

## Commissioner Foreword



Welcome to this latest edition of Common Ground. While you would have received a few one-off emails from us in recent months about specific issues (e.g., we recently sent an update about cladding), this edition is our more regular update, comprising articles across several different topics.

It's been a busy 2019 for us. We are, for example, on track to reach a record number of disputes. So I'm assuming that it's also a busy time for everyone out there in "body corporate land" as well. If you do have a need to contact my Office, you can maximise what you get out of that by having to hand some basic information. For information queries, please have to hand your plan of subdivision, regulation module and also a

specific question or question. For dispute resolution queries, please have to hand the reference number, your role in the dispute (e.g., you're a committee member, you're the applicant, etc.) and again, a specific question. All of this will save your time and ours.

As always, your feedback is welcome and you can mark your feedback to my attention.

**Chris Irons**  
**Commissioner**

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



## Frequently Asked Questions – Removing and replacing committee members

We get a lot of enquiries about the process for removing and replacing committee members. While the FAQs below provide some general information about these topics, it's worth saying that merely removing and replacing a committee member is not necessarily going to solve all problems. We'd suggest taking the time to also think about the underlying issues at play and whether a new person in a role is going to address them.

Please note that all responses provided apply to the Standard Regulation Module. You should check the regulation module your scheme is registered under for the relevant information. As always, if you remain in doubt about these issues, we'd recommend you consider seeking qualified legal advice.

### **Q1. A committee member has resigned. Do we need to replace them or can we just wait until the next annual general meeting (AGM)?**

If a committee member resigns, they must be replaced. Within one month of the resignation the committee (if it can still form a quorum) can appoint a person who is eligible to be a voting member to fill the vacancy. Alternatively the committee can call an extraordinary general meeting (EGM) to choose a person to fill the vacancy. If the committee no longer has enough members to form a quorum, it must call an EGM.

### **Q2. If an executive member resigns, can another executive member take on their role on the committee and hold two executive positions?**

Yes, an eligible voting member can hold two or three executive positions. That said, the committee will still need to fill the vacancy created by the resignation by appointing a person to be an ordinary member of the committee.

### **Q3. We are having trouble with a committee member, can we just remove them?**

A committee member can be removed by ordinary resolution at an EGM. It is important that there is a motion that also appoints an eligible person to the vacant position. It can be a part of the motion to remove the committee member or a separate motion.

### **Q4. We have a committee member who has breached the code of conduct. What can we do about it?**

If you're alleging a committee member has breached the code of conduct (the Act, Schedule 1A) the body corporate can pass a motion by ordinary resolution to issue them a breach notice. This is a written notice of no more than 600 words identifying the breach and giving them a notice period of at least 21 days to give other owners a written response to the notice of no more than 600 words. The committee member can ask the body corporate to pay for their reasonable cost of distributing their response to other owners. After the notice period in the breach notice has ended, the body corporate then considers a motion by ordinary resolution at a general meeting remove the member from office. A copy of the breach notice must be included in the notice of the meeting considering the motion to remove the committee member.

### **Q5. If a committee member is removed from office due to a breach of code of conduct, do we need to replace them?**

Yes. The body corporate may appoint a person who is eligible to be a member of the committee to fill the vacancy at the same general meeting where the member is removed.

### **Q6. We have called an EGM to fill a vacancy, but no one has nominated. Can we call for nominations from the floor?**

Yes, if the meeting has been called to fill a vacancy, nominations may be made orally from the floor of the meeting. Nominations can also be made by hand, by post and by facsimile to a committee member so that the member receives the nomination before the election is conducted at the meeting. An owner of a lot must be physically present at the meeting to vote in the election.

### **Q7. Most of our committee has resigned. We are going to call an EGM but no one is showing any interest to be on the committee. What happens if we can't replace all of committee members who resigned at the EGM?**

If an EGM is called to fill a committee vacancy, the agenda must also include a motion approving the engagement of a body corporate manager to carry out the functions of the committee. The motion will only be considered if, after the election to fill the vacant positions, at least one executive position is not filled, or the total number of voting members is fewer than three. If it is considered, the motion must be the last item of business for the meeting.

### **Q8. One of our committee members doesn't come to meetings or vote by proxy. Can they still be on the committee?**

If a committee member is not present personally or by proxy for two consecutive meetings of the committee, without the committee's leave, their position becomes vacant. You can then take steps to fill the vacancy. The requirement for the "committee's leave" requires some positive approval or consent to the absence – not just mere notification of an absence.

### **Q9. The chairperson has been convicted of drink driving offences. Can we remove him from the committee?**

A position on the committee is automatically vacated if a member of the committee is convicted (whether or not the conviction is recorded) of an indictable offence. An indictable offence is a crime or misdemeanour that is more serious (like murder and assault), while simple offences (including traffic offences) are called summary offences. The body corporate may want to seek legal advice about whether a particular conviction is for an indictable offence.



## Transferring between funds

Questions regarding what the body corporate can do when there is not enough money allocated in a certain fund, in particular the transferring of money between the administrative fund and the sinking fund are common in our Office.

In this article we will briefly touch on what are funds, how funds are raised and whether money can be transferred between funds.

### What are funds?

All bodies corporate have expenses. The legislation requires bodies corporate to plan for these expenses. The money that owners contribute to the body corporate, or that the body corporate receives from other sources, is paid into what are called funds.

There are usually two funds: administrative fund and sinking fund. The *administrative fund* is used to pay for maintaining common property and assets, insurance, postage, service contractors such as the body corporate managers or caretakers, and other recurrent spending. The *sinking fund* is for major expenditure of a capital or non-recurrent nature. Examples of capital expenditure include repainting the common property or replacing a roof or lift.

The Commercial Module also includes an option for a third fund, being a *promotional fund*.

Schemes registered under the 2-Lot Module still have body corporate expenses. However, the owners are not required to put money aside in the two funds. When a body corporate expense arises the two owners decide by making and recording an *owners' agreement*.

### Raising funds

Before each Annual General Meeting (AGM) the committee prepares a budget for each fund. The budget sets out how much is needed during the year for the daily administration of the scheme and estimates what may be required for major works in coming years. The committee may refer to a *sinking fund forecast* to help determine how much is needed and when. It is not compulsory for the body corporate to do a sinking fund forecast, however it may be difficult to anticipate the expenditure over nine years without one. The body corporate may engage a professional to complete one or complete one themselves. There is no duty on the body corporate to adhere to a sinking fund forecast.


At each AGM owners vote to approve the budgets and also agree how much to pay throughout the year to raise enough money to meet the budget. These are called levies. The body corporate may choose the frequency of the levy payments throughout the year. For example a body corporate may decide on one annual levy or split the levies into quarterly payments.

Although there are two funds, the body corporate may decide to open only one bank account. The account is held in the name of the body corporate, for example, "Body corporate for Country Manor community titles scheme 1234". Monies for each fund are deposited into the account.

The body corporate may also invest funds. At the end of the term the principal sum is either reinvested or returned to the original fund, to be used for its intended purpose. The interest earned from each fund can be paid back into the same fund.

### There is not enough money in the fund

Bodies corporate **cannot** simply transfer money between the administrative fund, the sinking fund or the promotional fund if there is not enough money in one fund.



Committee spending is limited and money must be available in the budget before the committee can spend it. If there is no provision, or insufficient provision, in the budget for the particular expenditure, the committee must call a general meeting to approve a special levy to pay for the expenditure.

In some situations bodies corporate may be in a position to amend the budgets voted on at the annual general meeting by holding an extraordinary general meeting (EGM) to vote to approve new budgets and levies to accommodate any unplanned expenses.

Amending the budget at an EGM is a different process from adjusting the budget at the AGM. At the AGM, the body corporate can only adjust the proposed budget up or down 10 per cent. This could be done if there is a motion that passes or does not pass that has not been factored into the proposed budget. If the budget needs adjusting, those present at the meeting can be asked to vote on a procedural motion.

### **Too much money in a fund**

It doesn't happen often but sometimes the body corporate may end up with too much money in one of its funds and be tempted to transfer it to the other fund.

This may happen because a special levy was raised and not spent for the purpose it was raised, or the body corporate raised money it was not entitled to raise (such as for painting the buildings in a standard format plan of subdivision).

The legislation does not provide for what to do when this happens, other than to state that monies cannot be transferred between funds.

There are very limited circumstances where a body corporate can refund monies paid into the sinking fund. There have been a number of adjudicators' orders which have dealt with the issue where monies have been collected in contravention of the legislation. One example is where a body corporate has collected levies for the payment of painting the buildings in a community titles scheme registered under a standard format plan of subdivision. In this type of scheme the painting is the owners' responsibility not the body corporates. Therefore, owners should not have paid levies to the body corporate for this purpose.

Examples of adjudicators' orders dealing with the issue of the body corporate refunding owners.

[The Duporth Riverside \[2017\] QBCCMCmr 177 \(11 April 2017\)](#)

[Somerset Park \[2017\] QBCCMCmr 412 \(24 August 2017\)](#)

Another alternative for the body corporate to deal with excess funds may be for the body corporate to allocate the excess monies to the following year's budget, allowing the owners to pay less.

Adjudicators have considered the issue of amending the budget motion and not allowing the transferring of monies between funds in the following orders:

[Ocean Resort Village \(No 1\) \[2016\] QBCCMCmr 458 \(6 October 2016\)](#)

[Panorama 22 \[2001\] QBCCMCmr 80 \(13 February 2001\)](#)

[Riverlands Noosa \[2006\] QBCCMCmr 612 \(22 November 2006\)](#)

[Brookwater Home Owners Club \[2009\] QBCCMCmr 376 \(2 October 2009\)](#)

[Villa Vittoria \[2011\] QBCCMCmr 197 \(10 May 2011\)](#)

You can search other adjudicators' orders on the [Australasian Legal Information Institute](#) website. Adjudicators' orders should be used as a guide only as each dispute application is determined on the individual circumstances presented.



## BCCM update

### Webinars

Our Webinars - [Access to body corporate records](#) and [Financial management](#) have been uploaded to our website. You can download them along with a copy of the transcripts and a hard copy of the responses to the questions and answers asked at the webinar.

Please continue to watch this page as we will continue to work towards having our enforcing by-laws webinar up shortly.

### New webinar

Our next webinar will be about body corporate decision-making and held on Wednesday 29 May 2019 at 2pm. The webinar will cover committee decision making at meetings and by vote outside a committee meeting as well as general meeting decision making.

You can [register](#) to attend on our website.

### Seminars

The Commissioner is getting out and about around the state presenting at a variety of functions. Keep an eye out for emails from us, letting you know what's happening and when.

### Fact sheets

Just a reminder that we have some joint fact sheets available for download. They include:-

- [Tips to reduce insurance premiums](#)
- [Insurance obligations in a body corporate](#)
- [Video Surveillance in a body corporate](#)

The insurance fact sheets are a collaboration with the Insurance Council of Australia, while the video surveillance fact sheet is a collaboration with the Queensland Police Service. We will continue to work with other agencies to provide more joint fact sheets. We will keep you updated.

### Fee payment

The security of our customers is of utmost importance to us. Due to the transition to a new phone system our Office can no longer take credit card payments for dispute applications and searches for adjudicators order over the phone.

Payments can still be made via our website for [Dispute applications](#) or [Search for adjudicators' orders](#). Alternatively, payment can be made by posting a cheque or money order to:

Office of the Commissioner for Body Corporate and Community Management  
GPO Box 1049  
BRISBANE QLD 4001



### Body Corporate and Community Management

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

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