## Commissioner Foreword

As we bid farewell to another busy year, our team is looking forward to a well-earned break over the Christmas period. The office will be closed from 4pm Friday 22 December 2023 and reopen 8.30am Tuesday 2 January 2024.

As the year draws to a close, we are pleased to see that our dispute resolution timeframes are starting to improve. A trend we expect should continue into the new year thanks to the dedication of BCCM staff and because of applicants providing the necessary information. Timely resolution of disputes is our offices highest priority, to ensure that you can enjoy community living.

To keep delivering the much-needed services we offer, adjustments to our dispute application fees are necessary. An amendment to the Body Corporate and Community Management Regulation 2008 and the Building Units and Group Titles Regulation 2008 was passed by Executive Council on 7 December. These amendments, commencing on 29 January 2024 will see a 20% increase to application fees. These increases are in line with the requirement by Queensland Treasury to offset the additional funding our office received for the Building Units and Group Titles Act 1980 (BUGTA) reforms. This funding has allowed for increased staffing to manage BUGTA enquiries and speed up the dispute resolution process.

Throughout the year, discussions with stakeholders have highlighted to me the effects of bullying and harassment in community titles schemes. While our legislation does not specifically address behavioural issues of that nature, I think it is timely to remind people that we all deserve to live in psychologically and physically safe communities.

With the holiday period nearly upon us, tensions can rise along with intolerance. Before you decide to launch an attack on someone through your keyboard, try to remember that one of the best ways to open a person's mind is not to argue with them, it is to listen to them. When people feel understood, they become less defensive and more reflective.*


Looking ahead to 2024, it is important to remember that, starting 1 September 2024, minimum housing standards will apply to all tenancies, not just newly signed leases. I know this seems a long way away but with how fast this year has flown by, it may be a good time to start thinking about how these changes may affect you. You can find out more information on minimum housing standards in this short video.

If you have an interest in bodies corporate that are regulated under the Building Units and Group Titles Act 1980 we have created an e-newsletter. The first edition will be sent at the end of January. You can subscribe here.

Wishing you all a safe and happy holiday period.

**Jane Wilson**
**Commissioner for Body Corporate and Community Management**

*Itzchakov, G., Weinstein, N., Leary, M., Saluk, D., & Amar, M. (2023). Listening to understand: The role of high-quality listening on speakers' attitude depolarization during disagreements. Journal of personality and social psychology

# Managing disruptive behaviours in short-term letting

The popularity of short-term accommodation platforms has revolutionised the way property owners rent their lots, providing an abundance of choices for both owners and holidaymakers.

However, the convenience these platforms offer can sometimes lead to challenges for body corporate residents.

This article aims to shed light on the current landscape and regulatory framework, specifically under the *Body Corporate and Community Management Act 1997* (the Act), regarding short-term letting in community titles schemes.

Additionally, it outlines practical avenues for bodies corporate to effectively manage disruptive behaviours associated with short-term visitors.

## Restricting short-term letting

One of the most common questions asked is whether a body corporate can choose to ban or restrict short-term letting. Based on decisions from the Queensland Civil and Administrative Tribunal (QCAT) and our adjudicators, the current position is that community titles schemes **cannot** create by-laws banning or restricting short-term letting.

This is largely based on the by-law limitations in sections 180(3) and (4) of the Act, which provide that:

- if a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use; and
- a by-law cannot prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

The effect of these sections on attempts to restrict short-term letting is demonstrated in the two case examples outlined below.

*Case example 1: Body Corporate for Hilton Park CTS 27490 v Robertson [2018] QCATA 168*

This QCAT appeal concerned a motion which sought to prevent owners from letting their lots for a period of less than six months.

The appeal turned upon the meaning of the term ‘residential’ in section 180(3) of the Act. The appellant contended that ‘reside’ means “to dwell permanently or for a considerable time”. However, Member King-Scott resolved that “the legislature intended that the term ‘residential’ would include holiday letting and/or short-term accommodation and that is the way it should be construed” in the Act.

Member King-Scott also considered whether ‘other dealing with a lot’ in section 180(4) of the Act incorporated short-term letting. It was ultimately determined that short-term letting was a form of lease protected by this provision.

Member King-Scott dismissed the appeal, upholding the adjudicator’s initial order that the motion was invalid and of no effect.

*Case example 2: Admiralty Towers II [2019] QBCCMCmr 567*

A by-law was created which required body corporate consent to be obtained for leases that were less than three months.

One owner attempted to distinguish this by-law from the QCAT decision discussed above on the basis that it was not a blanket ban, but rather, a regulation on short-term letting. The adjudicator determined that although the by-law was in line with section 169 of the Act which allows for the regulation of the use and enjoyment of lots, it still offended sections 180(3) and (4). It was observed that these sections are not only about outright prohibition – they are also about *restriction*.

The adjudicator remarked that "the ordinary meaning of the word "restrict" is to place limits upon something. The limiting factor imposed…is body corporate consent. A short-term lease may not proceed without it, while longer leases may proceed without interference."

The adjudicator resolved that the by-law was invalid and ordered the body corporate to remove it from the community management statement.

## Managing behavioural issues

The body corporate may not be able to make lawful by-laws that specifically restrict short-term letting. However, there are some actions a body corporate and owners, who short-term let their lots, can take that may assist with issues that arise.

Addressing disruptive behaviour from short-term visitors requires a proactive approach to ensure a positive experience for everyone. Here are some steps that may help to manage and mitigate issues:

### *Effective communication*

Effective communication can often be a preventative measure against disruptive behaviour. In our experience, by-law breaches often occur because the person was unaware of the by-laws at the time.

Bodies corporate may wish to circulate certain information to owners involved in short-term letting – some examples might include:

- a copy of the scheme's by-laws (possibly highlighting by-laws regulating noise, nuisance, or the use of recreational facilities)
- correspondence reminding owners to alert their short-term visitors to the by-laws
- information about by-law enforcement in the event of breaches.

Appropriate signage may also be displayed in communal areas – especially recreational facilities such as pools, barbeque areas or tennis courts, drawing attention to relevant by-laws.

Remember, an effective strategy often involves a combination of these measures, tailored to the specific needs and characteristics of the community. Regularly review and update these strategies to adapt to changing circumstances and feedback.

### *By-laws regulating the use of recreational facilities*

Instead of seeking to ban or restrict short-term letting, bodies corporate may consider regulating the use and enjoyment of common areas and recreational facilities. For instance, booking systems could be

created to secure the use of recreational facilities for an upcoming event, or opening and closing hours could be set for the use of recreational facilities (as demonstrated in the case example discussed below).

However, it is critical to remember that a body corporate is not free to create any by-law it wants – clear limitations on by-laws are outlined in the Act. For example, section 180(7) of the Act prevents by-laws from being oppressive or unreasonable, having regard to the interests of all owners and occupiers and the use of common property. Also, section 180(5) of the Act prevents by-laws from discriminating between types of occupiers.

You can view the full list of by-law limitations on our website and in section 180 of the Act.

Disregarding the limitations in section 180 of the Act means that a body corporate opens itself up to disputes. If you are in the process of creating new by-laws and you are unsure whether they comply with the Act, we recommend seeking independent legal advice, as our office cannot assist you with drafting your by-laws.

We have provided a case example below in which a body corporate successfully created a by-law regulating the use of its recreational facilities. However, it is important to bear in mind that adjudicators' orders are only guidelines, not precedents. Each matter before an adjudicator is decided based on its own unique circumstances.

> *Case example: The Grove [2018] QBCCMCmr 581*
>
> The body corporate adopted a by-law which prevented occupiers from using any recreational facilities on the common property between 10pm and 6am, unless they obtained the written consent of the committee.
>
> The applicant disputed the validity of the by-law, contending that it discriminated against shift workers who wanted to use the swimming pool after work. The adjudicator rejected this argument, stating that it is "in the interests of all residents that there be regulation of the use of recreational facilities on common property, particularly late at night when the use of those facilities has greater potential to disturb others".
>
> The adjudicator also noted that an occupier who wants to swim quietly at 5am might still receive approval from the committee to do so under the by-law, whereas an occupier wanting to hold a pool party at midnight might not.

⌘ *Local planning requirements*

Importantly, the regulation of short-term letting in community titles schemes does not end with the body corporate legislation. Local planning and zoning requirements could also affect the operation of short-term letting in a body corporate. Bodies corporate and owners who are thinking of using their lot for short-term letting should familiarise themselves with these requirements.

Each local council has its own 'local planning scheme' which includes information about the permitted uses in a specific zone. There may also be a development approval for the scheme which outlines the current authorised uses for the property.

You can contact your local council for more information about the local planning and zoning requirements for your body corporate and enforcement in cases of non-compliance.

We hope that this article has helped to clarify this contentious subject and provide some practical options to manage some of the behavioural challenges posed by short-term letting.

It is imperative to recognise that achieving a certain degree of harmony in community living means considering the interests of *all* involved.

Doing your best to strike an appropriate balance between the interests of long-term residents and owner-investors, who are using their lot for short-term letting, may go a long way towards avoiding unnecessary conflict in this area. Collaborative efforts between bodies corporate, long-term occupiers, and short-term let investors can contribute significantly to achieving a harmonious coexistence.

By actively working together, stakeholders can navigate challenges, promote understanding, and create a community where both short-term letting and long-term residency can thrive.

## FAQs about installing water meters

Owners and committees often have questions about how water usage is charged and how water meters can be installed. There are a number of issues to consider if a body corporate is looking at installing individual water meters.

The following information answers some of the frequently asked questions about water usage and charges, installing individual water meters and maintenance of meters.

This article provides general advice only and lot owners or bodies corporate need to seek their own advice, as each case depends on its facts.

### What are the rules for water meters in relation to bodies corporate established before 1 January 2008?

Before 1 January 2008, it was not mandatory to install water sub-meters within multi-unit premises.

Many schemes built before 1 January 2008 have no individual sub-meters installed, Instead, there is usually a single main water meter installed near the boundary of the property. A water utility service provider charges for water supplied to both the common property and the lots within the scheme. Each owner usually receives an individual water bill from the water utility service provider based on the contribution schedule lot entitlements. Sometimes the body corporate takes on the liability for the whole water bill. In this case, the body corporate pays the water provider and charges each owner according to contribution schedule lot entitlement or equally for their share of the total water bill.

### How is water charged in my body corporate when there are no individual meters or only some lots have meters?

If a utility service provider (water company or local council) is billing the owners directly, and there is no practicable way for the utility service provider to measure water use, a lot owner is liable to pay a proportional share of the total water bill for the scheme based on the contribution schedule lot

entitlements (Section 196, Act). For example, if there are 20 lots in a scheme, and each owner has equal lot entitlements, the proportion of the bill paid by each owner would be five per cent (i.e.,1/20 of total bill).

Section 196 also provides that the body corporate could vote by ordinary resolution to take on the liability for the total water bill by arrangement with the utility service provider. If this occurs, the body corporate pays the water bill to the utility service provider out of the contributions paid by owners.

Where the body corporate has taken on the liability for the total water bill, the following can apply:

- If all the lots have individual sub-meters, the body corporate must bill each owner by measured usage.
- If there are only some lots with meters, the body corporate can levy the lot owners with meters by the measured usage. The lots without meters must be shared either equally or proportionately among the lot owners according to the contribution schedule lot entitlements for each lot.

### How is water charged when there are individual meters on all the lots?

The body corporate is liable for a charge for water supplied to the common property, provided the supply is separately metered and separately charged to the body corporate. A lot owner is liable for a charge for water supplied to the owner's lot, provided the supply is separately metered and separately charged to the lot owner (Section 195, Act).

### What if we have sub-meters but the water supplier does not read individual meters?

If there is no practicable way available to the water supplier to separately measure the water supplied to each lot or to the common property, the body corporate may, by arrangement with the water supplier, take on the liability for the lot owners.

Under this arrangement, the body corporate may choose to levy the lot owners individually, if it has a way of measuring the supply. For example, the water supplier may choose not to enter the scheme land to read individual meters and instead issues the body corporate one bill based on total usage. The body corporate could decide to arrange to have the individual meters read to calculate each lot owner's share of the total usage. The body corporate would then levy each owner accordingly, based on individual usage.

This scenario could also apply if there is a separate common property water meter and in circumstances where not all the lots have meters. The body corporate could still take on the liability for the whole water bill and read those meters that have been installed. The owners' lots with meters would be charged for usage and the owners' lots that do not have meters would be charged either equally or proportionally by contribution schedule lot entitlements.

### What if there are no individual meters and some lots within the body corporate scheme have several occupiers and other lots do not?

The number of occupiers in a lot does not affect how a body corporate must charge for each owner's share of the water bill. There is no ability under the Act for a body corporate to charge for water based on the number of occupants (or tenants).

This is also the case for lots that have gardens, pools or spas requiring water.

## Our scheme was established before 1 January 2008. Is it too late to install water sub-meters?

Installing individual water meters (or sub-meters) may not be financially or practically feasible for older bodies corporate. Factors that owners or the body corporate may need to consider to determine viability include:

- where the sub-meters would be located
- accessibility of the pipes where the meters would need to be installed
- whether installed meters could be read in that location
- whether other owners have an interest
- cost of installation or upgrading/replacing old non-compliant meters.

Owners are free to make their own enquiries about the feasibility and obtain quotes regarding the installation of individual water meters within the scheme.

## Do lot owners pay for sub-meters to be installed or is that a body corporate expense?

To answer this question, you will need to establish whether the meters need to be installed on common property pipes or owners' pipes.

You can work out who owns the pipes by looking at the utility infrastructure maintenance page.

If meters are being installed on common property pipes, the body corporate is usually responsible for cost of the improvement to common property. The body corporate will probably need a vote at general meeting to authorise the expenditure and work. The type of motion required depends on the cost of the meter installation and is explained clearly in the table on the improvements to common property webpage (Section 186, Standard Module).

The body corporate will need to vote to install a meter for common property water usage if there is not already a separate common property meter, regardless of whether the individual meters are being installed on common property pipes or owners' pipes.

If the meters are to be located on the owners' pipes, the body corporate can offer to supply the service to install the meter. If an owner agrees to using the service to have a meter installed, the body corporate can carry out the work and seek reimbursement of their individual cost from each owner that agrees to the service (Section 210, Standard Module).

A body corporate cannot force all owners to install sub-meters inside the boundaries of their lots. Refer to the first question in this article for how the body corporate would need to bill for water if not every lot gets a meter installed.

## Who is responsible for the maintenance of water meters?

Water meters are utility infrastructure. A body corporate is generally responsible for utility infrastructure located on common property (Section 20, Act).

An owner is only responsible for utility infrastructure that **meets all three** of these points:

- supplies a utility service to only one lot; **and**
- is within the boundaries of the lot; **and**
- is not within a boundary structure for the lot.

However, if a utility infrastructure device has been installed on the common property by a lot owner and it services only their lot, they are usually responsible for the ongoing maintenance and/or replacement (Section 180 (4), Standard Module).

An exception to the above is that water meters installed in bodies corporate established after 1 January 2008 will not be part of common property. Meters that measure water supplied to a community titles scheme will usually remain the property of the provider supplying the water.

You can read more on the website about utility infrastructure maintenance and about maintenance responsibilities by format plan to determine the boundaries of your lot.

### More information

You can read other information about who can install water meters.

# Demystifying insurance excess

Who pays the excess on an insurance claim is an issue that our adjudicators are often called upon to determine. We will try and clear up the confusion surrounding who is liable for the excess on insurance claims by examining past orders of our adjudicators.

It is important to keep in mind that the orders referred to in this article are intended as guidelines only, and not precedents. Each matter before an adjudicator is determined by its own unique set of circumstances.

We will also explore whether a large excess on an insurance claim can create an “unreasonable burden” on individual owners.

### Liability for excess under the body corporate legislation

Working through an insurance claim to repair damaged property can be stressful and the pressure can be magnified when an individual owner in a body corporate is asked to pay the excess, especially if the excess is a sizeable amount.

While the default position for liability is based on what areas of a community titles scheme are affected, it boils down to what is *reasonable* in the circumstances.

The legislation states that if the damage caused by the insurable event affects:

- only one lot – the owner should pay the excess unless the body corporate decides it is unreasonable in all the circumstances for them to do so.
- two or more lots, or, one or more lots and common property – the body corporate should pay the excess unless the body corporate decides it is reasonable in all the circumstances for the excess (or a portion of the excess) to be paid by one or more of the affected lots.

## Liability for excess – a question of maintenance

When determining who is liable to pay the excess, one of the key questions should be: who is normally responsible for maintaining the property that caused or contributed to the damage?

The importance of this consideration is demonstrated in the decisions discussed below.

*Case example 1: Brighton on Broadwater Dune [2023] BCCM 345*

Water ingress from a failed window seal caused damage to the applicant's timber floorboards. The applicant sought reimbursement from the body corporate for the excess they had paid towards an insurance claim. The body corporate submitted that when considering the question of liability, the committee at the time found no "extenuating circumstances" to warrant the body corporate bearing the excess instead of the owner.

The adjudicator remarked that the legislative provision that applies when only one lot is affected "is not one which automatically puts the onus on owners to pay the excess in every situation. There is a discretion to be exercised reasonably by the body corporate, taking into account all the relevant circumstances".

As the body corporate was responsible for maintaining the window, the adjudicator determined that the body corporate should pay the excess and that it was unreasonable not to reimburse the applicant.

*Case example 2: Suginoko Place [2021] QBCCMCmr 110*

The applicant's lot sustained water damage due to a leaking pipe in the bathroom ceiling void. The applicant submitted that the body corporate should be liable for the insurance excess.

As there was no evidence to establish that the body corporate was responsible for the pipe, the adjudicator determined that there was no basis for reversing the applicant's liability for the excess.

*Case example 3: Soleil 501 Adelaide [2023] QBCCMCmr 29*

A flexi-hose in the applicant's unit burst, causing flooding to eight other lots. The applicant claimed that it was unreasonable for the body corporate to make them liable for the excess, as the body corporate had previously offered to organise repairs to the flexi-hose and failed to follow through.

In the applicant's view, the body corporate's offer – which was accepted by the applicant – meant that the body corporate had assumed responsibility.

The adjudicator dismissed the application and noted the body corporate's offer "does not alleviate the applicant from its obligations" to maintain its own utility infrastructure in good condition.

*Case example 4: Northcliffe [2018] QBCCMCmr 178*

A pinhole leak in one of the pipes under the applicant's shower base caused damage to the ceiling of the lot below. The applicant wanted reimbursement from the body corporate for the excess that had already been paid toward the claim.

The applicant contended that they "could not reasonably have predicted the leakage from below the shower base." However, the adjudicator highlighted that "the duty to maintain involves an obligation to

keep something in proper order by acts of maintenance before it falls out of condition" and that the owner was not only required to "attend to cases where there is a malfunction, but also to take preventative measures to ensure that there will not be a malfunction."

As the applicant was responsible for maintaining the leaking pipe that caused the event, the adjudicator determined that it was not objectively unreasonable for the committee to ask the applicant to pay the excess.

## Liability for excess – consider all the circumstances

Even if the body corporate was not responsible for the property that caused the damage, there may still be circumstances where the body corporate should pay the excess.

The case example below highlights the body corporate's obligation to consider all circumstances and act reasonably when considering who is liable to pay the excess.

*Case example: Focus [2023] QBCCMCmr 132*

A faulty main isolating valve in a lot (lot 111) caused a water leak, damaging the applicant's lot below (lot 107). The committee invoiced the owner of lot 111 for the excess – however, the owner of lot 111 refused to pay. The committee told the applicant that they would need to broach the excess dispute privately with the owner of lot 111.

As the repair work could not proceed until the excess was paid, the applicant submitted that the body corporate should pay the excess. As the event affected more than one lot, the body corporate was liable for the excess by default.

The adjudicator observed that the body corporate "cannot automatically pass on the excess to affected lot owners." Rather, the body corporate must consider "the particular circumstances" and "act reasonably in making that decision".

Importantly, the adjudicator observed that although the body corporate had not asked the applicant to pay any of the excess, its actions – in not paying for the excess itself or taking steps to recover the excess from lot 111 – had the same effect.

Given this, the adjudicator resolved that the body corporate should pay the excess, remarking that it was "entirely unreasonable for the body corporate to expect the applicant to bear the cost of the excess that it has not recovered, or to expect the applicant to pursue the owner of Lot 111 for the excess, or to expect Lot 107 to be left in a damaged condition for an extended period."

## Unreasonable burden: when is an excess too much?

We will look at a body corporate's decision to put in place a specific insurance policy. The legislation provides that, when taking out an insurance policy, the excess must not create an unreasonable burden on individual lot owners.

Contrary to common misconceptions, this is not simply a question of whether the excess is a burden on an owner - a high amount that would be difficult for an owner to pay. The issue is whether that burden is an *unreasonable* one.

*Case examples over page*

*Case example 1: Beach Meet [2018] QBCCMCmr 39*

An owner in a duplex (the applicant) was unwilling to accept a commercial insurance policy proposed by the other owner (lot 1) due to its lack of flood cover and the "extremely high" excess.

The applicant submitted that cyclones and flooding were serious concerns given the body corporate's location in far North Queensland. Under the proposed policy, the excess for cyclone cover would increase from $100 under the current policy to $20,000.

The applicant sought an order that a different insurance policy with lower excesses be obtained. When considering whether the proposed policy created an unreasonable burden, the adjudicator observed that "exhaustive attempts have been made to secure alternative insurance" and that there was no evidence that "alternative cover is able to be provided by any other insurer (let alone for lower excesses)" since lot 1 started being used for short-term letting.

The adjudicator determined that "it would not be just and equitable to make an order that cannot be complied with".

*Case example 2: Suginoko Place [2021] QBCCMCmr 110*

The applicant argued that a $15,000 excess imposed was an unreasonable burden. The adjudicator noted that although the amount was substantial and the applicant may "struggle to pay", no evidence was provided to show it was "objectively remarkable" or "wildly at odds with what insurers generally offer" similar schemes.

Or, that there were "any special circumstances…that would make it illogical, incomprehensible, or otherwise manifestly unreasonable" for the body corporate to choose this policy.

The adjudicator further observed that despite their liability for the excess, the applicant would benefit from the policy. Specifically, the adjudicator remarked that the applicant "will still receive a payment toward repairs that would otherwise have been her sole financial responsibility. In that sense, the excess is not truly a burden at all. It is just a smaller benefit than she would have received if the excess was smaller."

*Case examples 3 and 4: Soleil 501 Adelaide [2023] QBCCMCmr 29 and Cianna Gardens [2016] QBCCMCmr 553*

In both cases it was accepted that a lower excess for water damage could not be obtained due to the body corporate's claim history – evidence to the contrary was not provided by either applicant. Both adjudicators determined that the burden of the excess, though perhaps heavy, was not unreasonable.

Given the potentially detrimental effect that an insurance excess can have on individuals in a body corporate, it is fundamental to understand the legislative requirements.

We hope that the orders examined in this article will provide guidance when considering these questions and help to avoid unnecessary disputes in this area.

In situations where an insurance claim is not a viable option to cover the damage, the provision in the legislation about damage to property may be relevant.

You can read more about this provision in Issue 42 of Common Ground.

# Previous editions of Common Ground

You can access previous editions of Common Ground and manage your subscription details by clicking the link below.

Previous editions

**Body Corporate and Community Management** www.qld.gov.au/bodycorporate **1800 060 119**