

Question: Does the chairperson / caretaker have the authority to deny access to committee authorised contractors to a common area on the basis of safety concerns?



Our building has a garden at the back of the building on the second level. This garden is common property, but due to the location, cannot be worked or weeded as we have a WHS situation.

A problem has developed in that the garden is producing leaks through the concrete base. The combination of age, tree growth, roots, deterioration perhaps of the waterproof membrane etc, has finally prompted the body corporate committee to investigate solutions.

The caretaker refuses to go in the area until it has passed a WHS inspection. With full approval from the committee, I have arranged for various contractors to see the area, assess the situation, suggest the best solution, and quote accordingly.

I have been told not only by the caretaker but also the body corporate chairman (in front of the contractor) that I may not go onto this common area as it is not WHS compliant. Indeed, the gate was locked to ensure not only that I could not go in, but neither could the contractor. How can one get informed quotes in this situation?

My question is – does the chairperson and / or the caretaker have the authority to deny a resident owner and body corporate member access to a common area such as this when they are trying to solve existing issues with the area?

Answer: A body corporate may have to restrict access to certain parts of common property.

To meet its obligation to administer, manage and control the common property, a body corporate may have to restrict access to certain parts of common property, such as where there are genuine health and safety concerns regarding a particular area of common property.

However, when a majority of the committee are in favour of access being provided to contractors for quotations to be obtained, the caretaker and/or an individual committee member cannot restrict access. The body corporate's obligation to maintain the common property in good condition must include taking steps to determine whether an area could be made safe. Obviously, in the course of obtaining quotations regarding the required works, contractors will be required to enter the area.

Note that the chairperson's powers are essentially limited to conducting meetings and ruling motions out of order at a general meeting. They have no power to exclude anyone from common property and neither does the caretaker (except for areas allocated to it pursuant to an occupation authority).

If the matter cannot be resolved, then your options to pursue this matter further are to:

- place a motion on the AGM agenda for the owners to determine the next steps; and/or
- file a conciliation application in the Commissioner's Office.

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