application.

It was on the basis of the above and having regard for the particular circumstances of the scheme that I was able to authorise the alternative insurance under s179(4) of the Standard Module.

Another way of looking at my decision is to distil it to two options: no cover at all, versus at least some cover to an amount that doesn't leave the body corporate which minimises the risk to the body corporate as much as possible. When put in those terms it becomes easier to understand the decision-making process not just for this instance but for other bodies corporate in similar circumstances.

Importantly, "alternative" insurance should not be read as "no" insurance. The Standard and other Modules make clear that I am being asked to consider an alternative to and not an exemption from insurance altogether. There is no provision in the Regulation Modules or other legislation to completely waive a body corporate's legislative requirements in relation to insurance.


Remember also that the provision about alternative insurance makes clear that I am only to approve it where a body corporate *"cannot comply"* with its insurance obligations. It is unlikely to be the case that an insurance premium which is very expensive and which has dramatically increased in a short period of time could be argued as being a situation where a body corporate could not comply with its insurance obligations – clearly, it can, if cover is being offered.

With all of this in mind, if you are part of or involved with a body corporate and you're finding obtaining the required insurance cover to be challenging, verging on the impossible, firstly please consider the Practice Direction (no. 28) about alternative insurance, which you can find [here](#). The Practice Direction sets out what would be required, including the fact that while alternative insurance isn't an order of an adjudicator, it still needs to be made on our Form 15, Application for Adjudication, along with the prescribed fee for adjudication. My Office may look at reviewing this Practice Direction, in light of the decision I describe above, to ensure the Practice Direction remains current, so please stay tuned for more details on that if and when it happens.

From a very practical perspective, try to not leave any such application until the last minute, as my Office may not be able to guarantee, for example, a same-day turnaround.

Be sure that you can evidence all attempts at sourcing cover. This might be copies of emails between the body corporate, its body corporate manager and an insurance broker or even direct with insurance companies. Bear in mind that if I need to be satisfied I may request further information or ask the body corporate to demonstrate why it has not, for example, made further enquiries or undertaken further negotiations with an insurer or broker.

Remember, insurance cover for the scheme is a critical issue with implications for all owners (and occupiers), so any suggestion that cover is going to be altered will have an impact. While in the case I mention above it was a committee decision to lodge the application, consideration should be given to how the application (and then its outcome) would be communicated to everyone. The body corporate reviews its insurance policy at the annual general meeting, so it might be a good idea for the committee to consider an explanatory note about alternative



insurance at that forum too. If an alternative insurance approval is given, remember that this would form part of the body corporate's records, which is available to not only all current owners and occupiers but also prospective purchasers and occupiers.

Given the implications of insurance cover, it may also be advisable to consider seeking qualified legal advice prior to lodging an application for alternative cover.

Finally, some resources about insurance which may assist. My Office has collaborated with the Insurance Council of Australia on a fact sheet, providing some practical tips which may assist bodies corporate in reducing their insurance premiums. You can access the fact sheet [here](#). Secondly, for bodies corporate in Northern Australia (which is defined as from Rockhampton north and west by 100km), there may be the possibility of being part of the Strata Title Inspection Program, being run by James Cook University in Townsville as part of a Federal Government program. One of the aims of this program is making bodies corporate more resilient to weather events. Further information is available [here](#).

For general body corporate information, contact my Office on 1800 060 119 or [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate).



## BCCM update

### Webinars

We have up-loaded our webinar about enforcing body corporate by-laws to our website. You can view it and other previous webinars [here](#).

We have an upcoming webinar on 2 October 2019 at 2pm about dispute resolution applications which will provide you with some helpful tips and highlight some common errors which will help make the dispute form easier to complete and our case management process quicker. [You can register here to attend](#).

### Community titles schemes statistics

The number of Community titles schemes in Queensland are ever growing.

Number of Community titles schemes	50,446
Number of individual lots	513, 878

The number of schemes registered under each regulation module

Regulation module	Total number of schemes
Standard	29,633
Small Schemes	10,084
Accommodation	4,183
Commercial	2,172
Specified Two-lot Schemes	3,330

## Seminars

We are coming to visit to let you know about the body corporate legislation and other body corporate matters. Below is the timetable of events. Please click on your area to register your attendance. As places are limited we ask that you only register if you are intending on attending.

Please note the venues at Logan Central and Chermshire are currently sold out. We have created waiting lists for all venues so please continue to register your interest and if a place becomes available you will be contacted.

If you are no longer able to attend please cancel your ticket on Eventbrite so that the next person on the list can be notified. Alternatively contact our office on 1800 060 119 and we will cancel your ticket for you.

### Seminar dates, times and locations

Date	Times	Area	Venue	Address
Monday 26 August	10am-12pm	<a href="#">Surfers Paradise, Gold Coast</a>	Mantra on View Hotel	22 View Ave Surfers Paradise QLD
Tuesday 27 August	10am-12pm	<a href="#">Chermshire, Brisbane North</a>	Kedron Wavell Services Club	21 Kittyhawk Dr Chermshire QLD
Friday 30 August	10am-12pm	<a href="#">Logan Central, Brisbane South</a>	Diggers Services Club	42-48 Blackwood Rd Logan Central QLD
Wednesday 4 September	2pm-4pm	<a href="#">Mackay</a>	Rydges Mackay Suites	9 Gregory St Mackay QLD
Thursday 5 September	1pm-3pm	<a href="#">Gladstone, Central QLD</a>	Rydges Gladstone	100 Goondoon St Gladstone QLD
Monday 9 September	10am-12pm	<a href="#">Maroochydhore, Sunshine Coast</a>	Maroochy RSL	105 Memorial Ave Maroochydhore QLD
Tuesday 10 September	2pm-4pm	<a href="#">Pialba, Hervey Bay</a>	Hervey Bay RSL	11 Torquay Road Pialba QLD
Wednesday 11 September	10am-12pm	<a href="#">Brisbane CBD AM session</a>	Registry of Births, Deaths and Marriages	Level 32, 180 Ann St Brisbane QLD
Wednesday 11 September	2pm-4pm	<a href="#">Brisbane CBD PM session</a>	Registry of Births, Deaths and Marriages	Level 32, 180 Ann St Brisbane QLD
Tuesday 17 September	12:30pm-2.30pm	<a href="#">Cairns, Far North QLD</a>	Cairns RSL	115-119 The Esplanade Cairns QLD
Wednesday 18 September	10am-12pm	<a href="#">Townsville, North QLD</a>	Hotel Grand Chancellor	34 Flinders St Townsville QLD

## Body Corporate and Community Management

[www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate)

1800 060 119

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