

## Body Corporate and Community Management (Commercial Module) Regulation 2019 – Consultation draft

The community and stakeholders are invited to have their say on a consultation draft of the Body Corporate and Community Management (Commercial Module) Regulation 2019. This module will replace the Body Corporate and Community Management (Commercial Module) Regulation 2008.

The consultation draft includes reforms to streamline and modernise body corporate procedures, reduce body corporate costs and enhance protections for unit owners. The reforms were developed following extensive stakeholder and community consultation on the recommendations of the review of property law in Queensland conducted by the Commercial and Property Law Research Centre of the Queensland University of Technology (QUT) for the Government. The reforms included in the consultation draft relate primarily to the review's recommendations about body corporate procedural issues, which were contained in QUT's report titled 'Final recommendations: Procedural Issues under the *Body Corporate and Community Management Act 1997*'.

### Summary of reforms

#### Body corporate committee membership

- Streamline the appointment of committee members in community titles schemes with 3 or more lots and only 3 different owners for all the lots by deeming the committee in these schemes consists of 3 individuals who are owners, or the nominees of owners, of lots. (**Relevant section:** 12).
- Clarify the two ways that a voting member of the committee can be removed by ordinary resolution of the body corporate: (1) by 'plain' ordinary resolution removing the member or (2) by issuing a written notice of a breach of the code of conduct, followed by an ordinary resolution removing the member under the code breach process at section 16. (**Relevant sections:** 15-16).
- Where the principal scheme in a layered arrangement of community titles schemes includes more than 7 lots, permit the body corporate for the principal scheme to decide by ordinary resolution to increase the number of voting members of its committee from 7 members to up to 12 members. (**Relevant section:** Schedule, definition *maximum number*).
- Prohibit a committee member from receiving a direct or indirect benefit from a caretaking service contractor or service contractor unless the body corporate has authorised the member to receive the benefit. (**Relevant section:** 36; Supporting section: 9).

#### Committee meetings

- Provide that if a member of a body corporate submits a motion to the secretary for consideration by the committee, the committee must as soon as reasonably practicable include the submitted motion on the agenda for the next committee meeting or decide the motion outside of a committee meeting. (**Relevant section:** 22).
- Clarify that the committee may approve that a voting or non-voting member of the committee attend a meeting of the committee by electronic means. (**Relevant sections:** 25-26).
- Extend the existing right of lot owners to attend a committee meeting to apply to representatives of lot owners, provided the representative is recorded on the roll as the representative of a lot owner



or presents evidence that a lot owner has asked the representative to represent the owner at the meeting. **(Relevant section: 27)**.

- Clarify that a voting member of the committee is ineligible to vote personally or as a proxy for another voting member at either a committee meeting or on a motion given outside of a committee meeting, if they or their nominating entity owes a body corporate debt. Also clarify that committee members are ineligible to vote as a proxy of another member if the other member or their nominating entity owes a body corporate debt. **(Relevant sections: 28, 31)**.
- Provide that members' votes on a motion given outside of a committee meeting must be given within 21 days of the notice of the motion being given. Also deem motions to be decided at any point within the 21 day period if there is a majority of votes for the motion, or half or more of the votes are against the motion. If sufficient votes to determine the motion are not received within 21 days, the motion is taken to have been not agreed to. **(Relevant section: 33)**.

### First annual general meeting

- Require a motion submitted by a member of the body corporate before the first annual general meeting to be included on the general meeting agenda, if it is practicable. **(Relevant sections: 44, 52)**.
- Expand the list of documents and other information that the original owner of a community titles scheme must hand over to the body corporate at the first annual general meeting to include, amongst other things, a development approval, facilities management plan and a five-year administrative fund forecast. **(Relevant section: 54)**

### General meetings

- Clarify how a motion with alternatives is decided when the alternatives for the motion would require different types of resolution (for example, special resolution or ordinary resolution) if they were to be considered as individual motions. **(Relevant section: 47)**.
- Require the committee to approve the agenda for each general meeting, either at a committee meeting or by a vote outside of committee meeting. **(Relevant section: 51)**.
- Permit bodies corporate to change how a quorum for a general meeting is to be calculated and the number of voters that must be present personally for a general meeting, within certain limits. **(Relevant section: 57)**.
- Facilitate voting on motions to be decided by secret ballot at general meetings by electronic vote. **(Relevant sections: 64-66)**.
- Require minutes of general meetings to include the reason given for a motion being ruled out of order and, if a committee member is elected at the general meeting, the number of votes cast for each candidate. **(Relevant section: 71)**.
- Permit the body corporate to decide by special resolution to restrict the use of proxies for general meetings for particular matters, or altogether. **(Relevant section: 82)**.
- Allow voting by proxy at a general meeting in a community titles scheme that is the principal scheme in a layered arrangement of community titles schemes, if the person giving the proxy is the owner of a lot in the principal scheme, but retain the restriction on voting by proxy for subsidiary scheme representatives. **(Relevant section: 84)**.

### Body corporate managers and caretaking service contractors

- Clarify and improve requirements for a body corporate manager or caretaking service contractor to disclose any commission, payment or other benefit they are entitled to receive that is



associated with a contract the body corporate is considering entering into (including insurance). **(Relevant section: 102).**

### Property management

- Provide that the facilities management plan to be provided by the original owner at a first annual general meeting must include maintenance and inspection schedules for any maintenance and inspection reasonably required to prevent damage or failure to common property, body corporate assets and specified features of relevant schemes. **(Relevant section: 54).**
- Provide that the five-year administrative fund forecast to be provided by the original owner at a first annual general meeting must estimate the cost of common property and asset maintenance, insurance and other recurrent expenditure for the first five financial years of the scheme. **(Relevant section: 54).**
- Provide contemporary examples of utility infrastructure that relate only to supplying utility services to an owner's lot that a lot owner is responsible to maintain. **(Relevant section: 123).**
- Require the agenda for the second annual general meeting to include a motion proposing the engagement of an appropriately qualified person to prepare a defect assessment report for property for which the body corporate must take out reinstatement insurance. **(Relevant section: 124).**
- Allow bodies corporate to establish a voluntary defect assessment scheme for community titles schemes containing standard format plan lots. **(Relevant section: 125).**

### Insurance

- Extend the current requirements for disclosure of details about each policy of insurance held by the body corporate at the annual general meeting to also include disclosure of the name of any insurance broker or intermediary involved with the taking out of the policy and details of any benefit given, or to be given, by any insurance broker or intermediary. **(Relevant section: 138).**

### Administrative matters

- Streamline and modernise communication in bodies corporate by enabling documents, notices or other information that may be given under the Act or regulations to be emailed if the recipient has provided an email address as part of their address for service. **(Relevant section: 159).**
- Allow documents, notices or information that may be given by lot owners to the committee or secretary, as well as copies of committee minutes, to be given by way of electronic communication. **(Relevant section: 163).**
- Permit a body corporate and the owner of a lot to enter into an agreement about how documents, notices or information required or permitted to be given under the regulation will be given (for example, by providing the document through an online file-sharing website). However, certain critical notices, such as by-law contravention notices, required or permitted to be given under the Act, must be given personally or to a person's address for service (including an email if provided). **(Relevant section: 161).**
- Shorten the time for the owner of a lot, or a mortgagee for a lot, to give particular notices to the body corporate from 2 months to 1 month. **(Relevant section: 164).**
- Clarify the information provided by lot owners to the body corporate that must be recorded on the body corporate roll, including requirements that information in various notices establishing persons as representatives of lot owners or subsidiary schemes, or relating to transfer of ownership or change of address, be recorded on the roll. **(Relevant section: 165).**



- Provide the body corporate must record information required to be on the body corporate roll within 14 days after the body corporate receives the information. (**Relevant section:** 166).

Please note – transitional sections to provide for correspondences between the 2008 and 2019 regulations, to provide for the continuation of particular matters commenced under the 2008 regulation, and to provide for matters in the 2019 regulation not dealt with in the 2008 regulation are being drafted, but are not included in this consultation draft.

