Summary – new regulations

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29 September 2020 was a momentous day for the community titles sector, as it saw the making of new *Body Corporate and Community Management Act 1997* regulation modules that will modernise body corporate procedures, reduce body corporate costs and enhance protections for unit owners.

The new regulations represent the culmination of work by the Queensland University of Technology (QUT) to review current laws, and an extensive Queensland Government led consultation process in relation to QUT's recommendations and the new regulations. The new regulations will apply to all community titles schemes under the *Body Corporate and Community Management Act 1997* and will commence on 1 March 2021. This five-month timeframe will provide those living, working and investing in community titles schemes with the time needed to understand how the new regulations will apply in their scheme and to prepare for any changes.

Electronic voting and attendance

During the COVID-19 pandemic, individuals and organisations across all sectors have embraced the benefits of electronic technologies to help them communicate and conduct business and other activities. One of the key objectives of the new regulations is to help modernise body corporate procedures by allowing for greater use of electronic technologies to attend and vote at meetings, and to give and receive documents. Under the new regulations, from 1 March 2021:

Voting and non-voting body corporate committee members, and in some cases owners and certain owner representatives, will be able to attend a committee meeting electronically if authorised by the committee. Committees will be able to authorise electronic attendance:

- for a particular committee meeting or any committee meetings;
- using a particular electronic means, or any electronic means.

A body corporate will also be able to decide, by ordinary resolution, that owners can:

- attend a general meeting by electronic means such a videoconferencing;
- vote electronically.

Documents or other information that may be given under the Act or regulations, such as documents given by owners to a committee or notices of general meetings, or copies of committee meeting minutes given to owners, may be given by email, or by other agreed electronic means such by posting to file-sharing sites.

A system for receiving electronic votes, and notices and instructions to owners about electronic voting, must meet certain requirements to ensure the integrity of electronic voting processes.

Committees

There are several other changes for body corporate committees to be aware of. From 1 March 2021:

- Membership of new committees may look different. This is because eligibility of any two committee members cannot derive from ownership of the same lot. Except in certain circumstances, an owner cannot be a voting member of a committee at the same time as a family member, co-owner, or a person who holds a power of attorney from the owner unless they own a separate lot.

- An owner who submits a motion to be considered by the committee can expect an outcome within specified timeframes. The new provisions set a timeframe of six weeks, which may be extended to 12 weeks if required.
- Committees members have up to 21 days to respond to a vote outside a committee meeting, otherwise the motion is deemed not passed if not enough votes are received within this timeframe.
- Committees will be able to approve insurance policies for their schemes, in most circumstances, to avoid unnecessary delays and risks.
- A committee member who owes a body corporate debt, or who was nominated by an entity that owes a body corporate debt, is a debtor member and ineligible to vote at a committee meeting, or by a vote outside a committee meeting.

More information about changes to committee meetings can be found here. More information about committee membership can be found here.

General meetings

There have also been a number of changes which affect the running of general meetings.

To prevent what has become known as “proxy farming”, except in certain circumstances, a person will only be able to vote on motions at a general meeting, under the authority of a power of attorney for one lot owner.

New “group of same-issue motions” procedures will also apply, to facilitate fair and appropriate consideration of multiple motions about the same issues at general meetings.

There are more flexible quorum requirements for general meetings. A body corporate can reduce the number of voters required to be present at a meeting to achieve a quorum, within certain limits, and reduce the number of voters who must be personally present to one. Bodies corporate are also able to decide that a person is personally present if they can cast a vote electronically at the meeting (for example, by teleconference).

More information about changes to general meetings can be found here.

Improved lot owner protection

To improve protections for owners, under the new regulations: body corporate managers and caretakers will be required to disclose the amount of monetary benefit they are entitled to receive if a body corporate enters into an insurance policy or other contract; and new schemes will be subject to defect assessment requirements.

The new Standard Module restricts committee members from receiving direct or indirect benefits from caretaking service contractors and service contractors unless the body corporate has authorised the receipt of the benefit by ordinary resolution. The measure is intended to prevent inducements or rewards being given to committee members for preferential consideration of a contractor.

Additional items have been added to the list of documents developers must hand over to the body corporate at the first annual general meeting, including a copy of the development approval if one was required and the schemes community management statement. More information about these changes can be found here.

The new regulations will be welcome news for many across the community titles sector, who have been seeking more flexible and contemporary body corporate procedures to support self-management of schemes and harmonious community living. In today's busy world, the convenience of electronic body corporate processes is expected to assist in encouraging greater participation in body corporate decision-making. The new limitations on committee memberships, voting and use of powers of attorney are designed to ensure fair representation in these decision-making processes, and the new disclosure requirements to assist in ensuring owners have the information they need to make informed decisions.

For further information about these and other changes in the new regulations and how they apply, contact our Information and Community Education Unit on 1800 060 119 or visit our website.

Group of same-issue motions

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Current regulations that apply to motions with alternatives, or motions dealing with the same issue, have caused some contention amongst body corporate residents. In view of this, it may come as welcome news that the provisions on motions with alternatives have been removed from the new regulations that will commence on 1 March 2021.

Instead, two or more motions that propose alternative ways of dealing with the same issue will now be categorised – on the agenda and in the voting papers – as a 'group of same-issue motions'.

Under current regulations, where there are motions dealing with the same issue, a body corporate's meeting agenda and voting papers are required to include firstly, the motion submitted by the body corporate committee that identifies the issue to be dealt with, and secondly, a list of the alternative motions received by the body corporate proposing different or alternative action in relation to the issue. If one of the alternatives requires a special resolution to pass under the regulations, *all* alternatives must meet that higher threshold.

Feedback from bodies corporate has been that, in some instances, a higher-threshold alternative may be submitted strategically for the purpose of making it more difficult for other alternative motions to pass, by raising the threshold that is required. This, coupled with the fact that owners are only able to vote for the actual motion plus *one* of the alternatives – or against the motion entirely – has meant that the existing arrangements do not always provide the fairest indication of group opinion.

The aim of the "group of same-issue motions" provisions in the new regulations is to facilitate – as far as practicably possible – the success of the most popular motion in the group and the strengthening of owners' voting rights. Under the new provisions, owners will now be able to vote for or against any or all motions in the group, or abstain from voting on any or all of the motions. This is achieved by providing a two-step process for dealing with a group of same-issue motions.

Step 1: Identify the qualifying motions

Each of the motions in the group of same-issue motions will have a particular resolution type that must be satisfied for that motion to be passed. This means that there will be a mixture of different motions that may have different resolution types within the one group. While some of the motions may only require an ordinary resolution, others may require a special resolution, or a resolution without dissent.

A motion that receives the required number of votes to pass is a 'qualifying motion'.

Step 2: Identify the successful qualifying motion

If there is only one qualifying motion out of the group, that motion will automatically be the successful motion.

If there are no qualifying motions in the group, there is no successful motion.

If there are multiple qualifying motions, the qualifying motion with the highest number of votes in its favour will be the successful motion and the body corporate's decision.

So, how do you break a tie when multiple qualifying motions receive an *equal* highest number of votes in favour? Of these contenders, the one that received the least votes *against* it will be the successful motion.

The question then remains – what about the situation where there are multiple qualifying motions with equal votes in their favour and equal votes against? The new regulations provide that a tie of this kind will be resolved by chance. Whether this involves pulling the motions out of a hat or drawing straws is up to the owners at the general meeting to decide.

A group of same-issue motions in practice

Now, consider the scenario where a secretary receives motions from three lot owners proposing different ways to address the body corporate's boundary fence, which is falling apart.

> *BROKEN BOUNDARY FENCE*
>
> > *ORIGINAL MOTION 1: To replace the boundary fence with a higher quality colorbond fence at a cost of X (special resolution).*
> >
> > *ORIGINAL MOTION 2: To replace the wooden boundary fence with a similar wooden boundary fence at a cost of Y (ordinary resolution).*
> >
> > *ORIGINAL MOTION 3: To repair the damage to the broken boundary fence at a cost of Z (ordinary resolution).*

Original motion 1 receives 17 votes in its favour, 1 vote against and satisfies the requirements of a special resolution. Original motion 2 receives 17 votes in its favour, 5 votes against and satisfies the requirements of an ordinary resolution. Original motion 3 receives 4 votes in its favour, 10 votes against and does not meet the threshold for an ordinary resolution.

As original motion 3 did not satisfy the requirements of an ordinary resolution, it is out of the running. As both original motions 1 and 2 satisfy the requirements for their resolution type, they are both qualifying motions.

The next step is to work out which of the qualifying motions 1 and 2 has the most votes in its favour. As both qualifying motions received an equal highest number of votes, we must then look at the number of votes against.

Original motion 1 is the successful motion, as it received the least number of votes against it.

Procedural requirements

It is worth noting that, as well as a having a group title, a group of same-issue motions should be listed on the voting papers in descending order, starting with the higher threshold resolutions. The order would therefore be as follows:

1. Motions requiring resolution without dissent
2. Motions requiring a special resolution
3. Motions requiring a majority resolution
4. Motions requiring an ordinary resolution

Where the voting paper includes a group of same-issue motions, an explanatory schedule must accompany the voting paper. Section 90 of the new Standard Module contains an explanatory schedule checklist that should be followed for a group of same-issue motions. Importantly, the checklist requires that the explanatory schedule should include an explanatory note that provides general direction on voting rights, counting of votes and qualifying motions. A thorough example of this kind of explanatory note has been provided in section 90 as a guide.

At first glance, the new provisions appear harder to grasp due to the number of factors involved. On unpacking the different elements, however, the concept is surprisingly simple. It is our hope that this article has provided some clarity on a topic that may otherwise seem daunting.

Committee membership (Standard Module)

Originally sent to Common Ground subscribers in November 2020.

Committee membership is a key topic of many of the enquiries we receive in the Body Corporate and Community Management (BCCM) office. From 1 March 2021, several changes – some significant, some smaller – are being made to the Body Corporate and Community Management Standard Module (or "SM") regulations relating to committee membership. Aside from outlining the differences this will mean for committees, this article seeks to highlight the rationale for the changes and potential benefits.

Co-owners and family members – *section 11 SM*

The current regulations follow the general principle that usually there can only be one committee membership per lot. However, as the current regulations also permit an owner to nominate a family member or a person exercising the owner's power of attorney for the committee, the current regulations regarding committee membership have often raised queries. The most common question has been – if the regulations prevent co-owners who own only one lot from being on the committee at the same time, why are both husband and wife joint owners on our committee?

For some who considered that an owner was using the ability to nominate a family member or power of attorney strategically to affect committee outcomes, this has been a contentious issue and even viewed as a "loophole" in the current regulations. The new provisions seek to close this "loophole" by specifying that a lot owner cannot be a voting committee member at the same time as a member of their family, a

person acting under the authority of a power of attorney given by the owner, or a co-owner, unless they are the owners of more than one lot.

This change will mainly be relevant where there is ownership of only one lot. Where more than one lot is owned or co-owned, the position would be largely the same as it was previously. For example, if co-owners Bill and Rachel own two lots between them, it would be possible for Bill to be a committee member based on ownership of the first lot and for Rachel to be on the committee at the same time based on ownership of the second lot.

Likewise, if an individual owns two lots, it would be possible for that individual to be on the committee based on ownership of the first lot, while a member of their family or a person acting under a power of attorney given by the individual is a committee member based on the individual's ownership of the second lot.

As is the position under the current regulations, co-owners can also still be on the committee at the same time – even where they only own one lot – if it is necessary to bring the number of committee members to a minimum of three.

Three owners or fewer (minor committees) – *section 13 SM*

The current regulations deem a procedure for choosing the committee where all lots are in identical ownership, or there are two owners for all lots, which avoided the need to choose the committee at the annual general meeting.

From 1 March, this procedure will extend to an additional scenario – three or more lots with three different owners. Instead of choosing a committee at an annual general meeting, three owners will be able to decide between themselves which of the executive positions they each will hold. In the event of a disagreement, the three owners will hold the executive positions jointly.

This makes it easier for a body corporate with three owners, as it avoids the possibility of conflict when choosing which owner will hold which executive position.

A committee formed under this section with three or fewer owners will be called a "minor committee".

Electronic voting for committee ballot – *sections 24 and 29 SM*

Currently, electronic voting is not an option for committee elections. From 1 March 2021, if the body corporate passes an ordinary resolution, voters will be able to vote electronically to elect committee members. This option will only be possible if the body corporate can implement an electronic system that rejects the vote of a person who is not eligible to vote or who has already cast their vote in the election. The system must also ensure that only the secretary is in receipt of the electronic votes. For a secret ballot, there is the further requirement that the system cannot disclose the identity of the voter.

As well as increasing flexibility, the ability to cast votes electronically for committee elections is a move towards modernising body corporate regulations so they better reflect advances in technology. The regulations will cater for commonly used devices when casting votes (namely computers, smartphones or tablet computers).

Maximum number – *section 38 SM*

There has been some doubt on the part of both residents and body corporate managers about when nominations for committee membership must be invited from the floor of annual general meeting Although a definition of "required number" was provided in the current regulations, the wording of this

requirement, and use of a range for the required number, made it unclear whether a number of nominations must be called for in order to bring the number of voting committee members to a minimum of three, or to a minimum number of seven (or the number of lots if there are fewer than seven lots).

The new provisions which commence on 1 March 2021 seek to clarify this by removing the term "required number" entirely. The relevant section when it commences will provide that the person chairing the meeting must invite nominations from the floor if the number of committee members is fewer than the *maximum* number, to attempt to bring the total committee members to the maximum number.

The dictionary in the Standard Module will provide a clear definition of the term "maximum number". The rationale for this change is to encourage the greatest number of owners to serve on the committee. Arguably, greater owner representation on the committee promotes a more robust committee with a healthy diversity of opinion.

Engaging a body corporate manager in place of the committee – *section 74 SM*

A body corporate manager can be engaged to carry out the functions of a committee and its executive members where, in specified circumstances, the committee for the body corporate does not have sufficient members. The motion to engage a body corporate manager in place of a committee (often referred to as a Chapter 3 Part 5 engagement) under the expiring provisions, needs to be a secret ballot.

The new provisions that come into effect on 1 March 2021 will allow the body corporate to pass a motion by ordinary resolution to conduct an open ballot to decide this type of engagement. This change is aimed at reducing the body corporate costs associated with secret ballots and decreasing procedural burden on community titles schemes.

Benefits from a caretaking service contractor or service contractor – *section 79 SM*

The new regulations will introduce clear restrictions on the benefits that a committee member may receive from a caretaking service contractor from 1 March 2021. While the current regulation already deems an associate of a service contractor as ineligible to be a voting committee member, and prevents committee members from voting at the committee level where they have a direct or indirect interest in the issue being considered, the new regulations will provide further safeguards.

In particular, section 79 of the Standard Module will preserve the impartiality of voting committee members in certain circumstances and prevent them from giving preferential consideration to a contractor. Also, as a caretaking service contractor is automatically a non-voting committee member, this provision may assist in limiting their influence on committee voting.

The new regulations will specify that a committee member is only able to receive a direct or indirect benefit if:

- from a caretaking service contractor, it is the supply of, or payment for, a letting agent business service conducted by the contractor; or
- from a service contractor, it is the supply of, or payment for, a service the body corporate has engaged the contractor to provide, or a service, such as lawn mowing or other maintenance, that an owner of a lot has engaged the contractor to provide at market price; or
- the body corporate has authorised the committee member to receive the benefit by ordinary resolution.

Principal schemes – *maximum committee size of twelve*

The *Body Corporate and Community Management Act 1997* provides for layered arrangements of community titles schemes, where a lot within a scheme may itself be a scheme comprising lots and/or other subsidiary schemes. The top layer in such arrangements is called a 'principal scheme'.

Community titles schemes are increasing in average size and complexity, with this trend expected to continue. From 1 March 2021, the new Standard Module will allow the body corporate for a principal scheme to decide, by ordinary resolution, to increase the maximum number of committee members for the principal scheme to twelve members. This will provide for broader representation where there are many subsidiary schemes, without allowing excessively large committees that would likely prove unworkable.

Similar changes will come into effect where relevant for body corporate committees of accommodation, commercial and small scheme modules. Further information about how these changes will apply to your scheme can be found on the Office of Commissioner for Body Corporate and Community Management website at www.qld.gov.au/bodycorp-regchanges.

Committee meetings (Standard Module)

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In view of the committee's fundamental role in a body corporate, the regulations governing committee decision-making and meetings are essential to the functioning of a body corporate. The amendments in the new regulations that will replace the current Standard Module regulations on 1 March 2021 clarify processes for committee decisions, while also giving owners more certainty about outcomes.

Owner motions for committee consideration

Although owners submitting motions to their body corporate committee for consideration has always been common practice, there were no explicit rules governing this subject under the expiring regulations. The new regulations specify that an owner can submit a motion to the secretary personally, via post, facsimile or electronic communication (for example, emailing the secretary).

One of the most vexing issues for owners can be an unresponsive committee. Residents regularly express frustration about their committee "stonewalling" them and delaying decisions. There are two questions commonly posed to the Body Corporate and Community Management (BCCM) office by owners. Firstly, is there a timeframe for the committee to respond to my request? Secondly, what if my committee doesn't respond at all?

The new Standard Module regulations address these concerns by providing a clear process for committee decisions on owner motions. Going forward, there will be a "decision period" that committees must adhere to. Under this new period, committee decisions are required as soon as reasonably practicable within six weeks after the day the owner's motion is submitted. Where the committee will need extra time after the initial six week decision period, they must give a written explanation to the owner and nominate a reasonable additional period of no more than six weeks during which they will make their decision.

Where the committee does not decide the motion within the decision period, or within twelve weeks if extra time is required, the owner's motion is deemed declined. The inclusion of these timeframes means that owners will not be waiting indefinitely for a response from their committee (which may, in some cases, never be received). This new provision will also assist applicants fulfilling the self-resolution requirement for lodging a dispute application with the BCCM office. Under the current arrangements, it can sometimes be difficult for applicants to prove their attempts at self-resolution with their committee, when they may be waiting indefinitely for the committee's decision.

As well as accounting for difficulties experienced by owners, the new regulations consider matters through a committee lens. While some committees are admittedly unresponsive at times, some can also be challenged by owners who have excessive demands. As a safeguard against overloading committees, the new regulations do not require them to decide a motion if the owner has either submitted a motion about the same issue, or has submitted six or more motions, within the past twelve months. If the committee elects not to make a decision on a motion on one of these grounds, they must provide written notice of this to the owner. These changes endeavour to strike a reasonable balance between the interests of both owners and committees – weighing enhanced owner involvement and protection against the potential for an overburdened committee.

As an aside, it is worth noting that these changes about the "decision period" will not affect the timeframe the committee has to respond to a Form 1 submitted by an owner to the committee about a by-law breach. If an owner does not receive a response from the committee within fourteen days after submitting a Form 1, the owner can still choose to progress the issue to conciliation.

Finally, the new provisions about owner motions for committee consideration also highlight the committee's limitations when deciding on these motions. In part, the new provisions mirror the current regulations about ruling motions out of order at general meetings. Specifically, the committee must not decide on a motion if it is about a "restricted issue", or if it conflicts with the Act, regulations, by-laws, or a motion already voted on at the committee meeting. However, the new regulations also make it clear that a committee cannot decide on a motion if it is unlawful or unenforceable for another reason.

Electronic attendance

The new regulations allow for attending committee meetings by "electronic means" where there is committee authorisation to do so. Voting and non-voting committee members, owners or their representatives, or other persons invited to attend, may attend electronically. Committee authorisation can extend to all meetings or specific meetings. Also, the committee can authorise use of a specific electronic means or any electronic means. Some examples have been provided in the regulations including email, teleconferencing and videoconferencing.

Having clear and flexible options for attendance proved to be important when there was uncertainty around gatherings and social distancing in the COVID-19 environment. Going forward, electronic attendance will support participation by owners, including those who may be interstate or overseas, more generally. We are an increasingly busy society – often juggling multiple commitments – and the increased opportunity for owner involvement in committee meetings through electronic attendance promotes a more robust body corporate.

Attendance by owners and their representatives

The current regulations about attendance at committee meetings by non-members only allow for attendance by an *owner* who submits the required written notice. Any other non-member wanting to attend needs to be invited by a majority of the committee. The new regulations extend the right of attendance at committee meetings to owner representatives as well, provided that the representative supplies specified information demonstrating their status as the owner's representative.

Debtor members of the committee

Our office has spoken to many owners who assume that owing a body corporate debt prevents a committee member from voting at or outside of a committee meeting. However, under the current regulations owing a body corporate debt does not affect a committee member's ability to vote at the committee level – only their general meeting voting rights are displaced.

The new regulations deem a committee member who owes a body corporate debt, or who is nominated by an owner who owes a body corporate debt, as a "debtor member". These members of the committee will be ineligible to vote at committee meetings or outside of a committee meeting. Also, debtor members will not be able to appoint another voting member as their proxy or exercise proxies for other voting members. This addition appears to bring the regulations into line with owner expectations on this issue and provides some symmetry between committee meeting and general meeting voting rights.

Even though a debtor member will not be able to cast a vote at a committee meeting, the regulations will not prevent them being included in the quorum count for the purpose of starting a committee meeting.

Voting outside a committee meeting

The current regulations about voting outside committee meetings result in a considerable number of enquiries to our office. A key point of confusion is the requirement to give notice that a motion will be decided by vote outside of a committee meeting to owners at the same time as committee members. Perhaps due to the inability of owners to vote in this process, many committees neglect the requirement to advise owners, and notice is given to owners as an afterthought, if at all.

The drafting of the new regulations highlights the need to also advise owners, by separating this requirement into a specific provision. However, as is the case under the current regulations, there is no minimum amount of notice to be given, which leaves a certain amount of flexibility in the hands of the committee so as to preserve the responsive nature of a vote outside committee meeting process.

A further point of uncertainty under the expiring regulations about voting outside of committee meetings is the timeframe for voting. As it stands, committees can issue a notice that a motion is to be decided by a vote outside committee meeting, and then leave the matter suspended "in limbo" for an indefinite period. Committee members who unnecessarily delay voting in these circumstances sometimes prove exasperating for their fellow committee members and owners alike.

This is remedied in the new regulations by providing a clear timeframe for voting – committee members will be required to submit their vote within the "relevant period", which is 21 days after notice is given that the motion will be put to a vote outside of committee meeting.

A motion put to a vote outside a committee meeting will be deemed as declined if a decision is not reached within the "relevant period". For further clarity, the new regulations also specify that a motion will be deemed as decided within the "relevant period" where either the majority of all members that are entitled to vote agree or do not agree, to the motion. If one-half indicate that they do not agree with the motion, there is a tied vote and the motion is lost.

General meetings (Standard Module)

Originally sent to Common Ground subscribers in January 2021.

As general meetings are the primary means of body corporate decision-making, the provisions regulating them are critical in facilitating effective scheme governance. Some common objectives underpinning the changed arrangements for general meetings in the upcoming body corporate regulations are increased flexibility, convenience and protections for owners, as well as reduced costs for the body corporate. The new regulations are set to commence 1 March 2021.

First AGM: inclusion of motions submitted by owners

The expiring Standard Module provides a list of matters to be included on the agenda for the first annual general meeting called by the original owner. While there are many items listed for inclusion, there is no provision requiring motions submitted by owners to be included. From 1 March 2021, the agenda must incorporate any motion submitted by an owner prior to the first annual general meeting where practicable. As with many of the other regulation changes, the clear intent of the new regulation is to increase owner involvement and enhance the protections afforded to them.

First AGM: documents and materials to be given to the body corporate

The new regulations require the original owner to provide additional documents at the first annual general meeting – in both hard copy and electronic form – to facilitate a smooth handover and enable efficient record keeping. These documents include the current community management statement, a copy of any development approval that was required for the scheme land, any fire and evacuation plan required under the *Fire and Emergency Services Act 1990* and various types of warranty documents – to name just a few. Having these documents on hand from the outset contributes to the effective operation of bodies corporate in a range of areas. While the original owner shoulders some added responsibility, it is anticipated that the impact of this new requirement will be minimal, as these documents are likely to be in their possession already.

As previously noted, the original owner must now provide the scheme's community management statement – an important document containing information such as the body corporate's by-laws. Given that a new community management statement must be recorded where there are certain changes, the original owner must provide an editable copy.

Defect assessment report

Under the expiring regulations, there is no duty to consider a motion about obtaining a defect assessment report to investigate potential building defects and owners need to be vigilant and act on their own initiative to submit a motion requesting one. This is something that many owners may overlook, as the nature and purpose of a defect assessment report is not necessarily common knowledge among those unfamiliar with the building industry.

The value of early detection of defects has been recognised in the new Standard Module regulations. Under the new regulations the body corporate must include a "defect assessment motion" in its second annual general meeting. This motion requires the body corporate to propose the engagement of an appropriately qualified person to prepare a defect assessment report for body corporate property – except assets – which the body corporate must insure for full replacement value under the Act. The report must identify any defective building work and, where reasonably practicable, isolate the cause and any building work needed to remedy the defects.

While the decision about whether to use the body corporate's funds in this way will ultimately be left to lot owners, the mandatory inclusion of a defect assessment motion on the agenda serves to alert owners to its significance – striking an appropriate balance between owner protection and flexibility.

Early detection of defects has the potential to reduce costs for owners in the long run, as defects and flow on impacts will not be left to worsen over time. There is also a greater likelihood of capturing any building defects within the warranty period for new buildings, which is generally six years and six months.

Recommendations from stakeholders in the property development industry about progressively developed schemes have also been adopted to ensure owners have the opportunity to consider whether to obtain a defect assessment report that includes changes to the property following the second annual general meeting. In particular, the new regulations provide that a defect assessment motion must also be included on the agenda for the annual general meeting held immediately after the inclusion of new property within a scheme and the request to record a new community management statement.

For those schemes registered under a standard format plan of subdivision with stand-alone buildings (where body corporate insurance is not mandatory), the new regulations allow the body corporate to establish a voluntary defect assessment plan. The body corporate cannot require an owner to participate in the voluntary defect assessment plan unless the owner agrees to do so.

General meeting quorum

Bodies corporate will soon have greater control over the requirements for achieving a quorum – that is, the number of people who must be present for a valid general meeting. The expiring Standard Module requires at least 25 per cent of voters to be present at a general meeting before it can start. From March 2021, it will be possible for a body corporate to reduce this percentage, by a special resolution, to an amount that is no less than 10 per cent of voters. Bodies corporate will also be able to decide, by a special resolution, that only one voter must be present personally, instead of the current requirement for two voters to be present.

Allowing bodies corporate to tailor the quorum requirements to suit their scheme promotes legislative objectives such as flexibility and self-management. It also has the potential to reduce costs and delays where a body corporate is forced to hold an adjourned meeting if a quorum is not reached. These changes to the requirements makes a quorum more achievable and the need for an adjourned meeting less likely.

The new Standard Module also provides clarity on how to calculate the number of voters for a general meeting.

This topic has been a source of considerable confusion for owners in the past. The adjudicator's order in Sierra Grand provides further guidance about calculating the number of voters.

There have been many questions about what constitutes being "personally present" for a general meeting quorum. While some contend that it means *physical* presence only, others have accepted a broader interpretation inclusive of alternatives such as teleconferencing or videoconferencing. The new Standard Module removes uncertainty about what constitutes being personally present by specifying that a body corporate can now decide, by ordinary resolution, to extend being present personally to casting a vote by "electronic means", such as teleconferencing or videoconferencing. This move towards electronic forms of participation recognises that people's daily lives are increasingly busy and encourages owner involvement in general meeting voting.

Power of attorney

The current regulations do not prevent a person acting as the representative for multiple lot owners under a power of attorney. Stakeholders have voiced concerns that the representative role is increasingly being used strategically to sidestep the restrictions imposed by proxy voting. Proxy holders are subject to tight restrictions on the number of proxies they can hold and the types of motions that can be voted on using these proxies. However representatives under a power of attorney can exercise virtually unfettered general meeting voting rights and undermine the intent of the regulations, which is to avoid one person holding excessive voting power.

The original intention of the regulations has been fortified through restrictions on the use of powers of attorney in the new regulations. From 1 March 2021, a person holding a power of attorney will be unable to act as the representative of more than one lot owner unless the owner owns multiple lots, the owners are family members, or the power of attorney is given to the original owner in specified circumstances. These changes are designed to promote fairer and more even distribution of voting power that better reflects the majority view. For those that may feel disadvantaged by these changes, it is important to remember that there are still many options available if you are unable to physically attend a general meeting. This includes appointing a proxy, or casting a written or electronic vote before the meeting.

Electronic voting

Under the expiring regulations, votes can only be cast electronically for general meetings if the body corporate has decided to do so by ordinary resolution. The new regulations expand on the threshold requirements which must be satisfied before the body corporate can implement electronic voting.

Casting votes electronically will only be possible if the body corporate implements a system which rejects a vote cast by a person who is not eligible to vote on the motion or has already cast their vote, and ensures that only the secretary receives electronic votes.

For casting a secret ballot vote, there is an additional requirement that the system does not disclose a voter's identity and that only the returning officer receives the votes.

The system for receiving electronic votes may also allow voters who are present personally to cast their votes 'live' at the meeting – an acknowledgment of our increasing dependence on technology in our everyday lives. Computers, smartphones and tablets have been listed as examples of systems that may be used to cast live votes under the new regulations.

Under the new regulations for voting electronically, voters must follow the instructions provided by the secretary so that the vote is received by the secretary – or, in the case of a secret ballot, received by the returning officer – before the general meeting, or, if the system allows for 'live' voting, at the meeting. An electronic vote can be withdrawn for an open motion at any time prior to the result being declared. However, a proxy holder is unable to withdraw an owner's electronic vote. For a secret ballot, a voter can withdraw an electronic vote already cast if it can be readily identified and withdrawn.

Use of proxies for lot owners in a principal scheme

Under the new regulations, the restriction on using proxies in principal schemes in the expiring regulations has been relaxed slightly to permit lot owners in the principal scheme to appoint proxies. As before, subsidiary scheme representatives will still be unable to appoint proxies. Where the representative is unable to attend, the subsidiary may need to consider appointing a different representative.

Email as address for service

Our office has received many queries – from residents and body corporate managers alike – about whether documents and information can be circulated to owners via email. The expiring Standard Module contains several relevant provisions that need to be considered. For example, the regulation currently provides that notice of general meetings must be given to owners personally or sent to their address for service, while notice of committee meetings must be delivered to owners at their residential or business address. This has been recognised as a somewhat outdated approach in view of our growing ability to communicate electronically.

The new Standard Module regulations will explicitly allow for documents and other information to simply be emailed if the owner has provided their email as part of their address for service. As well as the added convenience for bodies corporate, this change is likely to reduce printing and other costs associated with postage.

Agreements for receiving documents and information

The new Standard Module goes a step further in modernising arrangements for receipt of documents or information from a body corporate. Aside from being able to deliver documents and other information by email if provided by an owner as part of their address for service, under the new regulations lot owner can also choose to enter into an agreement with their body corporate nominating an alternative way to receive documents or information. The example provided in the new regulations is an online file-sharing website.

Service of documents or information on the secretary

Many of our clients have sought clarification about the provisions in the expiring Standard Module regulations which state that the secretary is to receive certain documents or information. A common question involves the section which requires general meeting voting papers to be given to the secretary before the start of the meeting, and whether this requirement applies when a body corporate manager has been appointed to exercise the secretary's powers. Although the legislation currently allows for the body corporate manager to exercise authorised powers of an executive committee member, the expiring module does not plainly provide for the body corporate manager to receive documents instead of the secretary.

The new Standard Module removes any uncertainty about this by explicitly allowing a body corporate manager who is exercising authority under Section 119 of the Act to receive documents intended for the secretary.