

## Commissioner Foreword



Welcome to the December edition of Common Ground.

It is hard to believe that we are at the end of the year already. I hope you are enjoying the season's festivities.

Our common ground article this month is about removing committee members. Committee members play an important role in bodies corporate, as the decisions they make and how they make them have the potential to impact the daily lives of the many individuals who may be involved with their community titles scheme. Our office has a range of resources available to support committee members in their role, including:

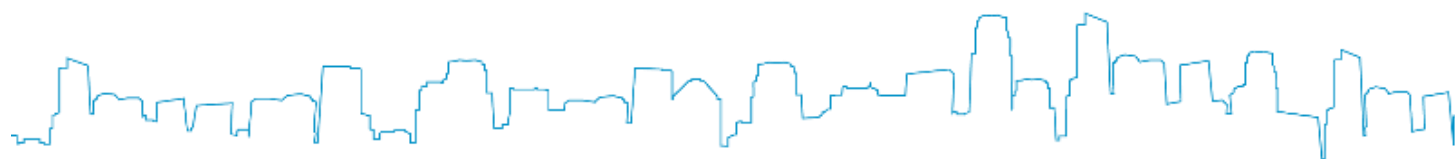
- our webpage about the [committee's role](#) and
- our free online training course for committee members, which you can [register](#) to complete

The diligent work of committee members contributes to many well-managed and harmonious schemes across the sector. While it may not happen very often, our article this month explains the processes that are available to your body corporate in the unlikely event that you need to remove a committee member.

This will be my final edition of Common Ground as I will be moving on to take up a position with Queensland Revenue Office. It has been a pleasure working with the BCCM Office and the stakeholder groups associated with the community titles sector. I have enjoyed learning more about and developing an understanding of issues within the sector and am pleased to have been a part of the Community Titles Legislation Working Group's work to consider reforms that may assist in addressing them. My sincere thanks to the BCCM team for their dedication and commitment to providing the best service possible, and to you for supporting the team and I, during my time as Commissioner. Sarah Zeidler will be Acting Commissioner whilst a recruitment process is undertaken. Sarah is an admitted solicitor with over 10 years' experience in various roles within the BCCM Office.

I wish you a merry Christmas and happy and safe New Year.

**Michelle Scott**  
**Commissioner for Body Corporate and Community Management**



## Removing committee members

Committees are made up of lot owners or their representatives and are elected each year, usually at the annual general meeting, to represent lot owners and make decisions on behalf of the body corporate. From time to time, a body corporate may for various reasons decide to remove a committee member or members from office. In this article we outline the ways that the body corporate can achieve this.

The two ways provided in the [Body Corporate and Community Management Act 1997](#) to remove a committee member are:



- by passing a motion by ordinary resolution of the body corporate at a general meeting (see [section 44\(2\)\(f\) of the Standard Module](#))
- for breach of the code of conduct ([see section 44\(2\)\(g\)](#)).

## General meeting resolution

Proposing a motion to remove a committee member from office, or in some cases multiple committee members, at a general meeting is by far the simpler of the two mechanisms available to bodies corporate under the Act. At any time, a body corporate can pass a resolution to remove a person from any voting position on the committee. As with all decisions that a body corporate makes, it must act reasonably. Whether a particular decision is unreasonable will depend on the circumstances. Generally, adjudicators have found that voters do not need to give reasons for why they vote for one candidate over another, and so it follows that owners are free to remove a committee member for any reason they wish, or without giving a reason. The submitter of a motion to remove a committee member also does not need to substantiate the basis for the motion. See for example: [Marcoola Beach \[2017\] QBCCMCmr 251](#).

It is important to note however, that if the submitter of the motion specifies that the reason for the removal is because of a breach of the code of conduct, the process in [section 45 of the Standard Module](#) (below) must be followed.

## Code of conduct breach

All voting members of the committee are bound by the *Code of conduct for committee voting members* in [Schedule 1A of the Act](#). Committee members are taken to have agreed to comply with the Code on being appointed.

If an owner (or the committee) believes that a voting member has breached the code of conduct and should be removed from office for that reason, the process set out in section 45 of the Standard Module must be followed:

1. The body corporate must pass a resolution to give the committee member a written notice. The notice must state:
  - a. That it believes the member has breached a stated provision of the code.
  - b. Details sufficient to identify the breach (not exceeding 600 words).
  - c. That the member may, within 21 days of being given the notice, give other owners a written response (not exceeding 600 words).
  - d. That the body corporate will pay the member the postage and photocopy costs of giving their response to other owners.
  - e. That the body corporate will consider a motion to remove the member from office at the next general meeting (which must be after the 21 days allowed for the member to respond).
2. If the notice is given and the 21-day period has passed, the body corporate must include a motion on the agenda for the next general meeting to remove that member from office, and include a copy of the notice given to the member.


As can be seen, the process for removing a committee member from office for a breach of the code of conduct is much more involved and requires two general meeting decisions. Notwithstanding, consideration is sometimes given to using this method if there is a lack of awareness among lot owners about the committee member's breaches of the code of conduct. This is because, unlike a general meeting motion which may provide no reason at all for a committee member's removal, the process highlights the issues that have occurred with other lot owners. However, the process is not commonly used.

## Filling vacancies

If a position becomes vacant due to either of the above processes being followed, the legislation provides that the vacancy must be filled.

The body corporate can appoint an eligible person to fill the vacancy without the need to conduct an election. Commonly, the motion to remove a committee member will be followed by a motion to appoint an alternative





person to fill the vacancy created by their removal. There is also nothing to prevent the submitter of the motion to remove the committee member from also having the position declared vacant and the appointment of a new committee member included in the same motion.

If the vacancy is not filled at the same meeting, the usual processes for filling a casual vacancy, which are provided for in [section 48 of the Standard Module](#), apply. This section states that the vacancy must be filled within one month and that this can be by a decision of the committee, provided the number of committee members has not fallen below the number required for a quorum. If there is no longer a quorum of committee members, another extraordinary general meeting must be called.

Choosing not to fill a committee vacancy created by the removal of a committee member at the same meeting that removed them can give rise to a risk that they will be re-appointed if there are no other nominations for the vacant committee position at the next general meeting. It is often a good idea for the person who is submitting a removal motion to decide on who they consider would be a good replacement and confirm their interest beforehand, so they can have that person named in a motion appointing them to the committee at the same meeting.

### Other issues

Sometimes owners and bodies corporate will try to control who can be appointed to a committee in future. For example, a body corporate may try to pass a motion that Mr Jones not be included in any nomination or election for any future committee. However, this is not permissible under the legislation. Adjudicators have held that a body corporate cannot resolve that an individual cannot be nominated for or elected to the committee at a particular meeting or in the future. Even if a person has been removed from office, if the person remains eligible, they can be nominated and elected again at any time in the future. Attempts to pass such restrictions would conflict with the legislative provisions regarding eligibility, nominations, and elections. (See for example: [Jewel of the Reef Palm Cove Condominiums \(No 3 - Residential Precinct\) \[2020\] QBCCMCmr 476](#))

It is important for bodies corporate to have a full and robust committee to make decisions. This does not mean that committee members will always see eye to eye or get along. It is often more helpful to focus on trying to resolve particular issues instead of removing committee members, especially if it is going to be difficult to find replacements.



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