

Body Corporate and Community Management Legislation Amendment Regulation 2021

Explanatory notes for SL 2021 No. 13

made under the

Body Corporate and Community Management Act 1997

General Outline

Short title

Body Corporate and Community Management Legislation Amendment Regulation 2021

Authorising law

Section 322 of the *Body Corporate and Community Management Act 1997*

Policy objectives and the reasons for them

The primary object of the *Body Corporate and Community Management Act 1997* (BCCM Act) is to provide for flexible and contemporary communally based arrangements for the use of freehold land in Queensland. For the achievement of this object, the BCCM Act provides for the establishment, operation and management of community titles schemes.

Five regulation modules have been made under the BCCM Act to provide a flexible set of rules to accommodate the management and administrative needs of the different types of community titles schemes, including procedures and requirements for general meetings and voting on motions. A community titles scheme is subject to one of the five regulation modules that is relevant to the use and characteristics of the scheme.

The following four regulation modules for the BCCM Act were remade on 29 September 2020 and will commence on 1 March 2021:

- the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (new Accommodation Module);
- the *Body Corporate and Community Management (Commercial Module) Regulation 2020* (new Commercial Module);
- the *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (new Small Schemes Module); and
- the *Body Corporate and Community Management (Standard Module) Regulation 2020* (new Standard Module).

The *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Specified Two-lot Schemes Module) did not require remaking.

The policy objective of the *Body Corporate and Community Management Legislation Amendment Regulation 2021* (the Amendment Regulation) is to ensure that reforms being introduced in the new Accommodation, Commercial and Standard Modules to facilitate electronic voting on motions at general meetings will apply to all types of body corporate general meetings. The new Small Schemes Module and the Specified Two-lot Schemes Module did not include these particular reforms and therefore do not require amendment.

The new Accommodation, Commercial and Standard Module provisions to facilitate electronic voting on motions to be decided at body corporate general meetings set out that a system for receiving electronic votes may allow a voter who is in attendance at the meeting in person or by electronic means (for example, teleconferencing or videoconferencing) to cast a vote electronically at the meeting. This will allow the use of 'live' electronic voting on motions, for example using a smartphone or computer, should the body corporate decide it is appropriate for the circumstances of the scheme.

However, the relevant provisions of the new Accommodation, Commercial and Standard Modules use the words 'annual general meeting' when referring to the types of meetings at which voters may cast electronic votes, and when setting out requirements for receiving electronic votes for secret ballot motions.

A general meeting of the body corporate is either an annual general meeting or an extraordinary general meeting. The body corporate for a community titles scheme must call and hold an annual general meeting within three months after the end of each of the scheme's financial years. At the annual general meeting statutory motions required under the BCCM Act or regulation module, as well as those submitted by lot owners, are considered, budgets are agreed, a committee election is held, and financial and other information is disclosed, among other things.

A body corporate may hold an extraordinary general meeting at other times by resolution of the committee, when requested by a prescribed number of lot owners, or where otherwise required under the regulation module to fill committee vacancies.

Achievement of policy objectives

The Amendment Regulation achieves the policy objective of ensuring that reforms introduced in the new Accommodation, Commercial and Standard Modules to facilitate electronic voting on motions will apply to all types of body corporate general meetings by amending the provisions relating to electronic voting to change the term 'annual general meeting' to 'general meeting' where required by removing the word 'annual'.

Consistency with policy objectives of authorising law

The primary object of the BCCM Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land. To achieve this object, the BCCM Act provides for the establishment, operation and management of community titles schemes.

The Amendment Regulation amends the new Accommodation, Commercial and Standard Modules, which support the primary object of the BCCM Act by providing flexible governance rules and requirements that meet the needs of different types of community titles schemes. The Amendment Regulation will ensure that particular reforms to body corporate governance rules and requirements in regard to electronic voting that are included in the new Modules will be applicable to all general meetings, as intended, and is therefore consistent with the primary object of the BCCM Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only effective way of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Regulation will facilitate the use of electronic voting at extraordinary general meetings, which has the benefit of allowing bodies corporate to adopt more flexible and efficient election processes, and potentially reduce costs associated with production, delivery and processing of hard copy voting materials.

The Amendment Regulation will also provide certainty and clarity about the operation of electronic voting at extraordinary general meetings and reduce disputes about the use of electronic voting at these meetings.

There are no anticipated implementation costs associated with the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Extensive public consultation was conducted on the new Accommodation, Commercial and Standard Modules, including the provisions to facilitate electronic voting. Consultation showed strong support for the electronic voting reforms, and consultation materials describing the reforms made it clear that the proposed electronic voting reforms were intended to apply to all types of general meetings.

Public consultation was not undertaken on the Amendment Regulation due to the minor and technical nature of the amendments.

In accordance with the Queensland Government Guide to Better Regulation, the proposed amendments are excluded from further Regulatory Impact Assessment under category (f): "Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice".