

2020 AMENDMENTS TO THE BCCM REGULATIONS



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Standard Module 2020	Key outcome of reform	Standard Module 2008	Other 2020 Modules
Voting member of Committee - Section 11 – ‘Co-owners or family members who are not eligible to be a voting member’	<p>Introduction of a new subsection 2 which allows co-owners of lots to both be voting committee members for each lot they own. This provides more flexibility where people co-own multiple lots.</p> <p>Under section 31(2) of the 2008 Standard Module, another co-owner of a lot could only be appointed to a voting committee position if that was necessary to bring the total number of voting committee members to 3.</p> <p>Under this change, if John and Sally Smith co-own both lots 1 and 2, then John Smith may be elected as a voting committee member for lot 1 and Sally Smith may be elected as a voting committee member for lot 2.</p>	Section 11	Section 12 Accommodation Module (“AM”) Section 11 Small Schemes Module (“SSM”) (Co-owners could be appointed to Treasurer and Secretary positions if they co-own multiple lots) No equivalent section in Commercial Module (“CM”)
Electing Committee - Section 13 - ‘When committee is chosen’	<p>A committee can now be elected outside of an AGM for schemes with:</p> <p>(a) 3 or more lots; and (b) No more than 3 owners.</p> <p>This will be called a “minor committee”. In this situation, the owners (or their nominees) must decide amongst themselves which executive committee positions are held. If they cannot agree, then the executive positions are held jointly.</p>	Section 13	Section 14 AM No equivalent section in CM or SSM
Conduct of elections – secret ballot - Sections 21 to 25	<p>The new sections provide for the conduct of committee elections by secret ballot to be carried out by electronic voting, if the body corporate approves electronic voting and the body corporate can operate a system that meets the requirements under the legislation.</p>	Section 21	No equivalent section in AM, CM or SSM
Conduct of elections – open ballot - Sections 26 to 30	<p>The new sections provide for the conduct of committee elections by open ballot to be carried out by electronic voting, if the body corporate approves electronic voting and the body corporate can operate a system that meets the requirements under the legislation.</p>	Section 22	Sections 22 & 23 AM No equivalent section in CM or SSM
Conduct of ballots – generally - Subdivision 5, sections 31 to 34	<p>These sections have been updated to provide more detail on how ballots for committee positions are to be conducted and to take into account ballots conducted electronically. For example, more detail is being provided on precisely how ballot papers are to be handled, scrutinised</p>	Section 25	Sections 24 to 26 AM No equivalent section in CM or SSM

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	and results declared. The intention seems to be to provide clarity on precisely what needs to be done during ballots to take out any angst and suspicion during contentious committee elections.		
Choosing ordinary members of committee - Subdivision 7, sections 36 to 39	The reform has brought about significant redrafting of the sections. However, in practice, very little will change. If the requisite number of voting committee positions is not filled, the person chairing the meeting must call for nominations from the floor.	Section 27	Sections 29 and 30 AM No equivalent section in CM or SSM
Removing committee members - Sections 44 and 45	Most of the changes made to these sections are to clarify that there are two distinct ways to remove a voting committee member from office: by simply passing an ordinary resolution, or by following the process to remove them for breaching the <i>Code of Conduct of Voting Committee Members</i> . This change is inconsequential as adjudicators have always accepted that these two different ways exist. The process for enforcing a breach of the <i>Code of Conduct</i> will continue to be rarely used.	Sections 33 to 35	Sections 36 and 37 AM Sections 15 and 16 CM Sections 15 and 16 SSM No equivalent section in SSM
Agenda for committee meetings - Section 58	<p>A lot owner may now submit motion for consideration at a committee meeting or be decided on outside a committee meeting.</p> <p>The committee is required to make a decision on the motion as soon as reasonably practicable and within a 6-week period. That period may be extended of no more than 6 more weeks, but the committee is required to give reasons for the extension.</p> <p>There have been some limits placed on the right. The committee is not required to decide a motion submitted to it by a lot owner if, within 12 months, the owner has already submitted a motion about the same issue or six or more motions. If either of those reasons apply, the committee must give the lot owner written notice of that.</p> <p>The committee is not allowed to decide the motion if it would be a decision on a restricted issue, or the motion, if carried, would conflict with</p>	N/A	Section 50 AM Section 22 CM Section 19 SSM

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	<p>the BCCM Act, the regulation, the by-laws, a motion already voted on at the meeting or be unlawful or unenforceable for another reason.</p> <p>If the committee does not decide the motion within the required decision-making period, then the motion is taken to have not been agreed to.</p>		
<p>Attendance at committee meetings</p> <p>- Sections 61 to 63</p>	<p>The committee may now authorise attendance at its meetings by electronic means. This will not cause any significant change to current industry practices, but simply recognises in the legislation longstanding practices of committees holding meetings electronically.</p> <p>However, a new change is that a lot owner who wants to attend a committee meeting may now instead give that right to a representative. This differs from the current legislation that only entitles an owner to attend – there is no recognition of an owner’s representative.</p>	<p>Section 50 and 51</p>	<p>Sections 53 to 55 AM Sections 25 to 27 CM No equivalent section in SSM</p>
<p>Voting at committee meetings</p> <p>- Section 64 and 67</p>	<p>If a voting committee member or nominating entity owes a body corporate debt, they will be known as a ‘debtor member’ and will be ineligible to vote at the committee meeting in their own right or as a proxy for another voting member. Further, a person who holds a proxy for the debtor member is not entitled to exercise a vote on behalf of that debtor member at the meeting.</p> <p>A ‘debtor member’ may still be counted towards the quorum of the meeting though.</p> <p>Pursuant to section 67, the ineligibility of a ‘debtor member’ extends to voting outside of committee meetings.</p>	<p>Sections 52 and 54</p>	<p>Sections 56 and 59 AM Sections 28 and 31 CM Section 20 SSM</p>
<p>Voting outside committee meetings</p> <p>- Sections 68 and 69</p>	<p>Committees now have 21 days to vote on a motion outside of committee meeting. If a decision is not made within 21 days, the motion is taken not to have been agreed to.</p>	<p>Section 54</p>	<p>Sections 60 and 61 AM Sections 32 and 33 CM No equivalent section in SSM</p>

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Engagement of body corporate manager to carry out functions of committee and executive members - Section 74	<p>A body corporate may engage a body corporate manager to carry out the function of the committee in some circumstances. This is usually known as a Part 5 administrator engagement. The engagement has always had to be approved by special resolution decided by secret ballot. Under this change, a body corporate may now decide to engage a body corporate manager to carry out the functions of the committee (an administrator) in an open ballot.</p> <p>However, the open ballot can only occur if an ordinary resolution passes permitting it. In practice, this change will be of little effect as a body corporate faced with the need to engage an administrator is unlikely to call a general meeting to simply decide to switch to an open ballot at some future general meeting to decide whether to engage the administrator.</p>	Section 58	Section 64 AM No equivalent section in CM Section 24 SSM (special resolution by open ballot)
Receipt of particular benefits by committee - Section 79	<p>A committee member must not receive a direct or indirect benefit from a caretaking service contractor or service contractor, other than a 'permitted benefit', unless the body corporate authorises receipt of the benefit.</p>	N/A	Section 69 AM Section 36 CM Section 79 SSM
Submitting agenda motions - Section 86	<p>A lot owner may now submit a motion for the first annual general meeting. It must be included on the agenda if it is practicable to include it.</p>	Section 88	Section 76 AM Section 44 CM Section 36 SSM
Notice of general meetings - Section 87 Conducting secret ballot - Section 108	<p>Voting on secret ballots may occur by hard copy or electronically, where the instructions for electronic voting are to be included in accordance with section 90(4)(g).</p>	Sections 70 and 89	Section 77 AM Section 45 CM No equivalent Section in SSM

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	The process has been clarified for electronic voting.		Section 96 AM Section 64 CM No equivalent Section in SSM
Group of same-issue motions - Section 89	<p>This used to be called a “motion with alternatives” and would have to be used when two motions on an agenda proposed alternative ways of dealing with the same issue. The committee would have to create a leading motion and would then list each original motion as an alternative. A voter would vote in favour or against the leading motion. If they voted in favour of the leading motion, then they could vote in favour of one of the alternatives. If the leading motion passed, then the alternative with the most support became the resolution.</p> <p>Confusion occurred when these different motions required different resolution types, but nonetheless dealt with the same issue. The solution has been to recast this provision to require the grouping of “same-issue” motions.</p> <p>All original motions dealing with the same issue must now be listed as a group of motions on the voting paper. A voter may vote for or against one or more of the grouped motions or may abstain for any of them.</p> <p>Any motion that receives the required number of votes to pass qualifies as a body corporate decision. If more than one of the grouped motions qualifies as a decision, then the motion that receives the most votes in favour will become the body corporate’s decision for the group of same-issue motions.</p> <p>If two or more qualifying motions receive the same number of votes in favour, then the qualifying motion that receives the fewest votes against it will become the body corporate’s decision. If there is a tie on the votes for and against two or more qualifying motions, then the result is decided by a chance of chance.</p>	Section 72	Section 79 AM Section 47 CM Section 38 SSM

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Documents and materials to be handed over to the body corporate at first general meeting - Section 96	A developer is required to hand over more documents than previously provided for at the first annual general meeting, such as the development approval, building warranties, and others.	Section 79	Section 86 AM Section 54 CM Section 44 SSM
Quorum for general meetings - Section 99	A body corporate may resolve to change how the quorum is to be calculated. Under the new section, a quorum cannot be less than 10% of the number of voters for the meeting or more than 25% of the number of voters for the meeting.	Section 82	Section 89 AM Section 57 CM Section 47 SSM
Meaning of voter for general meeting - Section 101	<p>A person may no longer act as a representative of more than one owner of a lot. This has been introduced to close a loophole in the industry whereby a person would collect powers of attorney from multiple lot owners and exercise significant voting power in general meeting.</p> <p>The only exceptions to this will be if the attorney is a member of the lot owner's family or if the powers of attorney are given under sections 211 and 219 of the BCCM Act (i.e. powers of attorney held by the original owner).</p>	Section 83	Section 90 AM Section 58 CM Section 49 SSM
Minutes of general meetings - Section 117	If a motion be ruled out of order by the person chairing the meeting, the reasons for the ruling must be recorded in the minutes.	Section 96	Section 103 AM Section 71 CM Section 56 SSM
Disclosure of commission or other benefit - Section 156	Currently, body corporate managers and caretaking service contractors are required to disclose commissions, payments or benefits they will receive before a body corporate decides to enter into a contract for the supply of goods or services. If the commission, payment or other benefit is monetary, this section has been amended to now specifically require the monetary amount to be disclosed.	Section 135	Section 142 AM Section 102 CM Section 156 SSM

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Committee spending - Sections 172	<p>A committee may spend above the relevant limit for committee spending for the purpose of obtaining insurance, if it is not a restricted issue for the committee.</p> <p>Section 172 has also been extended to provide for this.</p>	Section 151	Sections 158 and 160 AM Section 91 SSM No equivalent section in CM
Utility infrastructure providing a utility service - Section 180(4)(a)(ii)	<p>More types of devices only providing a utility service to a lot that the lot owner is responsible for are listed as examples: solar panels, air-conditioning systems and television antennae. The subsection continues to then broadly list that the lot owner is also responsible for another device providing a utility service to a lot.</p>	Section 159(3)	Section 170 AM Section 127 CM Section 99 SSM
Defect assessment - Sections 181 and 182	<p>A body corporate must include a defect assessment motion at the annual general meeting, after the first annual general meeting.</p> <p>Section 181 provides that a body corporate may establish a new voluntary defect assessment scheme, which only applies to developments created under a standard format plan of subdivision.</p>	N/A	Sections 168 and 169 AM Sections 124 and 125 CM Section 100 and 101 SSM
Giving documents to lot owners or relevant persons - Sections 218 to 221	<p>The new sections outline how documents, notices and information are to be given under this legislation. Significantly, it introduces the ability for parties to agree on the way these things may be given.</p> <p>This brings the legislation up to date with current industry practices of owners and bodies corporate agreeing that general meeting notices (and other similar documents) may be given electronically.</p>	Sections 202 to 205	Sections 204 to 206 AM Sections 161 to 163 CM Sections 137 & 138 SSM
Time to give notice - Section 223	<p>Currently a body corporate must be given notices of significant changes about a lot within 2 months of the change. This applies to changes such as the lot being sold, a lease of more than 6 months is entered into, a</p>	Section 193	Section 207 AM Section 164 CM Section 140 SSM

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	<p>letting agent is appointed or terminated, or a mortgagee enters into possession.</p> <p>The requirement to give notice has been shortened to 1 month.</p>		
<p>Updating the roll</p> <p>- Section 225</p>	<p>A body corporate's roll must now be updated within 14 days after new or changed information is received. Previously, there was no timeframe within which the roll had to be updated.</p>	N/A	<p>Section 209 AM</p> <p>Section 166 CM</p> <p>Section 142 SSM</p>
<p>Service of documents or information on secretary generally</p> <p>- Section 222</p>	<p>This new section clarifies that if a lot owner is required or permitted to give or serve a document or information on the secretary, then that document or information may be given or served on a body corporate manager who has been authorised under section 119(2) of the BCCM Act to exercise some or all of the powers of the secretary.</p> <p>This section has been introduced to regularise the industry-practice of lot owners giving voting papers to a body corporate manager. In <i>Whitsunday Waters Resort</i> [2020] QBCCMCmr 84, an Adjudicator cast doubt on the validity of this practice by finding that a voting paper could only be given to the secretary, not the body corporate manager.</p>		<p>Section 211 AM</p> <p>Section 168 CM</p> <p>Section 139 SSM</p>

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Suite 9A, Level 9/401 Queen Street, Brisbane City, QLD 4000

(07) 38393011