

NOT GOVERNMENT POLICY

2015

Property Law Review
Issues Paper
*Procedural issues under the Body
Corporate and Community
Management Act 1997*

Commercial and Property Law
Research Centre
QUT Law

Preface

The Commercial and Property Law Research Centre (the **Centre**) at the Queensland University of Technology (**QUT**) was established in 2013. The Centre is a specialist network of researchers with a vision of reforming legal and regulatory frameworks in the commercial and property law sector through high impact applied research.

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Procedural issues

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Attorney-General's foreword



The community titles sector is a vibrant part of Queensland's economy. As well as delivering much-needed jobs in the development, construction and body corporate service industries, community titles schemes support Queensland tourism by providing a wide range of short-term accommodation options for our domestic and international visitors.

Importantly, community titling gives Queenslanders choice about how and where they want to live. With over 44,000 community titles schemes in the State, it is clear that many Queenslanders have embraced community titles schemes as a housing or investment option that suits their situation and lifestyle.

Queensland has long been a world leader in innovative and flexible community titles legislation. However, the Government appreciates that time does not stand still, and legislation needs to keep pace with contemporary issues and challenges. In short, there are always opportunities for improvement.

The Government recognises the importance of the property law review being undertaken by the Commercial and Property Law Research Centre of the Queensland University of Technology.

The review is being led by respected property law experts and is canvassing a wide range of property law issues, including matters arising under the *Body Corporate and Community Management Act 1997* and other community titles legislation.

Previous consultation processes have examined body corporate lot entitlements, and particular body corporate governance issues such as the making and enforcement of by-laws, debt recovery and principles for terminating community titles schemes.

This Issues Paper examines additional body corporate governance issues including body corporate committees, general meeting procedures and other administrative matters.

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It is vital that Queensland's body corporate governance framework is fair, efficient and as simple and easy to follow as possible.

Accordingly, I encourage anyone with an interest in Queensland community titles schemes to take the time to read this paper and have their say by making a written submission by the closing date.

I would also like to take the opportunity to thank QUT's Commercial and Property Law Research Centre for its ongoing work on the property law review.

A handwritten signature in blue ink that reads "Yvette D'Ath". The signature is written in a cursive style with a large, looping initial 'Y'.

The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for Training and Skills

How to make a submission

Written submissions are invited in response to some or all of the issues raised in this Issues Paper.

The issues raised are not intended to be exhaustive. If you think there are other opportunities for improving body corporate governance under the *Body Corporate and Community Management Act 1997*, please include these in your response.

The closing date for submissions is **22 February 2016**.

Copies of the *Body Corporate and Community Management Act 1997* can be obtained at www.legislation.qld.gov.au.

Where to send your submission

You may lodge your submission by email or post.

The email address for submissions is: QUTreviewBCCM@justice.qld.gov.au

Alternatively, you can post your submission to:

QUT Review - BCCM
C/- Office of Regulatory Policy
Department of Justice and Attorney-General
GPO Box 3111
BRISBANE QLD 4001

These submissions will be provided to the Commercial and Property Law Research Centre at the Queensland University of Technology which is conducting the review.

Privacy Statement

Any personal information you include in your submission will be collected by the Department of Justice and Attorney-General (the Department) and the Queensland University of Technology for the purpose of undertaking the review of Queensland's property laws. The Department or the Queensland University of Technology may contact you for further consultation regarding the review. Your submission may also be released to other government agencies as part of the consultation process.

Submissions provided to the Department and the Queensland University of Technology in relation to this paper will be treated as public documents. This means that they may be published on the Department's website, together with the name and suburb of each person or entity making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in the submission. However, please note that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions (or information about their content) may also be provided in due course to a parliamentary committee that considers any legislation resulting from this review.

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1. Background

1.1. Review of Queensland Property Laws

In August 2013, the former Queensland Government engaged the Commercial and Property Law Research Centre (the **Centre**) at the Queensland University of Technology (**QUT**) to conduct an independent and broad-ranging review of Queensland's property laws. This review is paving the way for a more streamlined approach to how Queenslanders buy, sell and manage property by reducing red tape, unnecessary regulation and property law duplication.

A core element of the review includes the options for the modernisation, simplification, clarification and reform of the *Property Law Act 1974* (Qld) in light of case law, the operation of other related legislation and changes in practice. The review also includes a range of issues involving community titles schemes arising under the *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**). *Issues Paper 1: Seller Disclosure in Queensland* and *Issues Paper 2: Lot entitlements under the Body Corporate and Community Management Act 1997* were released for public consultation in February 2014.

Following the release of *Issues Paper 2*, which addressed setting and adjustment of lot entitlements in community titles schemes, the Centre has focused on a number of governance issues relevant to body corporate committees and lot owners. The Centre engaged in direct, face-to-face meetings with a broad range of strata industry groups and other relevant stakeholders to identify problems or concerns with the BCCM Act and to consider practical ways of addressing these areas.

The governance issues identified in these meetings have been addressed in a series of papers. Issues relating to by-laws, debt recovery and scheme termination were addressed in an Options Paper titled *Body corporate governance issues: By-laws, debt recovery and scheme termination*, which was released for public consultation in December 2014.

Issues concerning the procedural aspects of body corporate meetings and other governance issues related to running a body corporate are addressed in this Issues Paper. A further paper about body corporate issues, to be released in a future stage of the review, will consider the possibility of a transition to the BCCM Act for plans regulated under the *Building Units and Group Titles Act 1980* (Qld).

1.2. Meeting procedures and other issues

In a community titles scheme every lot owner is automatically a member of the body corporate¹ created when the scheme is established.² The body corporate makes decisions on matters of shared responsibility such as maintenance and management of common property including body corporate assets, setting the financial contributions that each lot owner must pay towards the common expenses and establishing and enforcing the by-laws.³

¹ *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**) s 31.

² BCCM Act s 30.

³ BCCM Act s 94. See also Queensland Government, Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management, *Body Corporate: A quick guide to community living in Queensland*, 3, <https://publications.qld.gov.au/dataset/body-corporate-a-quick-guide-to-community-living-in-queensland>.

The decisions of the body corporate are made in meetings where the body corporate votes on motions and passes resolutions. Meetings involve either of all the members of the body corporate or just a committee chosen to act on behalf of the body corporate. Body corporate meetings and committee meetings must be held and conducted in accordance with the BCCM Act⁴ and the relevant **Regulation Module**.⁵

A number of industry bodies, stakeholder groups, lot owners and other interested parties have suggested that the processes and procedures which apply under the BCCM Act and the Regulation Modules, while generally sufficient, may be improved to better reflect the needs of modern schemes.

1.3. Scope of Issues Paper

This Issues Paper considers the processes and procedures that apply under the BCCM Act and the Regulation Modules to identify areas for improvement and ask questions as to how improvement may occur.

Section 2 discusses the Regulation Modules which set out the procedures the body corporate must follow when holding meetings. Section 3 considers the procedural aspects of body corporate meetings and section 4 considers the procedural aspects of committee meetings.

The remaining sections of this Issues Paper consider other areas of the body corporate legislation that may be improved by legislative change. These sections focus on a number of relevant issues that affect the way a body corporate functions and the things the body corporate may (or may not) do. Section 5 considers issues relating to the use of electronic notices, minutes and voting. Section 6 considers issues associated with the first general meeting of a scheme. Section 7 addresses issues related to dispute resolution such as standing in layered schemes and the length of documents in the dispute resolution process.

The final section, section 8, deals with a number of miscellaneous issues. This includes consideration of whether there is a need to retain the body corporate seal, the address for service of a body corporate and what authority is needed to settle legal proceedings.

This Issues Paper does not consider the possibility of a transition to the BCCM Act for plans under the *Building Units and Group Titles Act 1980* (Qld). This topic will be the subject of a separate paper to be produced by the Centre. The issues related to such a transition are significant. Taking even preliminary steps towards such a transition will require a considered approach and stakeholder consultation.

⁴ BCCM Act ss 101 (committee meetings) and 104(1) (body corporate meetings).

⁵ BCCM Act s 21.

2. Body corporate procedures – the Regulation Modules

The BCCM Act provides that every scheme is subject to a Regulation Module, which sets out the way the body corporate must conduct meetings, manage property and deal with body corporate assets. The Regulation Modules apply to different types of schemes.

The **Standard Module**⁶ is the default Regulation Module. It applies to schemes if there is no other Regulation Module that applies to the scheme⁷ or if the community management statement (**CMS**) for the scheme does not list a Regulation Module. The Standard Module will also apply if the Regulation Module identified in the CMS does not apply (for example if the circumstances that must exist for that Regulation Module to apply do not exist for the scheme).⁸

The **Accommodation Module**⁹ applies to schemes where the lots are, or are intended to be, predominantly accommodation lots. This means the lots are subject to or immediately available to be the subject of a lease or letting for accommodation for long or short term residential purposes or as a hotel.¹⁰

The **Commercial Module**¹¹ applies to schemes where the lots are, or are intended to be, predominately commercial lots. This means the lots are used for commercial, retail or industrial purposes and not as an accommodation lot or residential lot.¹²

The **Small Schemes Module**¹³ applies to basic schemes¹⁴ of six lots or fewer that do not have a letting agent¹⁵ for the scheme.¹⁶ The Small Schemes Module is less prescriptive in some ways than the Standard Module, particularly with regard to committee meetings. The committee is only the secretary and treasurer under the Small Schemes Module.

The **Two-lot Module**¹⁷ applies only to specified two-lot schemes.¹⁸ Unlike the other Regulation Modules, where decisions are made by committee and general meetings, under the Two-lot module decisions are made by lot owner agreements.¹⁹

⁶ *Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld)* (**Standard Module**).

⁷ Standard Module s 3(2).

⁸ BCCM Act s 21(4)(b).

⁹ *Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld)* (**Accommodation Module**).

¹⁰ Accommodation Module s 3(2). Accommodation lot is defined in s 3(3).

¹¹ *Body Corporate and Community Management (Commercial Module) Regulation 2008 (Qld)* (**Commercial Module**).

¹² Commercial Modules s 3(2). Commercial lot and residential lot are defined in s 3(3).

¹³ *Body Corporate and Community Management (Small Schemes Module) Regulation 2008 (Qld)* (**Small Schemes Module**).

¹⁴ BCCM Act s 10 (definition of 'basic scheme').

¹⁵ BCCM Act s 16 (definition of 'letting agent').

¹⁶ Small Schemes Module s 3.

¹⁷ *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011 (Qld)* (**Two-lot Module**).

¹⁸ Two-lot Module s 3(2). See also BCCM Act s 111C (definition of 'specified two-lot scheme').

¹⁹ Two-lot Module s 5. For more information on the two-lot module, see <http://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-records-and-regulations/regulation-modules/two-lot-scheme-module/>.

Under the BCCM Act a body corporate must hold and conduct meetings in the way prescribed in the relevant Regulation Module.²⁰ The Standard Module, the Accommodation Module and the Commercial Module have very similar provisions relating to general and committee meetings. The Small Schemes Module is generally similar to the other Regulation Modules for general meetings but it is less prescriptive (as befits schemes with six lots or less) for committee meetings.

The discussion that follows focuses on the Standard Module, with references to the Accommodation Module, Commercial Module and Small Schemes Module where there is a significant difference in the relevant provisions. The Two-lot Module was only recently approved and it functions differently than the other Regulation Modules. For this reason, it is not generally discussed or considered in this Issues Paper.

²⁰ BCCM Act s 104.

3. General meeting procedure

Every meeting of the body corporate is a general meeting – either an **annual general meeting (AGM)** or an **extraordinary general meeting (EGM)**.²¹ The first AGM for a scheme must be held by the ‘original owner’ (the developer) by the earlier of either: two months after more than 50% of the lots in the scheme are no longer owned by the original owner; or eight months after the establishment of the scheme.²² The agenda for the first AGM must include specified items such as adopting budgets and choosing committee members²³ (see section 6.1 below).

After the first AGM, the body corporate must hold an AGM each year within three months of the end of the scheme’s **financial year**²⁴ (which is tied to the date the scheme was created).²⁵ The AGM must deal with a number of items of business including electing committee members for the scheme.²⁶ Other items that must be on the agenda for the AGM include motions: submitted by lot owners²⁷ (lot owners have until the end of the body corporate’s financial year to submit agenda motions for the AGM²⁸ except for lot owners in schemes under the Small Schemes Module, who can submit motions at any time²⁹); adopting budgets³⁰ for the year; and levying contributions on lot owners.³¹ The Small Schemes Module requires that the agenda state the name of the person submitting the motion, whether the motion is submitted by the committee and whether the motion is a statutory motion.³²

3.1. Date and location

The notice of a general meeting (see section 3.2 below) must specify the day, time and place of the general meeting.³³ The meeting must be held within 15km of scheme land. However, if less than 25% of the owners object (after being given a reasonable opportunity) the meeting may be held in a place more than 15km away from scheme land.³⁴

²¹ Standard Module s 64; Accommodation Module s 62; Commercial Module s 31; Small Schemes Module s 29.

²² Standard Module s 77(2); Accommodation Module s 75(2); Commercial Module s 44 (2); Small Schemes Module s 38(2).

²³ Standard Module s 77(3); Accommodation Module s 75(3); Commercial Module s 44(3); Small Schemes Modules s 38(3).

²⁴ Standard Module s 66; Accommodation Module s 64; Commercial Module s 33; Small Schemes Module s 31.

²⁵ BCCM Act schedule 6 (definition of ‘financial year’).

²⁶ Standard Module ss 13-32; Accommodation Module ss 14-23; Commercial Module ss 12-14; Small Schemes Module ss 12-14.

²⁷ Standard Module s 76; Accommodation Module s 74; Commercial Module s 43; Small Schemes Module s 37.

²⁸ Standard Module s 69(3); Accommodation Module s 67(3); Commercial Module s 36(3).

²⁹ Small Schemes Module s 34.

³⁰ Standard Module s 139; Accommodation Module s 137; Commercial Module s 98; Small Schemes Module s 73.

³¹ Standard Module s 141; Accommodation Module s 139; Commercial Module s 100; Small Schemes Module s 75.

³² Small Schemes Module s 37(2)(d).

³³ Standard Module s 70(2); Accommodation Module s 68(2); Commercial Module s 37(2); Small Schemes Module s 35(2).

³⁴ Standard Module s 75; Accommodation Module s 73; Commercial Module s 42. This requirement does not apply to schemes under the Small Schemes Module.

3.1.1. Issue – Date of the AGM

The AGM must be held within three months of the end of the financial year for the scheme. The financial year for a scheme is tied to the date the scheme was created.³⁵ The only way that the body corporate is able to hold the meeting at a different time of the year is to apply to an adjudicator to change the financial year for the scheme.³⁶ To do this, the body corporate must pass a resolution at a general meeting supporting an application to an adjudicator to change the financial year end date. The order of the adjudicator may be made as a declaratory order.³⁷ There is no other mechanism to allow the body corporate to decide to hold the AGM at a different time of the year.

It has been suggested that the body corporate should be able to change the financial year for the scheme without seeking an order of the adjudicator. The body corporate would require a resolution in a general meeting to approve a change to the financial year end date but would no longer be required to make an application to an adjudicator.

Alternatively it has been suggested that the BCCM Act should decouple the date of the AGM and the financial year. This would effectively allow the body corporate to set the date of the AGM at a convenient time of year, regardless of the financial year for the scheme.

Questions

- 1. Should the body corporate be able to pass a motion to change the financial year of the scheme? What type of resolution should be required to pass a motion changing the financial year for the scheme?³⁸**
- 2. Should bodies corporate have the ability to set the date of the AGM, regardless of the end of the financial year for the scheme, without requiring an adjudicator's order changing the financial year for the scheme?**

3.2. Notice of general meeting

Notice of a general meeting must be given to the owner of each lot in the scheme, and if not given personally, then must be sent to the owner at the owner's address for service.³⁹ The notice must include the agenda, a proxy form, voting papers for open and secret ballot motions and other specified information and documents.⁴⁰ The AGM must be held at least 21 days after the notice of meeting is given to lot owners.⁴¹ Schemes under the Small Schemes Module may decide a different period.⁴²

³⁵ BCCM Act schedule 6 (definition of 'financial year').

³⁶ BCCM Act s 283.

³⁷ BCCM Act s 227(2).

³⁸ The different types of resolutions are explained at section 3.6 below.

³⁹ Standard Module s 70(1); Accommodation Module s 68; Commercial Module s 37; Small Schemes Module s 35.

⁴⁰ Standard Module ss 70-73 (Examples of additional required documents are listed in the Note at the end of section 70); Accommodation Module ss 68-71; Commercial Module ss 37-40; Small Schemes Module s 35.

⁴¹ Standard Module s 74; Accommodation Module s 72; Commercial Module s 41.

⁴² Small Schemes Module s 36.

The owners of at least 25% of all the lots in the scheme may make a written request for a general meeting of the body corporate to consider and decide a proposed motion (a **requested EGM**). A requested EGM must be called within 14 days after the meeting is requested and held within six weeks after the meeting is requested.⁴³

3.2.1. Issue – Notice periods

General meetings of the body corporate, including the AGM and a requested EGM, require notice of at least 21 days. It has been suggested that this time is too long.

The AGM for the scheme must be held within three months of the end of the financial year for the scheme. This means that lot owners know (or should know) about when the AGM will be held. Because of this, it is argued that a notice period of 21 days is too long. It has been suggested that the period should be shortened to 14 days.

Similarly, it has been suggested that there should be a shorter time frame for an EGM. Any meeting of the body corporate other than an AGM is an EGM. An EGM may be called if there is an urgent matter to discuss or at any other time, if there is a need for a meeting of the full body corporate. It has been argued that the notice period should be only seven days.

Questions

3. **Should the timeframes for calling general meetings be changed?**
4. **If yes, should there be a shorter time when calling an EGM as opposed to calling an AGM? What should the timeframes be?**

3.3. Agenda for a general meeting

The agenda for a general meeting must be sent to lot owners with the notice of the general meeting.⁴⁴ The agenda must include a number of specific items of business (and additional items if the general meeting is the first AGM for the scheme as discussed at section 6.1 below).⁴⁵ If the general meeting is the AGM, in addition to the specified items, the agenda must also include statutory motions and anything else required under the BCCM Act to be included.⁴⁶

Statutory motions include motions: presenting the body corporate's accounts for the year; appointing an auditor (or not); adopting budgets; fixing contributions to be paid; and reviewing each insurance policy held by the body corporate.⁴⁷

⁴³ Standard Module s 67; Accommodation Module s 65; Commercial Module s 34; Small Schemes Module s 32.

⁴⁴ Standard Module s 70(3)(a); Accommodation Module s 68(3)(a); Commercial Module s 37(3)(a); Small Schemes Module s 35(3)(a).

⁴⁵ Standard Module s 76; Accommodation Module s 74; Commercial Module s 43; Small Schemes Module s 37.

⁴⁶ Standard Module s 76(3); Accommodation Module s 74(3); Commercial Module s 43(3); Small Schemes Module s 37(3).

⁴⁷ See schedule (definition of 'statutory motion') in each of the Standard Module, Accommodation Module, Commercial Module and Small Schemes Module (NB Small Schemes Module does not require a motion appointing an auditor).

3.3.1. Issue – Statutory motion reviewing insurance

It has been suggested that the statutory motion to ‘review’ each insurance policy held by the body corporate may be insufficient. In many cases, the decision to renew the insurance has already been made, especially if the renewal date for the insurance falls prior to the date of the AGM for the scheme.

Usually, the decision to renew the insurance will have been made by a committee resolution. However, renewal of the insurance policy may fall into the restricted issues that cannot be decided by the committee⁴⁸ or it may exceed the relevant committee spending limit (discussed at section 4.10 below).

It has been suggested that the BCCM Act should clarify whether renewing the insurance is a restricted matter under the Regulation Modules. It has also been suggested that the statutory motion to review insurance should be amended to refer to a motion approving or confirming insurance each year.

Questions

5. **Should the decision to renew an insurance policy for the scheme be a restricted issue that cannot be decided by the committee? If so, how should provision be made for insurance policies that must be renewed prior to the AGM?**
6. **Should the statutory motion to review insurance policies be amended to refer to approving or confirming the insurance?**

3.4. Quorum

Attendance at general meetings may be in person, by proxy or by written or electronic voting paper.⁴⁹ A general meeting requires a quorum, which is 25% of the number of voters for the meeting. A voter includes the lot owner, the lot owner’s representative or nominee.⁵⁰ Where the number is three or more voters, at least two must be present personally. If the number of voters is less than three, at least one must be present personally.⁵¹

If there is no quorum after 30 minutes, the meeting is adjourned to be held at the same place, day and time one week later.⁵² If not practical to hold the meeting at the same place, it may be held at another place if all owners are notified personally or in writing of the new location prior to the

⁴⁸ BCCM Act s 100; Standard Module ss 42-43; Accommodation Module ss 42-43; Commercial Module s 18; Small Schemes Module s 18.

⁴⁹ Standard Module s 82(1); Accommodation Module s 80(1); Commercial Module s 49(1). Lot owners in schemes under the Small Schemes Module may be present by a vote cast in a way decided by the body corporate: Small Schemes Modules s 43(1).

⁵⁰ Standard Module s 83; Accommodation Module s 81; Commercial Module s 50; Small Schemes Module s 44.

⁵¹ Standard Module s 82(2); Accommodation Module s 80(2); Commercial Module s 49(2); Small Schemes Module s 43(2).

⁵² Standard Module s 82(3); Accommodation Module s 80(3); Commercial Module s 49(3); Small Schemes Module s 43(3).

adjourned meeting starting.⁵³ If a quorum is again not present, the persons present (either personally, by proxy or written or electronic voting paper) will be deemed to form a quorum if the chairperson (or a body corporate manager exercising the powers of the chairperson under a delegation from the body corporate) is present.⁵⁴

3.4.1. Issue – The meaning of voter

Industry stakeholders have suggested that there is some confusion over the meaning of ‘voter’ when it comes to determining if a quorum is present for the purposes of a general meeting. For example, it is unclear if one lot owner who owns two or more lots in the scheme must be counted as just one voter or counted once for each lot owned. Similarly it is unclear whether a lot owner who holds the proxy of another lot owner is counted as one voter or two. It is also unclear whether a lot owner who is unfinancial (owes a body corporate debt) should be counted as a voter for the purposes of a quorum. Lot owners who are unfinancial lose the right to vote on most issues but they may still vote for a motion that requires a resolution without dissent.⁵⁵

Questions

7. **When determining whether a quorum is present, if a person owns several lots in a scheme, should that person be counted as a voter for each lot owned?**
8. **Should a lot owner (who is present personally) who holds the proxy of another lot owner (who is not present) be counted as one voter or as two?**
9. **When determining whether a quorum is present, should a lot owner who owes a body corporate debt be counted as a voter?**

3.4.2. Issue – The requirement to hold a second meeting

A number of industry stakeholders have commented that the second meeting which is required if a quorum is not present is a waste of time and money. Fewer people are likely to attend the second meeting as there is no requirement to give notice (and one week may be too short of a time to get notice to all lot owners in any case). The second meeting significantly increases the cost of holding the AGM. In some cases, the second meeting results in a one week delay in declaring the same results as would have carried had the first meeting gone ahead.

It has been suggested that the requirement to hold the second meeting should be removed. This would mean that if a quorum is not present at the first meeting, those lot owners present or represented by proxy, or voting paper would be deemed to be a quorum and the meeting would go ahead, chaired by a committee member or the body corporate manager.

⁵³ Standard Module s 82(5); Accommodation Module s 80(5); Commercial Module s 49(5); Small Schemes Module s 43(5).

⁵⁴ Standard Module s 82(4); Accommodation Module s 80(4); Commercial Module s 49(4). In the Small Schemes Module, references to chairperson are replaced with the term ‘voter’: s 43(5).

⁵⁵ Standard Module s 84(2); Accommodation Module s 82(2); Commercial Module s 51(2); Small Schemes Module s 45(2).

This may result in some meetings being held 'on the papers'. This means that a body corporate manager could chair a meeting where no lot owners attend. Voters would only be represented by written or electronic voting papers.

If this change is adopted, it may be necessary to safeguard the interests of lot owners who are unable to attend the general meeting. For example, the legislation could allow a set amount of time for lot owners to object to the motions carried at the AGM with a deemed quorum. The body corporate could be prevented from giving effect to resolutions until the set amount of time had passed. This could be modelled on the provisions in Victoria⁵⁶ which allow a general meeting without a quorum to continue but treat all resolutions as interim resolutions until a 29 day period has passed.⁵⁷

Questions

10. **If a quorum is not present after 30 minutes, should the meeting go ahead anyway (chaired by the body corporate manager or the chairperson) thus eliminating the need to hold a second meeting one week later (and saving the expense of the second meeting)?**
11. **Should the body corporate have the ability to hold the general meeting 'on the papers' (that is, decided by the voters present by written and electronic voting papers even if no voters are present personally)?**
12. **Should the legislation safeguard the interest of lot owners by giving them an opportunity to object to motions carried at an AGM with a deemed quorum? If so, how should this be done?**

3.5. Relevant limit for major spending

Under the Standard Module, Accommodation Module and Small Schemes Module, if a motion before the body corporate at a general meeting proposes to carry out work or to acquire personal property or services (including engaging a body corporate manager or service contractor), and the cost is more than the **relevant limit for major spending**,⁵⁸ then the committee or the person proposing the motion must obtain two quotes⁵⁹ for the work, property or service. The quotes must be included with the notice for the general meeting.⁶⁰ There is no relevant limit for major spending for schemes under the Commercial Module.

⁵⁶ *Owners Corporations Act 2006* (Vic) s 78.

⁵⁷ Or, if the lot owners object in the 29 day period, until the motion is approved at a special general meeting: *Owners Corporation Act 2006* s 78(4).

⁵⁸ Standard Module s 152; Accommodation Module s 150; Small Schemes Module s 86. See also the schedule in each module (definition of 'relevant limit for major spending').

⁵⁹ Unless exceptional circumstances apply such as the goods only being available from one source: Standard Module s 152(6); Accommodation Module s 150(6); Small Schemes Module s 186(6).

⁶⁰ Standard Module s 152(5); Accommodation Module s 150(5); Small Schemes Module s 86(5). If the quotations are voluminous, a summary and advice on how to access the full quotations may be sufficient.

Unless the body corporate, by ordinary resolution at a general meeting, sets a different limit, the relevant limit for major spending is the lesser of either \$1,100 multiplied by the number of lots in the scheme⁶¹ or \$10,000.⁶²

This means that for a 10 lot scheme, the relevant limit would be \$10,000 (\$1,100@ 10 = \$11,000 which is higher than \$10,000). A scheme with 100 lots would also have a limit of \$10,000. In some cases, the relevant limit for major spending may be lower than the limit allowed for committee spending (discussed at section 4.10 below, which is \$200 per lot and in a 100 lot scheme would be \$20,000).

3.5.1. Issue – Obtaining quotes

One issue with the current requirement is that unless at least one quote is obtained, the person proposing the motion may not know whether the proposal will be over the relevant limit. It has been suggested that at least one quote should be provided for any expenditure as this will give the body corporate a better idea of what will be involved in the proposal.

A second issue with this requirement is that a motion to appoint or re-appoint a body corporate manager will generally be greater than the relevant limit for major spending and thus require two quotes. It has been suggested that in the case of reappointment, where the motion to reappoint the body corporate manager is submitted by the body corporate manager, that there is a potential for collusion between body corporate managers. The body corporate manager could use an inflated quote from a competitor to make their own quote appear more reasonable. This means the body corporate will not be considering accurate quotes if it relies only on the quotes submitted by the body corporate manager. However, if a committee is concerned about this issue, they could seek their own quotes from alternative sources.

It has been suggested that the motion to appoint or reappoint a body corporate manager should be exempt from the two quote requirement, in the same way that motions to engage a service contractor that is also a letting agent are excluded.⁶³ This would put an onus on the committee to obtain alternative quotes when considering appointing or reappointing a body corporate manager. Alternatively, it has been suggested that a motion to reappoint the current body corporate manager could be exempt from the two quote requirement if the committee has proposed the resolution.

Questions

- 13. Is the current relevant limit for major spending appropriate for matters considered at general meetings of the body corporate?**
- 14. Should two quotes continue to be required for motions involving expenditure above the relevant limit for major spending?**

⁶¹ Or for layered schemes, the number of layered lots (defined as the number of lots that are not a community titles scheme plus, for each lot that is a community titles scheme, the number of lots in that scheme): Standard Module and Accommodation Module, schedule (definition of 'number of layered lots').

⁶² Under the Small Schemes Module the maximum can only be \$6,600 (\$1100 @ six lots).

⁶³ Standard Module s 152(1)(a); Accommodation Module s 150(1)(a).

15. Should the default relevant limit for major spending be increased or removed altogether?
16. Should the relevant limit for major spending be different for small schemes (e.g. 10 or fewer lots) and large schemes (e.g. 100 or more lots)?
17. Should one quote be required for any motion being considered by the body corporate at a general meeting that involves expenditure?
18. Should a motion to appoint or reappoint a body corporate manager be exempt from the requirement to provide two quotes? Why or why not?

3.6. Resolutions

Decisions of the body corporate are made by resolution. An **ordinary resolution** requires that more votes are counted in favour of the resolution than are counted against it.⁶⁴ A **majority resolution** requires that the votes counted in favour of the motion are more than 50% of the lots for which persons are entitled to vote on that motion.⁶⁵ A **special resolution** requires: at least two thirds of votes cast are in favour of the resolution; no more than 25% of the lots in the scheme vote against the resolution; and the lots voting against the resolution do not have more than 25% of the total contribution schedule lot entitlements for the scheme.⁶⁶ A **resolution without dissent** requires that no vote is counted against the resolution.⁶⁷

3.6.1. Resolution without dissent

A resolution without dissent is only required in only a very limited number of circumstances such as acquiring or dealing with scheme land,⁶⁸ dealing with money in particular cases,⁶⁹ adjusting the contribution schedule,⁷⁰ terminating or amalgamating the scheme⁷¹ or attaching an exclusive use by-law to a lot.⁷²

While a resolution without dissent may protect important individual rights to common property, there is a general perception that achieving a resolution without dissent is virtually impossible as it is effectively a requirement for unanimity. A single lot owner may prevent the body corporate from carrying out an action.⁷³

⁶⁴ BCCM Act ss 108.-110. An ordinary resolution is usually counted as one vote per lot. However, if a poll is properly requested, the votes will be counted by contribution schedule lot entitlements. The motion will pass if the total of the contribution schedule lot entitlements of the lots voting in favour of the motion are greater than the total of the contribution schedule lot entitlements of the lots voting against the motion.

⁶⁵ BCCM Act s 107.

⁶⁶ BCCM Act s 106.

⁶⁷ BCCM Act s 105.

⁶⁸ For example, BCCM Act ss 37, 40; Standard Module ss 161-162, 166-167.

⁶⁹ For example, borrowing beyond a particular amount (see Standard Module s 150); or using an insurance payout for a purpose other than repairing the damaged property (see Standard Module s 189).

⁷⁰ BCCM Act s 47A.

⁷¹ BCCM Act ss 78, 85, 91.

⁷² BCCM Act s 171.

⁷³ Although it should be noted that an adjudicator has the capacity to overturn a decision of the body corporate not to pass a resolution without dissent if the opposition to the resolution is unreasonable in the circumstances: BCCM Act schedule 5, item 10.

A body corporate is a community of individuals. The primary object of the BCCM Act is to provide for flexible and contemporary *communally* based arrangements, having regard to the secondary objects, which include balancing the rights of individuals with the *responsibility for self-management* as an inherent aspect of community titles schemes (emphasis added).⁷⁴

Given the emphasis on communal arrangements and the self-management of communities, the question as to whether one individual in the community should be able to completely thwart the will of the majority of individuals in the community is extremely relevant.

3.6.1.1. Issue – The will of the majority

It has been argued that, as in any community, the majority should be able to make decisions when there is a clear will to do so, even if those decisions are not unanimously supported by the members of that community. In practice, this would entail the removal of the requirement to obtain a resolution without dissent. It could be replaced with a resolution that has a different threshold, such as a special resolution or some other type of resolution that requires less than unanimous support.

If the requirement to obtain a resolution without dissent is removed from the BCCM Act, there may be a need to increase the available safeguards for lot owners to ensure that the minority are not unduly affected by decisions of the body corporate. Currently, an aggrieved person has a right to challenge any decision of the body corporate on the grounds of reasonableness of the decision, as the body corporate must act reasonably in anything that it does, including making or not making decisions.⁷⁵ However, if the resolution without dissent requirement is removed, it may be necessary to increase the grounds on which an aggrieved person can make an application to an adjudicator or tribunal.

Questions

- 19. Is there any reason to keep the requirement for a resolution without dissent? Would it make more sense to replace it, where it is required, with a special resolution (or some higher threshold that is lower than unanimous)?**
- 20. If the resolution without dissent is removed, what additional safeguards should be put in place to protect minority interest? For example, should the BCCM Act provide a right for lot owners in the minority to challenge a decision of the body corporate to an adjudicator on grounds other than the reasonableness of the decision?**

⁷⁴ BCCM Act ss 2, 4.

⁷⁵ BCCM Act s 94(2).

3.6.2. Majority Resolution

A majority resolution requires more than 50% of *the lots* vote in favour of the motion.⁷⁶ This makes it more difficult to achieve than both a special resolution and a resolution without dissent, as majority resolutions are based on the number of lots in the scheme, not the number of votes cast. For example, at a 100 lot scheme, if 25 voters are present and they all vote to support the majority resolution, it will not pass. Adding to the difficulty of actually achieving this type of resolution is that under the Standard, Accommodation and Commercial Modules, a proxy cannot be exercised on a vote for a majority resolution.⁷⁷

3.6.2.1. Issue – Difficulty of achieving majority resolution

Under the BCCM Act, a majority resolution is only required in one situation. The body corporate may decide by majority resolution to require the letting agent to transfer the business if grounds exist for the body corporate to require the transfer.⁷⁸

The majority resolution requires the support of at least 50% of the lots. Some large schemes have difficulty getting 50% of the lots in the scheme to even participate in the general meeting, let alone vote in favour of a particular issue.

Given the limited use and the difficulty in achieving, it may be simpler to replace the majority resolution with a special resolution, a resolution without dissent (to the extent this is retained) or some other threshold that is based on the number of votes cast rather than the number of lots in a scheme. If this is to occur, there must be some type of protection for lot owners (or third parties, such as letting agents) if their interests are affected by a vote of the body corporate. This may be by application to an adjudicator or the tribunal.

Questions

- 21. Is there any reason to keep the requirement for a majority resolution? Should it be replaced with a special resolution, a resolution without dissent or some other threshold that is based on the number of votes cast rather than the number of lots in the scheme?**
- 22. If the majority resolution is removed, what safeguard should be put in place for the letting agent?**

3.6.3. Poll for an ordinary resolution

A person entitled to vote at a general meeting of the body corporate may request that an ordinary resolution be decided by a poll.⁷⁹ If a poll is properly requested, the motion will pass only if the total contribution schedule lot entitlements for the lots for which votes are counted for the motion is more

⁷⁶ BCCM Act s 107.

⁷⁷ Standard Module s 109(3)(e); Accommodation Module s 107(3)(e); Commercial Module s 76(3)(c).

⁷⁸ BCCM Act s 140.

⁷⁹ Unless the ordinary resolution is conducted by secret ballot: BCCM Act s 109(1).

than the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion.⁸⁰

Presumably, this is intended to ensure that lot owners that pay a larger share of the expenses at the scheme have a greater say in the decisions at the scheme.

It has been suggested that polls are not commonly requested at general meetings. Additionally, many schemes have contribution schedule lot entitlements that are identical for all lots or where there is very little difference between the highest and the lowest contribution schedule lot entitlement. Given this, it has been suggested that the ability to call for a poll for a motion to be decided by ordinary resolution serves very little purpose.

Questions

23. What types of ordinary resolutions are commonly decided by a poll?

24. Are there any reasons to retain the ability to call for a poll on a motion to be decided by an ordinary resolution at a general meeting?

3.7. Minutes of general meeting

The body corporate must ensure that full and accurate minutes are taken at each general meeting.⁸¹ The minutes must be given to each lot owner within 21 days after the meeting.⁸² The issue of whether meeting minutes should be distributed electronically is discussed at section 5.2.3 below.

A number of concerns have been raised in regards to the 'full and accurate' requirement. The Regulation Modules define full and accurate to mean minutes that include specified information including: the time and place of the meeting; the names of attendees; details of proxies; the words of each motion voted on; and a record of the votes for and against the motion.

Question

25. Is there any other information that should be included in the minutes to ensure they are full and accurate?

⁸⁰ BCCM Act s 110(3)

⁸¹ Standard Module s 96(1); Accommodation Module s 94(1); Commercial Module s 63(1); Small Schemes Module s 51(1).

⁸² Standard Module s 96(2); Accommodation Module s 94(2); Commercial Module s 63(2); Small Schemes Module s 51(2).

4. The committee of the body corporate

The body corporate in a general meeting chooses members to form the committee to make decisions on behalf of the body corporate throughout the year.⁸³ The committee puts into effect the lawful decisions of the body corporate.⁸⁴ Under the Small Schemes Module, the committee is composed of just two positions – the secretary and treasurer.⁸⁵ The discussion below largely focuses on the requirements for committees and committee members under the Standard Module, the Accommodation Module and the Commercial Module, with only minor consideration of the Small Schemes Module. The Two-lot Module is not considered below as there is no committee (decisions are made by lot owner agreement).⁸⁶

4.1. Composition of the committee

Under the Standard Module, the Accommodation Module and the Commercial Module, the committee of the body corporate is composed of:

- **voting members** which include **executive members** (chairperson, secretary and treasurer) and **ordinary members**,⁸⁷ and
- **non-voting members**⁸⁸ which include the body corporate manager and the caretaking service contractor⁸⁹ (even if the person is also a member of the body corporate, they cannot be a voting member).⁹⁰

The **required number** of voting members for a committee under the Standard Module, Accommodation Module and Commercial Module is at least three, but not more than seven if the scheme has seven or more lots. If the scheme has less than seven lots the maximum number of voting members is equal to the number of lots in the scheme.⁹¹

4.1.1. Issue – Maximum number of committee members

The maximum of seven committee members may create problems in two scenarios. The first is in very large schemes. A scheme with 300 lots may have the same number of committee members as a scheme with only eight lots. A second problem may arise in some layered schemes. Each subsidiary scheme is one lot in the principal scheme.⁹² A layered scheme may contain more than seven lots. This means that not every subsidiary scheme will have a representative on the committee of the principal body corporate.

⁸³ Except for restricted issues (such as those in Standard Module ss 42-43) a decision of the committee is a decision of the body corporate: BCCM Act s 100(1).

⁸⁴ BCCM Act s 101.

⁸⁵ Small Schemes Module s 10.

⁸⁶ Two-lot Module s 5.

⁸⁷ Standard Module s 9(5); Accommodation Module s 10(5); Commercial Module s 10(5).

⁸⁸ Standard Module s 12; Accommodation Module s 13; Commercial Module s 10(3).

⁸⁹ The Commercial Module does not include a caretaking service contractor in the definition of 'non-voting member'.

⁹⁰ Standard Module ss 10(2), 12(2)-(3); Accommodation Module ss 11(2), 12(2)-(3); Commercial Module s 11(2).

⁹¹ See schedule (definition of 'required number' and 'voting member') in each of the Standard Module, Accommodation Module and Commercial Module.

⁹² For an example of a layered scheme, see BCCM Act schedule 1 part 3.

Questions

- 26. Should the maximum number of voting members of the committee be increased above seven? If so, in what circumstances?**
- 27. If the body corporate is a principal body corporate for a layered scheme that has more than seven subsidiary schemes, should there be one committee representative for each subsidiary scheme?**

4.2. Part 5 Appointment

There must be a committee for a body corporate under the Regulation Modules.⁹³ Where a committee has been elected, the body corporate may delegate the functions of an executive member of the committee to a body corporate manager⁹⁴ but it cannot delegate all of its functions.⁹⁵ If no committee is elected, the body corporate may appoint a body corporate manager to carry out the functions of the committee (a **part 5 appointment**).⁹⁶

The part 5 appointment is available if, following the AGM, the total number of voting members is lower than three or the executive positions are not filled.⁹⁷ In these circumstances, the body corporate may engage a body corporate manager to carry out the functions of the committee by following the process in the relevant Regulation Module.⁹⁸

4.2.1. Issue – Procedural requirements for part 5 appointment

To make a part 5 appointment, the body corporate must be given material that includes the terms of the engagement and an explanatory note in the approved form explaining the nature of the engagement. Under the Standard Module and the Accommodation Module, the motion appointing the body corporate manager must be approved by a secret ballot passed by a special resolution where no vote is exercised by proxy.⁹⁹ The Small Schemes Module does not require a secret ballot or that no vote is exercised by proxy.¹⁰⁰

If these requirements are not achievable at the AGM that fails to elect a committee then an EGM must be held. The agenda for the EGM must include a motion to appoint the body corporate manager under a part 5 Appointment.¹⁰¹ Under the Standard Module and the Accommodation Module, the body corporate may appoint an eligible person (including a co-owner, if necessary to bring the total number of voting members on the committee to three)¹⁰² to a vacant committee position. If this does

⁹³ Standard Module s 7; Accommodation Module s 8; Commercial Module s 8; Small Schemes Module s 8.

⁹⁴ BCCM Act s 119.

⁹⁵ BCCM Act s 97.

⁹⁶ BCCM Act ss 98, 120. Standard Module s 7(2); Accommodation Module s 8(2); Small Schemes Module s 8(2). The Commercial Module does not contain provisions for a part 5 appointment.

⁹⁷ Standard Module s 58(3); Accommodation Module s 56(3).

⁹⁸ Standard Module ss 29-32, 58-62; Accommodation Module ss 29-32, 56-60; Small Schemes Module ss 23-27.

⁹⁹ Standard Module s 58(2); Accommodation Module s 56(2).

¹⁰⁰ Small Schemes Module s 23(2).

¹⁰¹ Standard Module s 32; Accommodation Module s 32.

¹⁰² Standard Module s 31(2); Accommodation Module s 31(2).

not fill the executive positions or bring the number of members to three, then the body corporate may pass a motion to make a part 5 appointment.

It has been suggested that the procedural requirements to make a part 5 appointment are onerous. It has been suggested that the requirements should be relaxed so that the body corporate can more easily make a part 5 appointment at the same AGM that has failed to elect a committee. For example, it has been suggested that the part 5 appointment should not require a vote by secret ballot. It would also be necessary to amend the other requirements of a part 5 appointment so that the body corporate would not be required to hold an EGM just to make a part 5 appointment.

Questions

28. Should a body corporate be able to engage a body corporate manager under a part 5 appointment without the need to hold an EGM?

29. Should the vote to appoint a body corporate manager under a part 5 appointment require a secret ballot?

4.2.2. Issue – Greater delegation to the body corporate manager

If the committee positions are not filled at the EGM and a part 5 appointment is made, the body corporate may not choose a committee member¹⁰³ and the term of office of any committee member previously elected will come to an end.¹⁰⁴ There is no committee for the body corporate if a body corporate manager is appointed under part 5.¹⁰⁵

It has been suggested that schemes should have the ability to appoint a body corporate manager to carry out all of the functions of the committee under a part 5 appointment but still retain a committee. This would allow the body corporate manager to make routine decisions without the delay of contacting the committee. In this situation, the body corporate could set particular matters as restricted matters¹⁰⁶ to be decided by the body corporate in a general meeting.

The Centre understands that in many situations, committee members are happy to let the body corporate manager take actions as they see fit, often letting body corporate managers make decisions on most matters. In these types of situations, a body corporate manager is effectively acting under a part 5 appointment but without the proper authorisation. This may create problems if lot owners or others require the body corporate manager to demonstrate the authorisation for particular actions attempted or undertaken.

Allowing a scheme to make a part 5 appointment and retain a committee may amount to merely recognising an existing practice in the industry. Further, it may provide greater protection for body

¹⁰³ Standard Module s 60(3); Accommodation Module s 58(3).

¹⁰⁴ Standard Module s 33(4); Accommodation Module s 33(4).

¹⁰⁵ Standard Module s 7(2); Accommodation Module s 8(2).

¹⁰⁶ Standard Module ss 42-43; Accommodation Module ss 42-43; Commercial Module s 18; Small Schemes Module s 18.

corporate managers by giving them the authorisation needed to take particular actions. It may also give more flexibility to lot owners and committee members who prefer a minimalist approach.

Questions

30. Should a body corporate be able to engage a body corporate manager to perform all of the functions of the committee and still retain a committee?

31. If so, should this be limited to bodies corporate with less than a particular number of lots? If yes, how many?

4.3. Eligibility to be a voting member of the committee

A voting member of the committee must be an owner¹⁰⁷ or the family member or power of attorney of an owner, or if the owner is a corporation, the director, secretary or other nominee of the corporation.¹⁰⁸ However, certain parties are excluded from being voting members of the committee, even if they are otherwise eligible.

The Standard Module¹⁰⁹ and Accommodation Module¹¹⁰ exclude:

- a body corporate manager,¹¹¹ service contractor¹¹² (including caretaking service contractors¹¹³) or letting agent¹¹⁴ for the scheme; and
- an associate¹¹⁵ of a body corporate manager, service contractor or letting agent for the scheme;
- any person who conducts a letting agent business¹¹⁶ for the scheme (even if not a letting agent); and
- any person who owes a body corporate debt at the time the voting members are chosen.

The Small Schemes Module has basically the same exclusions as the Standard Module.¹¹⁷ The Commercial Module excludes only the body corporate manager, an associate of the body corporate manager and any owner who owes a body corporate debt.¹¹⁸

¹⁰⁷ Every lot owner is automatically a member of the body corporate: BCCM Act s 31.

¹⁰⁸ Standard Module s 10(1); Accommodation Module s 11(1); Commercial Module s 11(1); Small Schemes Module s 11(1)

¹⁰⁹ Standard Module s 10(2).

¹¹⁰ Accommodation Module s 11(2).

¹¹¹ BCCM Act s 14 (definition of 'body corporate manager').

¹¹² BCCM Act s 15 (definition of 'service contractor').

¹¹³ Caretaking service contractor is a service contractor who is also a letting agent or an associate of a letting agent: BCCM Act s 16(1) (definition of 'letting agent'), s 309 (definition of 'associate'), Schedule 6 (definition of 'caretaking service contractor').

¹¹⁴ BCCM Act s 16(1) (definition of 'letting agent').

¹¹⁵ BCCM Act s 309 (definition of 'associate').

¹¹⁶ BCCM Act s 16(2) (definition of 'letting agent business').

¹¹⁷ There is no letting agent for schemes under the Small Schemes Module (see s 3). The other exclusions are the same as the Standard Module: Small Schemes Module s 11(2).

¹¹⁸ Commercial Module s 11(2).

4.3.1. Issue – Committee voting rights for resident managers

It has been suggested that under the Standard Module and Accommodation Module caretaking service contractors should be eligible to be elected as a voting member of the scheme. The caretaking service contractor (generally referred to as a **resident manager**) owns a lot in the scheme and runs a business as a letting agent and building manager for the scheme. In many cases, the total investment in the scheme held by the caretaking service contractor, including the value of the business and the value of the lot, is greater than the total investment of most other lot owners in the scheme.

It has been argued that caretaking service contractors should be eligible to act as voting members on the committee in order to participate in the decisions that affect the investment. Caretaking service contractors would continue to be subject to the requirements in the relevant codes of conduct and would be required to recuse themselves from a committee vote in the case of a conflict of interest.

Question

32. Should a resident manager be eligible to be a voting member of the committee for the body corporate (but excluded from voting on motions relating to the renewal or performance of the caretaking service contract)?

4.3.2. Issue – Exclusion of ‘associates’ from the committee

A person otherwise eligible to act as a voting member of the committee will be ineligible if they are an associate of a body corporate manager, a service contractor or a letting agent for the scheme.

Under the BCCM Act, a person is an associate of another person if they are related in any of the following ways:

- by marriage, de-facto or registered relationship;
- by blood such as parent / child, siblings, cousins;
- through a partnership;
- as employee / employer;
- through a fiduciary relationship or where a person is accustomed or under an obligation to act at the direction of another;¹¹⁹ and
- an executive officer and a corporation, or a corporation and a person who controls or substantially influences that corporation’s conduct.¹²⁰

It has been suggested that the definition of ‘associate’ is too broad. A literal reading of the definition could exclude a lot owner from being a voting member of the committee just because that lot owner is the adult child of the body corporate manager for the scheme.

¹¹⁹ This can be formal or informal but does not include the relationship between the owner of a lot in a scheme and a letting agent for the scheme: BCCM Act s 309(3).

¹²⁰ BCCM Act s 309.

Question

33. Is the definition of ‘associate’ too broad, given that deemed association may stop an otherwise eligible lot owner from being able to act as a voting member of the committee?

4.4. Choosing committee members

Committee members are chosen during the AGM in accordance with the relevant Regulation Module. Under the Standard Module and the Accommodation Module, the body corporate must follow the process in the relevant Regulation Module, unless they agree by special resolution to use another method.¹²¹ Calls for nominations for committee members must be given at least three weeks, but not more than six weeks, before the end of the body corporate’s financial year.¹²²

Under the Standard Module, if another method has not been approved by the body corporate, committee members are elected at the AGM by secret ballot or, if the body corporate so decides by ordinary resolution, by an open ballot.¹²³ The requirements are the same under the Accommodation Module except that a secret ballot is not required.¹²⁴ Voting papers for open ballots and secret ballots must be included with the notice and agenda of the general meeting sent to lot owners.¹²⁵

4.4.1. Issue – Consistency of methods

The Regulation Modules have slightly different requirements. Under the Accommodation Module there is no requirement for a secret ballot.¹²⁶ The Commercial Module provides that the committee must be chosen by election in a way decided by the body corporate by special resolution.¹²⁷ For schemes under the Small Schemes Module, election must be in accordance with the meeting rules¹²⁸ or if no meeting rules apply, as decided by special resolution.¹²⁹

The differences relate to the types of schemes covered by the relevant Regulation Module. It may be assumed that the differences exist for a reason. For example, there is little reason why the rules under the Commercial Module and the Small Schemes Module should be as prescriptive as the rules under the Standard Module or the Accommodation Module. Despite this, it has been suggested that it may be appropriate for the Regulation Modules to have the same requirements in terms of the methods of choosing committee members, as consistency in this regard will be helpful for lot owners in all schemes.

¹²¹ Standard Module s 15(1); Accommodation Module s 16(1). The alternative method must be fair and reasonable in the circumstances of the scheme: Standard Module s 15(6); Accommodation Module s 16(5).

¹²² Standard Module s 16(3); Accommodation Module s 16(3).

¹²³ Standard Module s 15(2).

¹²⁴ Accommodation Module s 16.

¹²⁵ Standard Module ss 70(c)-(d); Accommodation Module s 68(c)-(d).

¹²⁶ Accommodation Module s 16.

¹²⁷ Commercial Module s 14.

¹²⁸ Small Schemes Module s 7(b).

¹²⁹ Small Schemes Module s 14(2).

Questions

34. Should there be consistency across the Standard Module, Accommodation Module and Commercial Module regarding the method of electing committee members?

35. If yes, what method should be used?

4.4.2. Issue – Only three lot owners

If there are three or more lots in the scheme, but only two different lot owners, those two lot owners, or their nominees will be the committee members. They must decide among themselves who will hold which executive position, or if they cannot agree, they must jointly hold the executive positions.¹³⁰ If there are only three different lot owners, however, the lot owners must nominate and have an election to get on the committee.

Under the *Building Units and Group Titles Act 1980* (Qld), which applied to schemes prior to 1997 (and which continues to apply to specified Acts)¹³¹ if there are three or fewer owners, those three make up the executive committee.¹³² It has been suggested that where there are only three lot owners for a scheme under the BCCM Act, the three (or their nominees) should be the executive members of the committee without the need to hold an election.

Question

36. If there are three or more lots in a scheme but only three different lot owners, should the lot owners (or their nominees) automatically be the executive members of the committee without the need to hold an election?

4.5. Code of conduct for committee voting members

Committee voting members are subject to a code of conduct in schedule 1A of the BCCM Act.¹³³ The code of conduct applies to each person who is a committee member and a voting member of the committee under a Regulation Module applying to the scheme.¹³⁴

If a committee voting member breaches the code of conduct, the body corporate may take action to remove the member from the committee. The Regulation Modules set out a process for removing committee members for a breach of the code of conduct. The first step is an ordinary resolution of the body corporate in a general meeting to give the accused committee voting member a written

¹³⁰ Standard Module s 13(4); Accommodation Module s 14(5); Commercial Module s 12(4); Small Schemes Modules s 12(4).

¹³¹ BCCM s 326.

¹³² *Building Units and Group Titles Act 1980* (Qld) s 42(3).

¹³³ BCCM Act s 101B, schedule 1A and schedule 6 (definition of ‘code of conduct’).

¹³⁴ BCCM Act s 101B(1).

notice detailing the breach.¹³⁵ The accused committee voting member has 21 days to provide a written response.¹³⁶ At the next general meeting called after the 21 day period, the body corporate may vote by ordinary resolution to remove the accused committee voting member from office¹³⁷ and at the same general meeting appoint an eligible person to fill the vacancy¹³⁸ or call a general meeting to choose a person to fill the vacancy.¹³⁹ Under the Commercial Module, the committee may appoint an eligible member to fill the vacancy or call a general meeting.¹⁴⁰ Under the Small Schemes Module, a vacancy can be filled by calling an EGM.¹⁴¹

The removal process for a code of conduct breach requires two general meetings. The first general meeting is to decide to give the accused committee voting member a written notice. The second general meeting, which must be called after the mandatory time period has expired, is to vote to remove the person from office. This process must be restarted if there is an AGM in between these two general meetings. This requirement makes it difficult to remove a committee voting member for a breach of the code of conduct.

4.5.1. Issue – Difficulty removing committee voting members

In addition to the ability to remove a committee member for a breach of the code of conduct following the process set out in the Regulation Modules, the body corporate retains a general ability to remove a committee member from office for a particular reason or for no reason at all by passing an ordinary resolution in a general meeting.¹⁴² This power is separate¹⁴³ from the process of removal for a breach of the code of conduct outlined in the Regulation Modules.

Despite the availability of this general power to remove a committee voting member, it has been suggested that the process of removing committee voting members for a breach of the code of conduct using the process in the Regulation Modules is too time consuming and expensive to be of any real value. The cost of two EGMs may be very high especially in large schemes under professional management. One option to shorten the process is to allow a committee to decide to issue the accused committee voting member a notice detailing a breach. A vote to remove the accused committee voting member should continue to require a resolution of the body corporate in a general meeting. Alternatively, the legislation could clarify the two removal options, providing that the general power is to remove a committee member for no reason, or for any reason and without a right of reply by the committee member, whereas the more formal process is only for removal due to a breach of the code of conduct and gives the committee member a right of reply to the allegations.

It has also been suggested that the code of conduct could address additional issues. For example, it is silent about attending committee meetings. The Regulation Modules provide that a committee

¹³⁵ Standard Module s 34; Accommodation Module s 34; Commercial Module s 16; Small Schemes Module s 16.

¹³⁶ Standard Module s 34(1)(c); Accommodation Module s 34(1)(c); Commercial Module s 16(1)(c); Small Schemes Module s 16(1)(c).

¹³⁷ Standard Module s 35; Accommodation Module s 35; Commercial Module s 17; Small Schemes Module s 17.

¹³⁸ Standard Module s 37; Accommodation Module s 37.

¹³⁹ Standard Module s 38; Accommodation Module s 38.

¹⁴⁰ Commercial Module s 15(4).

¹⁴¹ Small Schemes Module s 12(5).

¹⁴² Standard Module s 33(2)(f); Accommodation Module s 33(2)(f); Commercial Module s 15(2)(f); Small Schemes Module s 15(2)(e).

¹⁴³ See *Searene Whitsunday* [2012] QBCCMCmr 219 at paras [47] – [51].

member's position becomes vacant if the member is not present personally or by proxy at two consecutive committee meetings without the committee's leave.¹⁴⁴ It has been suggested that attendance at committee meetings could be added to the code of conduct.

Once a lot owner has been removed from office for breach of the code of conduct, there is no restriction on that lot owner renominating for a committee position.

Questions

- 37. Should the legislation clarify the two removal options and enumerate the situations in which each may be used to remove a committee member?**
- 38. Should the procedure for removing committee voting members for a breach of the code of conduct be made shorter so that it can be done without the need to hold two general meetings (for example, by allowing the committee to decide to issue a written notice detailing the breach, without the need for a general meeting)?**
- 39. Does the code of conduct for committee voting members address relevant issues? Are there any additional issues that should be addressed in the code of conduct?**
- 40. Should lot owners who have been removed from the committee be prohibited from renominating for a committee position?**

4.5.2. Issue – Removing the entire committee

In some schemes, the body corporate is dissatisfied with the conduct of several committee members and sometimes even with the entire committee. Industry stakeholders have suggested that the BCCM Act and the Regulation Modules are not clear whether the entire committee can be removed by one resolution of the body corporate or whether there must be a resolution to remove each committee member.

Individual motions for each committee member are likely to stand a greater chance of being approved by the body corporate. An individual motion for each committee member being removed allows lot owners who support the removal of the entire committee to vote for all the motions. It also allows lot owners who support removal of some of the committee members to vote just for those they want to see removed. If there is a single motion to remove the entire committee, any lot owner who wants to remove some, but not all, committee members, must vote against the entire motion, as they cannot vote to support just part of a motion.

¹⁴⁴ Standard Module s 33(2)(d); Accommodation Module s 33(2)(d); Commercial Module s 15(2)(d). This does not apply under the Small Scheme Module.

Question

41. Should the BCCM Act and the Regulation Modules specify whether the body corporate can remove the entire committee with a single motion or should a separate motion be required to remove each committee member?

4.6. Code of conduct for non-voting members

Non-voting members of the committee (body corporate managers and caretaking service contractors) are subject to a code of conduct contained in schedule 2 of the BCCM Act.¹⁴⁵ Non-voting members that are letting agents are also subject to an additional code of conduct contained in schedule 3 of the BCCM Act.¹⁴⁶ Caretaking service contractors, which by definition are letting agents,¹⁴⁷ are also subject to this code.

4.6.1. Issue – Breach of relevant code of conduct

If a non-voting member of the committee is accused of breaching the relevant code of conduct, there is little the lot owners can do. A body corporate manager or a caretaking service contractor who breaches the code of conduct in schedule 2 of the BCCM Act will be in breach of the terms of the contract with the body corporate¹⁴⁸ and the body corporate may have a remedy for breach of contract. It may be that the only remedy the body corporate has available is to enforce the terms of the contract.

If a letting agent or the caretaking service contractor breaches the code of conduct in schedule 3, the body corporate may issue a code contravention notice.¹⁴⁹ The code contravention notice must be authorised by an ordinary resolution of the body corporate at a general meeting decided by secret ballot.¹⁵⁰ Failure to comply with a code contravention notice may be grounds for the body corporate to require the letting agent to transfer the letting agent business.¹⁵¹

It has been suggested that where a body corporate has a dispute with the body corporate manager or the caretaking service contractor, that there is little ability to exclude that party from receiving communications and attending committee meetings. Arguably, the conduct of the body corporate manager or the caretaking service contractor in such circumstances will be guided by the existing duties to act with honesty, fairness and professionalism¹⁵² and skill, care and diligence.¹⁵³ Despite these existing duties it may be appropriate to expand the relevant codes of conduct to address additional types of behaviour that may be desirable in situations such as where there is a dispute between the body corporate and the body corporate manager or the caretaking service contractor.

¹⁴⁵ BCCM Act s 118; schedule 2 and schedule 6 (definition of ‘code of conduct’).

¹⁴⁶ BCCM Act schedule 3 and schedule 6 (definition of ‘code of conduct’).

¹⁴⁷ BCCM Act schedule 6 (definition of ‘caretaking service contractor’).

¹⁴⁸ The provisions of the code of conduct in schedule 2 are taken to be included in the terms of the contract engaging the body corporate manager or caretaking service contractor: BCCM Act s 118.

¹⁴⁹ BCCM Act s 139.

¹⁵⁰ BCCM Act s 139(1).

¹⁵¹ BCCM Act s 138.

¹⁵² BCCM Act Sch 2 item 2 and Sch 3 item 1.

¹⁵³ BCCM Act Sch 2 item 3 and Sch 3 item 2.

Questions

- 42. Should the non-voting members of the committee also be subject to the code of conduct in schedule 1A (for committee voting members)?**
- 43. What should happen if a body corporate manager or a caretaking service contractor breaches the code of conduct in schedule 2 or schedule 3 of the BCCM Act?**
- 44. Do the codes of conduct for non-voting members and letting agents address relevant issues? Are there any additional issues that should be addressed in the codes?**

4.7. Committee meetings

The first committee meeting for a scheme is held in a location as determined by the person calling the meeting. After that, the meeting is held in a location as agreed by the committee.¹⁵⁴ Under the Standard Module and the Accommodation Module, the meeting must be held no more than 15km from scheme land, if requested by at least half of the number of committee members required to make up a quorum.¹⁵⁵

There are no requirements to hold committee meetings. They are called as frequently or as infrequently as necessary for the scheme. Under the Small Schemes Module, committee meetings are called at the times and places as decided by the committee.¹⁵⁶ Under the other Regulation Modules, committee meetings are called by the secretary or in the secretary's absence, by the chairperson (or another committee member if both are absent).¹⁵⁷ Notice of committee meetings must be given to all other committee members (other than the member calling the meeting) at least seven days prior to the meeting. The notice period may be shortened to two days if all committee members agree to a shorter notice period for the proposed meeting either at the previous committee meeting or in writing.¹⁵⁸

The notice of the meeting must contain an agenda and include details of when and where the meeting is to be held.¹⁵⁹ Advice about the meeting must also be given to each lot owner individually (other than an owner who has opted out of receiving such notice).¹⁶⁰ The advice must include the agenda for the meeting and be delivered to the residential or business address of the lot owner when the notice of the meeting is given to the committee members.¹⁶¹

¹⁵⁴ Standard Module s 46; Accommodation Module s 46; Commercial Module s 21.

¹⁵⁵ Standard Module s 46(3); Accommodation Module s 46(3).

¹⁵⁶ Small Schemes Module s 19.

¹⁵⁷ Standard Module s 44(1); Accommodation Module s 44(1); Commercial Module s 19(1).

¹⁵⁸ Standard Module s 45; Accommodation Module s 45; Commercial Module s 20.

¹⁵⁹ Standard Module ss 45(4), 47(1); Accommodation Module ss 45(4), 47(1); Commercial Module ss 20(4), 22(1).

¹⁶⁰ Standard Module s 45(3); Accommodation Module s 45(3); Commercial Module s 20(3).

¹⁶¹ Standard Module s 45(4); Accommodation Module s 45(4); Commercial Module s 20(4).

Committee meetings may be requested by a quorum¹⁶² of the voting members of the committee¹⁶³ by writing to the secretary or chairperson. A meeting requested in this manner must be held within 21 days after the written request is given.¹⁶⁴

A quorum for a committee meeting requires at least ½ the number of voting members of the committee.¹⁶⁵ A voting member may be present by proxy¹⁶⁶ but under the Standard Module, the body corporate may prohibit proxies for committee meetings.¹⁶⁷ The issue of proxies is considered further at section 5.6.

Lot owners who are not committee members may attend the committee meeting if they give 24 hours written notice to the secretary.¹⁶⁸ However, these lot owners may be excluded from discussions of particular items of business, such as a breach of the by-laws or a dispute between the lot owner and the body corporate.¹⁶⁹ The lot owner may speak only with the permission of the committee, which may be revoked at any time.¹⁷⁰

4.7.1. Issue – Placing items on the agenda

It has been suggested that non-members may require greater opportunity to have items addressed by the committee. Currently there is no requirement to hold committee meetings and generally no timeframe for the body corporate to respond to requests from lot owners.¹⁷¹

Lot owners have no mechanism to force the committee to have a meeting (although they may call an EGM if 25% of lot owners agree in writing).¹⁷² Lot owners who wish to have an item added to the agenda of a committee meeting may have difficulty as the notice period is only seven days and may be shortened to two days. While the agenda is set before the meeting, the committee is not required to consider other matters that are not on the agenda.¹⁷³

Questions

45. Should greater notice of the committee meetings be given to lot owners who are not members of the committee?

¹⁶² A quorum for a committee meeting is at least ½ the number of voting members for the committee: Standard Module s 49; Accommodation Module s 49; Commercial Module s 24.

¹⁶³ Standard Module s 44(2); Accommodation Module s 44(2); Commercial Module s 19(2).

¹⁶⁴ Standard Module s 44(3); Accommodation Module s 44(3); Commercial Module s 19(3).

¹⁶⁵ Standard Module s 49; Accommodation Module s 49; Commercial Module s 24.

¹⁶⁶ Standard Module s 49(2); Accommodation Module s 49(2); Commercial Module s 24(2).

¹⁶⁷ The body corporate in a general meeting may by special resolution prohibit the use of proxies for committee meetings for particular things or altogether: Standard Module s 100(2). Proxies may not be used at a committee meeting of the principal scheme in a layered community titles scheme: Standard Module s 103(2)(b).

¹⁶⁸ Standard Module s 51(2); Accommodation Module s 51(2); Commercial Module s 25(2).

¹⁶⁹ Standard Module s 51; Accommodation Module s 51; Commercial Module s 25.

¹⁷⁰ Standard Module s 51(5)-(6); Accommodation Module s 51(5)-(6); Commercial Module s 25(5)-(6).

¹⁷¹ One notable exception is that the body corporate must respond to requests about by-law enforcement within 14 days: BCCM Act s 182(3); s 183(3).

¹⁷² Standard Module s 67; Accommodation Module s 65; Commercial Module s 34; Small Schemes Module s 32.

¹⁷³ Standard Module s 47(2); Accommodation Module s 47(2); Commercial Module s 22(2).

46. Should there be a greater ability for lot owners, who are not on the committee, to have items of interest added to the agenda for a committee meeting?

47. Should lot owners be able to compel the committee to hold a meeting?

4.8. Voting outside of committee meetings

The committee of the body corporate may make decisions without a formal meeting. A resolution may be voted on outside of committee meetings¹⁷⁴ and passed if written notice of the motion is given to all committee members¹⁷⁵ and a majority of all voting members entitled to vote agree in writing¹⁷⁶ to support the motion. Notice of the motion (to committee members) and advice of motion (to other lot owners in the scheme, excluding any owner who has opted out of receiving such notice)¹⁷⁷ must be given at the same time or, in an emergency, as soon as reasonably practical. The motion must be confirmed at the next committee meeting held after the motion is voted on.¹⁷⁸

4.8.1. Issue – No minimum or maximum timeframe

There is no timeframe required for committee members to return their vote on a motion decided outside of a committee meeting. Presumably, if the motion has not been decided by the next committee meeting, then the motion could be decided then. As discussed above, there is no requirement to hold committee meetings.

There is also no set period of time between when the notice and advice of the motion are given and when the motion is decided. If enough committee members vote on the motion in a very short period of time, it could be decided before most lot owners are even aware of the issue.

If a motion is decided on a vote outside a committee, any lot owner who did not agree with the decision could take steps to challenge the decision with an adjudicator.

Questions

48. Should the legislation specify a maximum amount of time after a notice and advice of a motion to be decided outside of a committee meeting have been given by which a vote must be returned?

49. Should the legislation specify a minimum amount of time after a notice and advice of a motion to be decided outside of a committee meeting have been given before the result can be declared?

¹⁷⁴ Standard Module s 54; Accommodation Module s 54; Commercial Module s 28.

¹⁷⁵ Or as many as is practicable to contact in an emergency: Standard Module s 54(1)(a); Accommodation Module s 54(1)(a); Commercial Module s 28(1)(a).

¹⁷⁶ In an emergency, agreement may be given orally or in another appropriate form: Standard Module s 54(2); Accommodation Module s 54(2); Commercial Module s 28(2).

¹⁷⁷ Standard Module s 54(3); Accommodation Module s 54(3); Commercial Module s 28(3).

¹⁷⁸ Standard Module s 54(6); Accommodation Module s 54(6); Commercial Module s 28(6).

4.9. Minutes and record

Full and accurate minutes and a full and accurate record of each motion voted on outside of committee meetings must be kept and given to lot owners within 21 days after the committee meeting or vote outside of committee meeting (unless they opt out of receiving such notice).¹⁷⁹ The method of giving minutes and the record of motion to lot owners is discussed at section 5.3.2.

Under the Standard Module, a **notice of opposition** signed by the owners of at least ½ of the lots may be given to the secretary within seven days after the minutes or record required under Standard Module section 55 is given to each lot owner.¹⁸⁰ A notice of opposition will stop the committee from giving effect to a resolution. However, a notice of opposition cannot be given for resolutions of a routine or administrative nature or that involve spending amounts less than \$200 or \$5 multiplied by the number of lots in the scheme.¹⁸¹

The body corporate is prevented from giving effect to resolutions of the committee until the time for giving a notice of opposition ends unless the resolution is necessary to deal with an emergency or ratified by an ordinary resolution of the body corporate.¹⁸² A notice of opposition is only available under the Standard Module.

Question

50. Should the notice of opposition be available under the other Regulation Modules?

4.10. Relevant limit for committee spending

The Regulation Modules limit committee spending for schemes under the Standard Module, Accommodation Module and the Small Schemes Module. There is no limit on committee spending for schemes under the Commercial Module.

Where a committee spending limit applies, the committee may not, without specific authorisation, give effect to any proposal that requires spending above the **relevant limit for committee spending**.¹⁸³ The default limit is \$200 multiplied by the number of lots in the scheme¹⁸⁴ although the body corporate may, by ordinary resolution at a general meeting, set a different limit. The committee may spend above the relevant limit for committee spending in limited circumstances such as: if the spending is specifically authorised by an ordinary resolution of the body corporate in a general meeting; all owners have given written consent; or when necessary to comply with the law or an order of an adjudicator, court or tribunal.¹⁸⁵

¹⁷⁹ Standard Module s 55; Accommodation Module s 55; Commercial Module s 29; Small Schemes Module s 22.

¹⁸⁰ Standard Module s 56.

¹⁸¹ Standard Module s 56(2).

¹⁸² Standard Module s 57(1).

¹⁸³ See schedule in each of the Standard Module, Accommodation Module and Small Schemes Module (definition of 'relevant limit for committee spending').

¹⁸⁴ This includes layered lots for schemes under the Standard Module and Accommodation Module. See each schedule (definition of 'number of layered lots'). See also note 61 above.

¹⁸⁵ Standard Module s 151(1); Accommodation Module s 149(1); Small Schemes Module s 85(1).

4.10.1. Issue – Appropriate limit

The relevant limit for committee spending means that, unless another amount has been authorised, in a scheme of 10 lots, the committee may spend \$2,000 (\$200 @ 10). A scheme with 100 lots may spend \$20,000 (\$200@ 100). In a scheme with 100 lots, this amount is higher than the relevant limit for major spending (as discussed at section 3.5 above is a maximum of \$10,000).¹⁸⁶ Where the relevant limit for committee spending is higher than the relevant limit for major spending, the committee must obtain and consider at least two quotes prior to carrying out the work, supplying the personal property or services.¹⁸⁷

Questions

- 51. Is the current relevant limit for committee spending appropriate?**
- 52. Should the default relevant limit for committee spending be different for small schemes (e.g. 10 or fewer lots) and large schemes (e.g. 100 or more lots)?**
- 53. Is the current approach to situations where the relevant limit for committee spending is higher than the relevant limit for major spending for a scheme appropriate? If not, how should the legislation deal with this situation?**
- 54. Should the body corporate be required to consider and set the relevant limit for committee spending at each AGM?**
- 55. Should the Commercial Module have a relevant limit for committee spending?**

4.11. Professional committee member for large schemes

The committee of a body corporate is made up of lot owners who volunteer their time and energy to facilitate the running of the scheme. At small schemes, the duties of committee members may not demand a substantial amount of time. However, larger schemes may have operating budgets in the millions of dollars and have significant assets and infrastructure which require regular repair, maintenance and upgrades. The average body corporate committee member is unlikely to have experience dealing with all the issues that may be relevant to effectively run a large, modern scheme.

¹⁸⁶ Standard Module, Accommodation Module schedule (definition of 'relevant limit for major spending').

¹⁸⁷ Unless exceptional circumstances apply such as the goods only being available from one source: Standard Module s 153; Accommodation Module s 151; Small Schemes Module s 87.

4.11.1. Issue – Lack of relevant experience

The Centre understands that some large, complex schemes have recently appointed an experienced professional to act as a sort of specialist consultant of the body corporate in an advisory capacity for several hours per month. This person is hired to liaise with the resident manager and the body corporate manager, to advise the body corporate and act as a professional committee member. This person is to have relevant experience in managing the type of infrastructure and assets controlled by the body corporate. The person is to be a disinterested third party, not connected to the body corporate manager or the resident manager, who can advise the body corporate committee.

Stakeholders who manage large schemes have suggested that the BCCM Act should specifically provide for bodies corporate to engage the services of an experienced person to act as a professional committee member. The position could be included as a non-voting committee member.

Questions

- 56. Should the BCCM Act permit schemes to appoint a professional committee member?
Should particular schemes be required to appoint a professional committee member?**
- 57. What minimum qualifications should a professional committee member have?**

5. Electronic notices, minutes and voting

The BCCM Act has very few provisions dealing with communication via electronic means. There are no provisions dealing with giving or sending documents to lot owners via email or making documents available on a website. Electronic voting is allowed, but there is very little guidance as to how electronic voting is to be done.

It has been suggested by lot owners, body corporate managers and other industry groups that the BCCM Act should be updated to allow for the use of modern communication technology when giving notices, minutes and voting. Electronic distribution of documents and increased guidance for electronic voting will reduce the amount of paper required to be printed and posted by bodies corporate (and body corporate managers) prior to meetings. This will reduce the operating cost of the body corporate and should reduce the fees lot owners are required to contribute.

There is little argument against allowing electronic delivery of notices and minutes and electronic voting. Society is increasingly accepting of electronic communication in a range of situations, including electronic conveyancing. Electronic distribution of documents reduces the amount of paper that needs to be printed and posted, reducing costs. It allows lot owners who are interested to easily print a copy of the documents. Finally, the delivery is virtually instant and can reach lot owners all around the world in a very short period of time.

The main argument against electronic notices and voting relates to lot owners who, for whatever reason, do not use electronic communication. However, the introduction of electronic communication in the BCCM Act will not mean that printed and posted notices and ballots must be completely removed. Lot owners should have the option to choose whether they want electronic communication or not. It is suggested that those lot owners who choose not to receive documents electronically should bear the cost of posting and printing the documents (as an additional service provided by the body corporate or the body corporate manager).

This section considers the existing requirements in relation to giving, sending and making available documents, such as meeting notices and minutes via electronic means. It also considers issues associated with electronic voting, electronic attendance at committee meetings and proxies.

5.1. Giving written information electronically

Under the *Electronic Transactions (Queensland) Act 2001* (Qld) (ETA) the requirement to give written information will be satisfied if:

- the person receiving the information consents to receiving it electronically; and
- the information is readily accessible so as to be useable for subsequent reference.¹⁸⁸

For the first requirement, consent, usually the positive act of supplying an email address is sufficient to indicate that the person has consented to receive information electronically. The second requirement is generally satisfied if the information is in a form that can be downloaded and saved or printed, such as a file attached to an email. This means that the person has actually received the information. If the information is not directly attached to the email (for example, where the email

¹⁸⁸ *Electronic Transactions (Queensland) Act 2001* (ETA) s 11.

contains a link to the information and the recipient must click on the link to access the information) then this requirement may not be satisfied as there has not been anything in the way of receipt.¹⁸⁹ Further, if the information is transient, that is available for a time (for example on a website) but not available later, then this will also be unlikely to satisfy the requirement.

5.2. General meetings

5.2.1. Giving notice of a general meeting

Written notice of a general meeting of the body corporate must be given at least 21 days before the meeting is held.¹⁹⁰ The notice must be given to the owner of each lot in the scheme, and if not given personally, then must be sent to the owner at the owner's address for service.¹⁹¹

The BCCM Act and the Regulation Modules are silent as to the giving of electronic notice for a general meeting. The body corporate may be able to rely on the ETA to give the lot owner electronic notice of a general meeting if the lot owner has consented and the information is attached to an email.

5.2.2. Sending notice to the address for service

As an alternative to giving the notice, the body corporate may send the notice to the lot owner at their address for service via post. The lot owner's address for service is the owner's address as recorded in the records of the body corporate, or if no address is recorded, the address of the lot.¹⁹²

As currently defined, the lot owner's address for service does not include an email address. This means that electronic delivery of a notice of a general meeting to an address for service is not currently possible. Sending the notice to an email address will not satisfy the requirement of being sent to the address for service under the BCCM Act.

It has been suggested that definition of 'address for service' should be amended to include an email address. Lot owners who do not live in the lot may change their address from time to time and forget to inform the body corporate of the new address. If mail is returned and it is confirmed that the lot owner's address for service as listed in the body corporate records is incorrect, the body corporate may use the address of the lot as the lot owner's address for service. However, if the lot is tenanted, there is no guarantee that the correspondence will get to the lot owner.

For schemes with a large number of overseas lot owners the cost of sending post overseas may be very high. Additionally, it is difficult to ensure that the notice will arrive in a timely manner. There is no guarantee that the notice will be received, especially in countries where the postal service may be unreliable.

While lot owners may move house and change their address regularly, it is arguable that people do not change their email address very often. This means that amending the address for service of lot

¹⁸⁹ A link to information is a communication of the means by which the information can be found, it is not a delivery of the information itself: *Conveyor & General Engineering Pty Ltd v Basetec Services Pty Ltd* [2014] QSC 30 at [28] and [37].

¹⁹⁰ Standard Module s 74; Accommodation Module s 72; Commercial Module s 41; Small Schemes Module s 36 (the body corporate may decide a different notice period under the Small Schemes Module s 36(1)).

¹⁹¹ Standard Module s 70(1); Accommodation Module s 68(1); Commercial Module s 37(1); Small Schemes Module s 35(1).

¹⁹² BCCM Act s 315(4).

owners to include an email address is likely to result in more lot owners actually receiving notice of general meeting than is the case using just postal addresses. Additionally, the cost to the body corporate will be reduced as sending email is less expensive than sending letters by post.

It has been suggested that lot owners who do not take advantage of electronic delivery of notices and minutes could be made to pay for the costs of printing and posting the relevant documents. It is important to note, however, that any such costs on individual lot owners may have the effect of placing an additional burden on particular classes of lot owners, such as the elderly, who may not have access to electronic communication and may not have the ability to pay extra to receive printed and posted documents.

5.2.3. Minutes of a general meeting

After a general meeting, a copy of the minutes of the meeting must be given to each lot owner within 21 days.¹⁹³ The Regulation Modules are silent as to how the minutes must be given. There is no guidance in the BCCM Act or Regulation Modules regarding how to give minutes of general meetings electronically. Generally, it is understood that the minutes of a general meeting are sent to lot owners at their address for service.

Arguably, the ETA may apply if the requirement to give a copy of the minutes is a requirement to give information in writing, the lot owner consents to receive the information electronically and the information is readily accessible so as to be useable for subsequent reference.¹⁹⁴ If, however, the address for service is redefined to include an email address, then the minutes of a general meeting could be sent electronically to lot owners who agree to receive them via email. If the email bounces back or is undeliverable, the notice or minutes could be sent to the physical address for service.

Questions

58. Should a lot owner's address for service include an email address in addition to a physical address?

59. Should the BCCM Act allow the body corporate to send notices of general meetings and minutes of general meetings to lot owners via email?

5.3. Committee meetings

5.3.1. Giving notice of a committee meeting

Committee meetings require written notice of at least seven days.¹⁹⁵ The notice must be given to each committee member and advice of the meeting must be given to all lot owners (except any who have

¹⁹³ Standard Module s 96; Accommodation Module s 94; Commercial Module s 63; Small Schemes Module s 51.

¹⁹⁴ ETA s 11.

¹⁹⁵ However, the voting members of the committee may agree in writing to a reduced notice period of two days: Standard Module s 45(2); Accommodation Module s 45(2); Commercial Module s 20(2).

instructed that they do not want to receive advice of committee meetings)¹⁹⁶ at their residential or business address.¹⁹⁷

The notice of a committee meeting must be delivered to the residential or business address of an owner of a lot. It is unclear if this could include an email address, if one were provided by a lot owner. However, if the definition of address for service is to be amended to include email addresses, the requirement to deliver the notice of a committee meeting to the lot owner's residential or business address could also be amended to include reference to an email address.

5.3.2. Giving minutes of a committee meeting

After a committee meeting, or following a motion voted on outside of a committee meeting,¹⁹⁸ the minutes of the meeting or the record of the motion must be sent to each member of the committee and each lot owner¹⁹⁹ within 21 days after the meeting or the vote.²⁰⁰ The minutes or record of motion may be given either personally, by mail, fax or electronically.²⁰¹

Electronic delivery is expressly provided in the case of minutes of a committee meeting. There is no guidance as to how this is achieved. Arguably, the ETA applies and there must be consent and receipt of the information. Again, however, if the address for service is re-defined to include an email address, then the body corporate would be able to email an electronic copy of the committee meeting minutes (or record) to lot owners at their email address and satisfy the requirement to give the minutes or record electronically.

Question

60. Should the BCCM Act allow the body corporate to send notices of committee meetings and minutes and record of motion voted on outside of committee to lot owners via email?

5.3.3. Making documents available

One potential pitfall in sending documents via email is that an email may bounce back to the sender if the recipient's inbox is full or if the attachment is too large for the recipient's email server to handle.

To avoid this problem, it has been suggested that the body corporate should be able to make documents available on a secure website and provide lot owners with instructions to access the website and download the documents. While this may already occur in practice, it is unlikely that making documents available in this way would satisfy the requirements to give or send information under the BCCM Act, the Regulation Modules and the ETA. As discussed above (at section 5.1) sending

¹⁹⁶ Standard Module s 45(3)(b); Accommodation Module s 45(3)(b); Commercial Module s 20(3)(b).

¹⁹⁷ Standard Module s 45(4)(c); Accommodation Module s 45(4)(c); Commercial Module s 20(4)(c).

¹⁹⁸ Standard Module s 54; Accommodation Module s 54; Commercial Module s 28.

¹⁹⁹ Except any who have instructed that they do not want to receive committee meeting minutes or records of motions.

²⁰⁰ Standard Module s 55; Accommodation Module s 55; Commercial Module s 29; Small Schemes Module s 22.

²⁰¹ Standard Module s 55(4)(b); Accommodation Module s 55(4)(b); Commercial Module s 29(4)(b); Small Schemes Module s 22(3)(b).

a link to a location where the information can be accessed does not result in the lot owner actually receiving the information. If there is no receipt, the information has not been given.

This option will require that the BCCM Act is amended to provide that making documents available on a website will satisfy the requirement to give the information to the lot owner.

Questions

- 61. Should making documents available on a website, and providing lot owners with instructions to access the website satisfy the requirement to give notices of meetings and minutes under the BCCM Act?**
- 62. Should lot owners be able to 'opt-in' to receive all meeting notices, agendas and minutes (or record of motion voted on outside of a committee) via e-mail or by accessing a website? If yes, what form should the opt-in take?**
- 63. Should lot owners who do not opt-in be required to pay the printing and postage costs associated with delivering the notices and minutes (so that this cost is not borne by the other lot owners)?**

5.4. Electronic voting

Under the Standard Module, Accommodation Module, and Commercial Module, the body corporate may decide by an ordinary resolution to allow electronic voting for open motions²⁰² or for motions to be decided by secret ballot.²⁰³ The body corporate must have a system for receiving votes for a secret ballot that does not disclose a voter's identity and that rejects votes cast by a person who is not a voter.²⁰⁴ Instructions on how the vote can be cast for the relevant motion must be included²⁰⁵ in the voting paper (which must accompany the notice of the general meeting). The vote must be completed in accordance with the instructions, signed and sent to the secretary. The vote must use a reliable method that is capable of identifying the person and the person's intention with relation to the vote.²⁰⁶ The vote must also be in accordance with any requirement under the ETA about how a document is signed or sent electronically.²⁰⁷

Electronic voting is not specifically available under the Small Schemes Module. However, the body corporate may decide the way voting is to be done at a general meeting.²⁰⁸ The way must be fair and

²⁰² Standard Module ss 71(4)(f), 86(1)(d) and 86(3); Accommodation Module ss 69(4)(f), 84(1)(d) and 84(3); Commercial Module ss 38(4)(f), 53(1)(d) and 53(3).

²⁰³ Standard Module ss 71(4)(g), 89(1)(b) and 90(2); Accommodation Module ss 69(4)(g), 87(1)(b) and 88(2); Commercial Module ss 38(4)(g), 56(1)(b) and 57(2).

²⁰⁴ Standard Module s 89(2); Accommodation Module s 87(2); Commercial Module s 56(2).

²⁰⁵ For open ballot motions: Standard Module s 71(4)(f); Accommodation Modules s 69(4)(f); Commercial Module s 38(4)(f). For secret ballot motions: Standard Module s 71(4)(g); Accommodation Module s 69(4)(g); Commercial Module s 38(4)(g).

²⁰⁶ For open ballot motions: Standard Module s 86(3)(b); Accommodation Module s 84(3); Commercial Modules s 53(3). For secret ballot motions: Standard Module s 90(2); Accommodation Module s 88(2); Commercial Module s 57(2).

²⁰⁷ See *Electronic Transactions (Queensland) Act 2001* (Qld) s 14.

²⁰⁸ Small Schemes Module s 47.

reasonable in the circumstances of the scheme and may include telephone or email voting provided the intention of the voter not present personally can be clearly communicated.²⁰⁹

5.4.1. Issue – Electronic voting as a default option

Currently, lot owners may vote in person, by written ballot (sent in by post) or by electronic voting, if the body corporate has decided by ordinary resolution to allow electronic voting for ordinary ballots and for secret ballots. Lot owners who receive their ballot in the post sometimes complete the ballot by hand and then scan and email the ballot to the body corporate secretary or manager. This is actually a form of a written, postal ballot, just delivered electronically. It is not actually electronic voting.

It has been suggested that electronic voting should be automatically available as a default option for schemes. This would mean that bodies corporate could make use of electronic voting on motions without requiring a resolution of the body corporate. Lot owners who did not wish to vote electronically could attend the general meeting and vote in person or request a paper ballot and vote in writing. Alternatively, the Regulation Modules could provide that voting may be done in a way decided by the body corporate, provided the method is fair and reasonable in the circumstances.²¹⁰ This would allow the body corporate to choose one or a range of options when it comes to voting.

As with electronic delivery of notices, it has been suggested that lot owners who opt out of electronic voting should pay the costs of postage and printing of the ballot papers so that this cost is not borne by the other lot owners in the scheme. It is important to note, however, this may have the effect of disenfranchising particular classes of lot owners who do not have access to electronic voting and may not have the ability to pay extra to receive a paper ballot.

Questions

64. Should the BCCM Act and the Regulation Modules allow electronic voting as the default option so that owners who do not wish to vote electronically must opt-out of electronic voting (or vote in writing or in person at a general meeting)?

65. Should the same rules that apply to electronic voting under the Standard Module, Accommodation Module and Commercial Module also apply under the Small Schemes Module?

5.5. Electronic attendance

5.5.1. Electronic attendance at general meetings

The Standard Module, Accommodation Module and Commercial Module provide that a lot owner may be present at a general meeting either personally, by proxy or by a written or electronic voting paper.²¹¹ It is unclear whether this would include ‘virtually’ attending a general meeting via telephone

²⁰⁹ Small Schemes Modules s 47(2).

²¹⁰ This is the test that applies under the Small Schemes Module s 47(2)(a).

²¹¹ Standard Module s 82(1); Accommodation Module s 80(1); Commercial Module s 49(1).

or video conferencing such as Skype. Arguably the Small Schemes Module allows a body corporate to decide to permit a lot owner to attend a general meeting via telephone or video conferencing software.²¹² However, the Small Schemes Module only applies to schemes with six or fewer lots.²¹³ It is much more challenging, both physically and economically, to permit this type of virtual attendance at larger schemes.

For this reason, the Centre understands that body corporate managers are not supportive of allowing lot owners to attend general meetings via telephone or video conference for large schemes. It is argued that if electronic voting is made easier there is little reason for lot owners to require telephone or video conference attendance at a general meeting.

5.5.2. Electronic attendance at committee meetings

The Standard Module, the Accommodation Module and the Commercial Module allow the committee to vote on motions outside of a committee meeting.²¹⁴ The notice of the motion and the vote must both be in writing and in most cases this is done via email correspondence between committee members. The motion voted on outside of a committee meeting must be confirmed at the next committee meeting.²¹⁵

While it is technologically and economically challenging to allow telephone and video conferencing attendance at general meetings, this is not the case for committee meetings. Committees are composed of up to seven committee voting members plus non-voting members. It has been argued that committee members should be able to attend committee meetings via telephone or video conferencing.

The Regulation Modules could expressly provide that a committee may decide how to hold meetings. Alternatively, the Regulation Module could provide that a body corporate in a general meeting may authorise the committee to attend committee meetings in a way that is fair and reasonable in the circumstances of the scheme.

Questions

66. Should committee members be able to attend committee meetings by telephone or video conference?

67. Should the body corporate be required to authorise electronic attendance at committee meetings by an ordinary resolution in a general meeting?

²¹² Small Schemes Module s 47.

²¹³ Small Schemes Module s 2(c).

²¹⁴ Standard Module s 54; Accommodation Module s 54; Commercial Module s 28.

²¹⁵ Standard Module s 54(6); Accommodation Module s 54(6); Commercial Module s 28(6).

5.6. Proxies

5.6.1. Proxies for general meetings

The BCCM Act states that the Regulation Modules may provide for the way in which a lot owner can appoint another person to act as their proxy at a general meeting.²¹⁶ Under the Standard Module and the Accommodation Module, the body corporate may, by special resolution, decide to prohibit the use of proxies for particular things or altogether.²¹⁷ This option is not available under the Commercial Module or the Small Schemes Module.

Under the Standard Module and the Accommodation Module, for schemes with 20 or more lots, a person may hold proxies for no more than 5% of the lots. If the scheme has less than 20 lots, a person may hold a proxy for only one lot.²¹⁸ This restriction does not apply under the Commercial Module or the Small Schemes Module.

To be valid, a proxy must:

- be given to the secretary prior to the meeting;²¹⁹
- be in the approved form;
- cannot be irrevocable;
- last for no more than the financial year (or a shorter period as stated in the proxy itself);²²⁰
- appoint a named individual; and
- cannot be transferred.²²¹

The Regulation Modules place some restrictions on the use of proxies.²²² Under the Standard Module and the Accommodation Module, a proxy may not be used for the following:

- electing committee members;
- voting on a special resolution to prohibit or restrict the use of proxies;
- voting on a special resolution to change the applicable Regulation Module;
- voting on a majority resolution;
- a motion engaging, or amending or terminating the engagement of, a service contractor; or
- a motion decided by secret ballot.

5.6.2. Issue – Use of proxies at general meetings

The Centre understands that the use of proxies at general meetings is a constant source of tension in a number of schemes. In many cases, absentee lot owners who have their lots in the letting pool run by the resident manager will appoint the resident manager as their proxy. This may result in the

²¹⁶ BCCM Act s 103.

²¹⁷ Standard Module s 107(2); Accommodation Module s 105(2).

²¹⁸ Standard Module s 107(4); Accommodation Module s 105(4).

²¹⁹ Standard Module s 107(5); Accommodation Module s 105(5); Commercial Module s 74(2); Small Schemes Module s 54(2).

²²⁰ This restriction does not apply under the Accommodation Module or the Commercial Module.

²²¹ Standard Module s 108; Accommodation Module s 106; Commercial Module s 75; Small Schemes Module s 55.

²²² Standard Module s 109(3); Accommodation Module s 107(3); Commercial Module s 76(3); Small Schemes Module s 56(3).

resident manager controlling a large number of votes at a general meeting and lead to allegations that the resident manager is attempting to manipulate the vote.

A number of amendments were made to the Standard Module and the Accommodation Module in 2003 to restrict the ability of a person to manipulate a vote through the possession and use of proxies.²²³ Despite these amendments, there has continued to be a number of disputes related to the validity of proxies.

It has been suggested that use of proxies should be completely prohibited for general meetings. Arguably, proxies will not be necessary if lot owners have a greater number of options to cast a vote. If notices of meetings can be distributed electronically and lot owners have the option to vote electronically, in writing or in person, there is little argument in support of continuing to provide for proxies in the BCCM Act and the Regulation Modules. In fact, removing proxies could remove a number of pages of legislation and a source of significant conflict in community titles schemes.

Question

68. If the BCCM Act facilitates electronic distribution of meeting notices and electronic voting, is there any reason to continue to allow the use of proxies for general meetings?

5.6.3. Proxies for committee meetings

A committee voting member may be present at a committee meeting by proxy²²⁴ (provided that proxies have not been prohibited for committee meetings).²²⁵ The completed proxy for a committee meeting must be given to the secretary before the meeting and has effect only for one meeting²²⁶ (except for schemes under the Commercial Module where the proxy may have effect until just before the next AGM held after the proxy is given).²²⁷ The proxy must also be in the approved form, cannot be transferred and must appoint a named individual.²²⁸ Under the Standard Module and the Accommodation Module, a voting member of the committee may only be represented by proxy at two meetings during the year.²²⁹

If the use of proxies is prohibited for general meetings, it is necessary to consider whether they should continue to be allowed for committee meetings. As discussed above, it may be realistic to allow committee members to attend committee meetings virtually by telephone or video conference. This could eliminate the need to use proxies for committee meetings.

²²³ See the Explanatory Notes, Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 2003, Statutory Legislation No. 263, 2003 at p 57.

²²⁴ Standard Module s 49(2); Accommodation Module s 49(2); Commercial Module s 24(2).

²²⁵ Under the Standard Module, the body corporate may prohibit the use of proxies for committee meetings: s 100(2). Proxies may not be used at a committee meeting of the principal scheme in a layered community titles scheme: Standard Module s 103(2)(b); Accommodation Module s 101(2)(b); Commercial Module s 70(2)(b).

²²⁶ Standard Module s 100(4)-(5); Accommodation Module s 98(2)-(3); Commercial Module s 67(2)-(3).

²²⁷ Commercial Module s 67(3).

²²⁸ Standard Module s 102; Accommodation Module s 100; Commercial Module s 69.

²²⁹ Standard Module s 104(2); Accommodation Module s 102(2).

Question

69. If the use of proxies is prohibited for general meetings, should the use of proxies also be prohibited for committee meetings?

70. If telephone or video conference attendance is allowed for committee meetings, is there any need to keep proxies?

6. First AGM

The first AGM for a scheme²³⁰ must be held by the original owner by the earlier of either: two months after more than 50% of the lots in the scheme are no longer owned by the original owner; or eight months after the establishment of the scheme.²³¹

Specified issues must be included on the agenda for the first AGM. The original owner must hand over documents and materials to the body corporate to be retained by the body corporate in their records.

6.1. Compulsory agenda items

At the first AGM, the agenda must include the following items:²³²

- budgets and contributions;
- review of insurance policies;
- choosing committee members;
- the custody and use of the body corporate seal;
- issues to be reserved for decision by ordinary resolution;
- whether the by-laws should be amended or repealed;
- whether to appoint an auditor for the accounts;²³³ and
- if the meeting is called on the order of an adjudicator, the issues required by the adjudicator's order.

Question

71. Are there other items that should be included on the agenda for the first AGM?

6.2. Original owner to hand over documents and materials

The Regulation Modules provide that at the first AGM, the original owner must give the body corporate particular documents²³⁴ and materials. The types of documents that must be handed over include, among other things:

- an inventory of body corporate assets;
- plans and drawings of buildings forming part of the scheme;
- details of insurance;
- documents in the original owner's possession or control relevant to the scheme or the buildings and improvements on scheme land; and

²³⁰ Including schemes established by amalgamation of two existing schemes.

²³¹ Standard Module s 77(2); Accommodation Module s 75(2); Commercial Module s 44(2); Small Schemes Module s 38(2).

²³² Standard Module s 77; Accommodation Module s 75; Commercial Module s 44; Small Schemes Module s 38.

²³³ The Small Schemes Module does not require this to be on the agenda.

²³⁴ Standard Module s 79; Accommodation Module s 77; Commercial Module s 46; Small Schemes Module s 40.

- a detailed and comprehensive estimate of the sinking fund expenditure for the first 10 years of the scheme.

The list of categories, while extensive, does not expressly include the original development approval granted to the developer by the local council for the site. It has been argued that the development approval should be included as a document relevant to the site²³⁵ but it is not always handed over. This has resulted in some bodies corporate registering a CMS that conflicts with the development approval (as the body corporate was not actually aware of the conditions in the development approval).

6.2.1. Issue – Specific documents to be handed over

It has been suggested that the Regulation Modules should be amended to specifically include the development approval. The original owner will have been given (and should have retained a copy of) the development approval and should be required to provide the body corporate with a copy to ensure the body corporate does not contravene the development approval.

Some have argued that the Regulation Modules require the development approval to be included and that the body corporate may take legal action against the original owner to demand a copy, if it has not been provided.

Alternatively, the body corporate may obtain a copy of the development approval from the local government, usually for a fee²³⁶ (which may be cheaper than taking legal action against the original owner to force compliance with the obligations in the BCCM Act).

It has further been suggested that the Regulation Modules should expressly list specific documents that must be handed over by the original owner. The list should include the development approval; the Certificate of Classification; the fire safety plan; building contracts between the original owner and the developer (for subrogation purposes);²³⁷ and a maintenance and lifecycle management plan (discussed at 6.3 below).

Question

72. Should the documents and materials required to be handed over by the original owner at the first AGM expressly include the development approval for the site?

73. What other documents should be expressly listed for hand over by the original owner at the first AGM?

²³⁵ See for example, Standard Module s 77(1)(b) and (g).

²³⁶ The body corporate may request a limited, standard or full planning and development certificate: *Sustainable Planning Act 2009* (Qld) s 737. The cost is set by each local council and may be from several hundred to several thousand dollars.

²³⁷ BCCM Act s 36(3)(a).

6.2.2. Issue – Disputes with the original owner

Any action against the original owner must be commenced in a court of competent jurisdiction as the original owner is not a party to a dispute for the purposes of the BCCM Act (unless in the capacity of a lot owner for the scheme).

It has been suggested that the definition of ‘dispute’²³⁸ in the BCCM Act should be amended to include disputes between the body corporate and the original owner that relate to the BCCM Act. This would allow the body corporate to pursue specific disputes with the original owner through the Office of the Commissioner for Body Corporate and Community Management (**BCCM Commissioner**) if those disputes relate to the operation of the BCCM Act.

The BCCM Commissioner is established under the BCCM Act to perform a number of functions, including a dispute resolution service²³⁹ but its jurisdiction is limited to contraventions of the BCCM Act and the exercise of rights or powers under the BCCM Act. If the original owner were to be made a party to disputes for the purposes of the BCCM Act, the body corporate would be able to take action with the BCCM Commissioner against the original owner but only to the extent that the conduct in question relates to the BCCM Act. Issues such as building defects, contracts agreed to by the original owner during the original owner control period and issues concerning the sale of a lot by the original owner to a lot owner would not be within the jurisdiction of the BCCM Commissioner.

Question

74. Should disputes about contraventions of the BCCM Act between the body corporate and the original owner be added to the definition of dispute under chapter 6 of the BCCM Act so that the body corporate can take action against the original owner through the BCCM Commissioner’s office?

6.3. Management plan

It has been suggested that the documents handed over to the body corporate by the original owner at the first AGM could include a maintenance and lifecycle management strategy (**management plan**) for the scheme, which could be prepared by the original owner around the time of the first AGM. The management plan could set out optimal maintenance requirements for particular body corporate assets and significant infrastructure. This will help to establish the intended lifecycle of scheme buildings and infrastructure. It will also establish a reference point for replacement and upgrade of common property in the future. It has been suggested that the management plan could also define the obligations on the resident manager and the body corporate in respect of maintenance responsibilities.

There may be some additional burden on the original owner to create a management plan. However, the original owner is already required to produce and hand over a 10 year rolling forecast of sinking fund expenditure so the further assessment to create a management plan should not be significant.

²³⁸ BCCM Act s 227.

²³⁹ BCCM Act s 232.

Question

75. Should the original owner produce a management plan for the scheme, setting out the lifecycle and maintenance requirements for body corporate assets and significant infrastructure?

7. Dispute resolution

The BCCM Commissioner provides a number of important services to lot owners and bodies corporate in community titles schemes, including educational materials and dispute resolution services. Bodies corporate and lot owners that have a dispute may seek dispute resolution through the BCCM Commissioner's office if the dispute falls into the definition of a 'dispute' in the BCCM Act.²⁴⁰

Stakeholder groups have raised a number of issues relating to dispute resolution including issues of standing in a layered scheme and concerns relating to distributing and accessing the large amount of paperwork that may be generated in a dispute resolution process.

7.1. Issue – Standing in layered schemes

Under the existing dispute resolution provisions, a lot owner in a subsidiary scheme does not have standing to seek dispute resolution against the principal body corporate (**PBC**) for the scheme. If the lot owner cannot motivate the subsidiary body corporate to take action against the PBC, there is little the lot owner will be able to do to address the grievance.

The issue also exists in reverse. A PBC does not have standing to seek dispute resolution against a lot owner in a subsidiary body corporate, for example, to enforce a by-law. It has been suggested that the definition of dispute in the BCCM Act²⁴¹ should be expanded to include a dispute between an owner in a subsidiary scheme and the PBC.

Question

76. Should the definition of dispute in the BCCM Act include disputes between a principal body corporate and a lot owner in a subsidiary scheme?

7.2. Issue – Length of applications for adjudication

A person who is a party to a dispute under the BCCM Act (the **applicant**) may make application to the BCCM Commissioner for dispute resolution.²⁴² Under the BCCM Act, the dispute resolution options range from non-binding conciliation²⁴³ through to adjudication.²⁴⁴ When an application is made for adjudication, the BCCM Commissioner must give notice, including a copy of the application, to the respondent to the application, the body corporate and other affected persons.²⁴⁵ The body corporate must give a copy of the notice to each person whose name appears on the body corporate roll as the

²⁴⁰ BCCM Act s 227.

²⁴¹ BCCM Act s 227.

²⁴² BCCM Act s 238, schedule 6 (definition of 'dispute resolution process').

²⁴³ See <http://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-disputes/types-of-dispute-resolution/conciliation-for-body-corporate-disputes/>.

²⁴⁴ See <http://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-disputes/types-of-dispute-resolution/adjudication-for-body-corporate-disputes/>.

²⁴⁵ BCCM Act s 243(1).

owner of a lot in the scheme.²⁴⁶ There is no clear guidance as to how the notice must be given and it is understood that the notice is generally posted to the address for service of each lot owner.

This requirement may be particularly onerous on a body corporate if the application is lengthy and there are a large number of lots in the scheme. For example, if an application is 20 pages long and the scheme has 100 (or more lots) the body corporate must copy and post at least 2,000 pages of paper to lot owners. This can be quite expensive and some lot owners may not be interested in the application.

Body corporate managers have suggested that the BCCM Act should specifically allow notice of applications for adjudication to be sent to lot owners via electronic means. This will allow a body corporate to avoid the costs associated with posting a copy of the application to every lot owner in the scheme. Under the existing legislation, there is no reason why the notice cannot be given to lot owners electronically, provided the body corporate has email addresses for the lot owners.

Alternatively, the BCCM Act should provide that applications for adjudication can be made available to lot owners electronically. This would mean that rather than post a full copy of the application to all lot owners, a short letter could be sent with instructions that would allow an interested lot owner to access the application electronically. This will reduce cost of printing and posting paper, particularly where the application is large, or there are a large number of lots in the scheme. Alternatively, it has been suggested that the legislation could limit the length of the application to a maximum number of pages or make the applicant responsible for the costs to the body corporate to copy and distribute the application to each lot owner in the scheme.

Questions

- 77. Should the BCCM Act allow notices of applications for adjudication to be given electronically to lot owners?**
- 78. Should the body corporate be able to satisfy the requirement to 'give' a copy of an adjudication application to lot owners if the application is made available electronically and the body corporate gives each lot owner instructions on how to access the application?**
- 79. Should the legislation limit the length of an application for adjudication to a statutory maximum number of pages?**
- 80. Should the applicant be required to pay for the cost of printing and distributing the application to lot owners in the scheme?**

7.2.1. Issue – Length of submissions on applications

Each person given notice of the application for adjudication by the BCCM Commissioner or given a copy of the notice by the body corporate (each, an **interested person**)²⁴⁷ has an opportunity to make

²⁴⁶ BCCM Act s 243(4).

²⁴⁷ BCCM Act s 246.

a written submission to the BCCM Commissioner about the application.²⁴⁸ The applicant is then invited to view the submissions and given an opportunity to make a written reply to the submissions.²⁴⁹

An interested person may apply to the BCCM Commissioner to inspect and get copies the application, the submissions and the applicant's reply to the submissions.²⁵⁰ It costs \$16.10 per hour (up to a maximum of \$63.20) to inspect the documents and copies are anywhere from \$1.10 to \$1.85 per page.²⁵¹ This makes it very expensive to for the body corporate to obtain copies of the submissions and the applicant's reply. However, there is no obligation on the body corporate to obtain a copy of the submission or the reply to a submission.

Body corporate managers have suggested that the length of the submissions responding to an application should also be limited. This will mean that interested parties making submissions will be forced to state their case in fewer words. This will also reduce the cost to the body corporate to obtain a full copy of all the submissions and replies.

Question

81. Should the legislation limit the length of a submission in response to an application for adjudication to a statutory maximum number of pages?

²⁴⁸ BCCM Act s 243(2)(b).

²⁴⁹ BCCM Act s 244.

²⁵⁰ BCCM Act s 46.

²⁵¹ *Body Corporate and Community Management Regulation 2008* (Qld) schedule item 2.

8. Miscellaneous issues

8.1. Body corporate seal

The BCCM Act requires the body corporate to have a seal²⁵² which is used as prescribed in the relevant Regulation Module and as decided by the body corporate at the first AGM.²⁵³ The seal is required for particular dealings with scheme land²⁵⁴ and industry practice is to apply the seal to contracts, including contracts appointing a body corporate manager. However, the Regulation Modules do not specifically require the seal to be applied to contracts.

At the federal level, the requirement to use a seal on documents has been removed with very little problem. The *Corporations Act 2001* (Cth)²⁵⁵ allows a corporation to execute documents without a seal and provides a list of assumptions that a person may make when dealing with a corporation.²⁵⁶ The *Corporations Act* does not prohibit documents from being executed under a seal. It specifically allows a person dealing with the corporation to assume that a document has been duly executed by the corporation if it has been signed by two directors of the company or a director and the secretary or a sole director.²⁵⁷

Body corporate managers have suggested that the BCCM Act could mimic the *Corporations Act* and remove the requirement for the body corporate seal. The BCCM Act could allow a body corporate to execute documents with a signature from two executive members (e.g. the chairperson and the secretary) or the chairperson and another committee member or even two committee voting members.

The main function of the body corporate seal is to allow third parties who deal with the body corporate to assume that a document that is sealed has been duly executed. The BCCM Act already provides protection for third parties who honestly and without notice of an irregularity, enter into a transaction with a committee member or a person who has apparent authority to bind the body corporate to the extent that such a transaction will be valid and binding on the body corporate.²⁵⁸ If the requirement to use the body corporate seal is removed, this protection could be expanded to mimic the types of protection in the *Corporations Act*.

Questions

82. Is there any reason to retain the requirement to use a body corporate seal?

83. If the requirement to use the body corporate seal is removed, who should be able to execute documents on behalf of the body corporate? Two executive committee members, one executive member and one ordinary member or two ordinary members?

²⁵² BCCM Act s 34; Standard Module s 192; Accommodation Module s 190; Commercial Module s 148; Small Schemes Module s 126.

²⁵³ Standard Module s 77(3)(d); Accommodation Module s 75(3)(d); Commercial Module s 44(3)(d); Small Schemes Module s 38(3)(d).

²⁵⁴ For example, Standard Module s 161(6) (disposal of an interest in or leasing/licensing common property).

²⁵⁵ *Corporations Act 2001* (Cth) s 127.

²⁵⁶ *Corporations Act 2001* (Cth) s 128-129

²⁵⁷ *Corporations Act 2001* (Cth) s 129(5).

²⁵⁸ BCCM Act s 310.

84. If the requirement to use the body corporate seal is removed, what safeguards should be placed in the legislation for third parties dealing with bodies corporate?

8.2. Body corporate address for service

The BCCM Act provides that the address for service of a body corporate is the address notified from time to time by the body corporate to the Titles Registry and recorded on the indefeasible title for the common property.²⁵⁹ If no address is advised, the address for service of the body corporate will be the address for service of the original owner shown on the first community management statement.²⁶⁰

This may create a number of problems. Firstly, bodies corporate may be lax in updating the address. There is no requirement to update the address for service and no timeframe for this to occur. Secondly, if no address is given, the default is to use the original owner's address, which in many cases will be out of date.

It has been suggested that if the address for service is not provided or reasonably appears not to be correct, then the address for service of the body corporate should be deemed to be the address of the secretary for the scheme or the street address of the scheme itself.

Additionally, it has been suggested that the body corporate address for service could be updated to include an email address. This will be particularly useful if the BCCM Act and Regulation Modules are amended to facilitate the giving of certain documents electronically. It will allow the BCCM Commissioner to communicate with a scheme electronically in relation to a dispute resolution application, thus reducing the amount of paperwork that the BCCM Commissioner must produce and distribute. The email address could be created by the original owner when the scheme is registered and access details given to the body corporate at the first AGM.

A second benefit to requiring schemes to have an updated address for service is that it will improve the BCCM Commissioner's ability to make contact with bodies corporate across Queensland at current registered addresses. The BCCM Commissioner produces a wealth of material related to body corporate issues including information relating to legislative change.

Questions

85. Should bodies corporate be required to update the address for service? If the address has not been given or is out of date, what should be the default address?

86. Should the address for service of the body corporate include an email address?

²⁵⁹ BCCM Act s 315(2).

²⁶⁰ BCCM Act s 315(3).

8.3. Authority to settle legal proceedings

The BCCM Act provides that the body corporate cannot start legal proceedings²⁶¹ unless authorised by a special resolution of the body corporate in a general meeting.²⁶² However, the BCCM Act is silent as to the type of authority needed to settle existing legal proceedings, for example by withdrawal or consent order.

It is generally accepted that a resolution to discontinue or settle legal proceedings requires the same type of resolution as was required to commence legal proceedings. This means that a second special resolution is required to settle the legal proceedings. However, this is not clearly set out in the legislation.

In an analogous situation, the Regulation Modules provide that where a motion has been passed by a particular type of resolution, the same type of resolution is needed to amend or revoke the original motion.²⁶³ However, the issue of discontinuing or settling legal proceedings is somewhat different. Settling legal proceedings is not an amendment or revocation of an earlier motion. Generally, it is a new motion in and of itself.

Occasionally the original special resolution approving the legal proceedings will specify how, and under what conditions, the proceedings may be settled or withdrawn or at least designate a person who has the authority to make the decision.

However, where the resolution has not specified this information, it may be necessary to call an EGM to decide by special resolution to settle the proceedings. This may create a number of issues. Firstly, the cost of calling the EGM may be extremely high, making it undesirable to call an EGM. Secondly, an EGM cannot be held until 21 days after the notice of the meeting has been given to lot owners²⁶⁴ which may make it difficult to quickly respond to an offer to settle the proceedings.

It has been suggested for clarity and to avoid uncertainty, the BCCM Act should specify the type of authority needed to settle legal proceedings. Alternatively, it has been suggested that the BCCM Act could authorise the chairperson or the full committee to settle legal proceedings, if that decision is supported by written advice from a solicitor.

Question

87. How should the BCCM Act deal with the issue of settling legal proceedings? Should a special resolution be required or should the BCCM Act authorise the chairperson or the committee to decide to settle or discontinue legal proceedings, if that decision is supported by written advice from a solicitor?

²⁶¹ This does not apply to prescribed proceedings, such as debt recovery, by-law enforcement, enforcement of an adjudicator's decision or a counterclaim, third-party claim or other proceeding in a proceeding to which the body corporate is already a party: BCCM Act s 313(4) (definition of 'prescribed proceeding').

²⁶² BCCM Act s 312(1)(b).

²⁶³ Standard Module s 95; Accommodation Module s 93; Commercial Module s 62; Small Schemes Module s 50.

²⁶⁴ Standard Module s 74; Accommodation Module s 72; Commercial Module s 41; Small Schemes Module s 36 (The body corporate for a scheme under the Small Schemes Module may decide a different time).

²⁶⁴ Small Schemes Module s 36.

8.4. Continuation of contributions

A general meeting of the body corporate may be unable to agree to a budget at a general meeting. This may result from a disagreement among lot owners or a lack of a quorum. If this occurs, there may be a period of turmoil where the body corporate is not collecting any funds in contributions but the expenses of the body corporate (such as insurance, which a body corporate must have²⁶⁵) continue to fall due. The time between the AGM and an EGM may be 21 days or more, and if agreement still cannot be reached, there may be further turmoil.

Under the Standard, Accommodation and Commercial Modules, the committee may pass a resolution authorising interim contributions, which are then offset against any contributions finally approved at a general meeting.²⁶⁶ However, in some cases there is such turmoil at the scheme that the committee is unable to function.

In this situation, the lot owners may seek an order of an adjudicator appointing an administrator for the scheme.²⁶⁷ The administrator will be authorised to carry out the functions of the body corporate, including passing budgets.²⁶⁸ However, this may still involve a period of time during which the body corporate is not collecting income but expenses continue to fall due.

Body corporate managers have suggested that when the body corporate is unable to pass a budget and levy lot owners for contributions that the previous contributions should continue to apply at the scheme by default, without further vote being required from the committee or the body corporate. This would allow the body corporate to continue to receive an income and avoid being unable to pay important expenses during the period between the general meetings.

Question

88. If the body corporate is unable to pass a budget at a general meeting, should the contributions from the previous year continue to apply until such time as a new budget and new contributions are passed? Why or why not?

8.5. Continuation of committee members

The Regulation Modules provide that the term of office of a member of the committee continues until another person is chosen for the position.²⁶⁹ Despite this, some committee members view their term as lasting from one AGM until the next AGM.

²⁶⁵ Standard Module s 178(1); Accommodation Module s 176(1); Commercial Module s 134(1); Small Scheme Module s 112(1).

²⁶⁶ Standard Module s 141 (3)-(4); Accommodation Module s 139(3)-(4); Commercial Module s 100(3)-(4);

²⁶⁷ BCCM Act s 276(4), schedule 5, item 23.

²⁶⁸ BCCM Act s 278.

²⁶⁹ Standard Module s 33(1); Accommodation Module s 33(1); Commercial Module s 15(1); Small Schemes Module s 15(1).

If the body corporate fails to elect a committee, then it may be necessary to hold an EGM and make a part 5 appointment (discussed above at section 4.2). The Centre understands that in some circumstances, committee members will not continue to act in their capacity as a committee member after the AGM. Body corporate managers have suggested that there should be greater emphasis on the fact that the term of office of a committee member continues until another person is chosen for the position.

Question

89. What is the best way to educate committee members about their responsibilities beyond the AGM after they are elected?

Resources

A. Cases

Conveyor & General Engineering Pty Ltd v Basetec Services Pty Ltd [2014] QSC 30

Searene Whitsunday [2012] QBCCMCmr 219

B. Legislation

Commonwealth of Australia

Corporations Act 2001 (Cth)

Queensland

Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld)

Body Corporate and Community Management Act 1997 (Qld)

Body Corporate and Community Management (Commercial Module) Regulation 2008 (Qld)

Body Corporate and Community Management Regulation 2008 (Qld)

Body Corporate and Community Management (Small Schemes Module) Regulation 2008 (Qld)

Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011 (Qld)

Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld)

Building Units and Group Titles Act 1980 (Qld)

Electronic Transactions (Queensland) Act 2001 (Qld)

Sustainable Planning Act 2009 (Qld)

Victoria

Owners Corporations Act 2006 (Vic)

C. Other

Explanatory Notes, Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 2003, Statutory Legislation No. 263, 2003

www.qld.gov.au/bodycorporate.

Annexure

Glossary

TERM	MEANING
Accommodation Module	<i>Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld)</i>
AGM	Annual general meeting of the body corporate
Applicant	The party to a dispute under the BCCM Act who makes application to the BCCM Commissioner
BCCM Act	<i>Body Corporate and Community Management Act 1997 (Qld)</i>
BCCM Commissioner	Office of the Commissioner for Body Corporate and Community Management
BUGTA	<i>Building Units and Group Titles Act 1980 (Qld)</i>
Centre	Commercial and Property Law Research Centre
CMS	Community management statement
Commercial Module	<i>Body Corporate and Community Management (Commercial Module) Regulation 2008 (Qld)</i>
EGM	Extraordinary general meeting of the body corporate
ETA	<i>Electronic Transactions Act (Queensland) 2001 (Qld)</i>
Executive members	The chairperson, secretary and treasurer of the committee for the body corporate
Financial year	The period from the establishment of the scheme until the end of the month immediately before the month when the first anniversary of the establishment of the scheme falls, and each successive period of 1 year from the end of the first financial year. See BCCM Act schedule 6 (definition of 'financial year')
Interested person	In relation to an application for adjudication with the BCCM Commissioner, each person required to be given a copy of the application by the BCCM Commissioner or the body corporate
Majority resolution	A resolution of the body corporate in a general meeting where at least 50% of the lots in the scheme vote in favour of the resolution
Non-voting members	Of the committee for a body corporate are the body corporate manager and the caretaking service contractor for the scheme
Notice of opposition	A notice opposing the giving of effect to a resolution of the committee signed by at the owners of at least one-half of the lots in the scheme (only available under the Standard Module)
Ordinary members	The members of the committee for the body corporate who are not executive members and are not non-voting members
Ordinary resolution	A resolution of the body corporate in a general meeting where more votes are cast in favour of the resolution than are cast against it
Part 5 appointment	Appointment of a body corporate manager to carry out the functions of the committee
PBC	Principal body corporate
QUT	Queensland University of Technology
Regulation Modules	The Standard Module, the Accommodation Module, the Commercial Module, the Small Schemes Module and the Two-lot Module

NOT GOVERNMENT POLICY

TERM	MEANING
Relevant limit for committee spending	The maximum amount of spending associated with a motion of the committee before the motion will require the approval of the body corporate in a general meeting
Relevant limit for major spending	The maximum amount of spending associated with a motion of the body corporate above which the motion must be accompanied by at least two quotes
Requested EGM	An EGM requested in writing by the owners of at least 25% of the lots in the scheme
Required number	Under the Standard Module, Accommodation Module and Commercial Module, the required number of voting members for the committee is at least three but not more than seven, if the scheme has seven or more lots. If the scheme has fewer than seven lots, a number equal to the number of lots in the scheme
Resident manager	The caretaking service contractor for a scheme
Resolution without dissent	A resolution of the body corporate in a general meeting in which no vote is counted against the motion
Small Schemes Module	<i>Body Corporate and Community Management (Small Schemes Module) Regulation 2008 (Qld)</i>
Special resolution	A resolution of the body corporate in a general meeting where at least two thirds of votes cast are in favour of the resolution; no more than 25% of the lots in the scheme vote against the resolution; and the lots voting against the resolution do not have more than 25% of the total contribution schedule lot entitlements for the scheme
Standard Module	<i>Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld)</i>
Two-lot Module	<i>Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011 (Qld)</i>
Voting members	The ordinary members and the executive members of the committee