

# Proposed motions

## FOR INCLUSION ON THE AGENDA OF A GENERAL MEETING

Body Corporate and Community Management Act 1997 (“**BCCMA**”)  
Body Corporate and Community Management (Standard Module) Regulation 2008 (“**SM**”)  
Body Corporate and Community Management (Accommodation Module) Regulation 2008 (“**AM**”)  
Body Corporate and Community Management (Commercial Module) Regulation 2008 (“**CM**”)  
Body Corporate and Community Management (Small Schemes Module) Regulation 2008 (“**SSM**”)  
Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011  
 (“**STLSM**”)

### Motions

#### 1. **Motion to adopt electronic delivery of notices** **Ordinary Resolution**

The Body Corporate hereby RESOLVES that:

- (a) it may, in addition to the existing authorised methods of delivery of notices, deliver any and all notices, documents, correspondence, communications and other forms of information (“Notices”) by way of an electronic communication, including email, SMS, facsimile and the sharing of a digital file via a digital file sharing system, provided that the recipient of the Notices has consented to the Notices being given by an electronic communication, with such consent to be express or inferred by the conduct of the recipient;
- (b) the Notices delivered by an electronic communication will be deemed to be delivered when the electronic communication containing or attaching the Notices, or a hyperlink to the Notices, becomes capable of being retrieved by the recipient at the recipient’s electronic address or any information system controlled by or on behalf of the recipient;
- (c) lot owners may, in addition to the existing authorised methods of delivery of notices, voting papers, correspondence and or any other materials to the Secretary as prescribed by the Body Corporate and Community Management Act 1997 and Body Corporate and Community Management Regulations (“Secretarial Notices”), deliver all Secretarial Notices to the Secretary electronically via the following email address **[insert email]** and otherwise by delivery to the address or Post Office Box specified by the Secretary; and
- (d) all Notices and Secretarial Notices which are required to be signed may, in addition to any other lawful method of signing, be signed by way of electronic signature.

[Sections 45 & 70 SM] [Sections 45 & 68 AM] [Sections 20 & 37 CM] [Sections 35 SSM]  
[Section 5 STLSM]

**Explanatory note.** This motion is to provide the Body Corporate and lot owners with the flexibility of electronic delivery of notices, while also clarifying the way in which electronic notices may be sent and received. The methods of delivery of notices in this motion are supplementary to (and are not intended to limit in any way) the other lawful ways that notices may be delivered and are subject to the Electronic Transactions (Queensland) Act 2001.

Comments (not to be included on agenda)

1. There is already some provision made in the Regulation Modules for minutes of committee meetings to be sent electronically [S. 55(4)(b)(iv) SM; S. 55(4)(b)(iv) AM; S. 29(4)(b)(iv) CM; S. 22(3)(b)(iv).]
2. S. 5 of the STLSM, owner agreements may be entered into by way of electronic communications in accordance with the Electronic Transactions (Queensland) Act 2001.
3. There are various other sections in the Act and Regulation Modules where the specific method of delivery of notices is not prescribed.
4. Under S. 39 of the Acts Interpretation Act 1954, where a document is required to be served on a person under legislation, regardless of whether 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used, service of the document may be performed by: delivering it to the person personally; or by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document. Email and file sharing platforms are a "similar facility" to facsimile, being other forms of electronic communication.
5. Under Ss. 11 & 14 of the Electronic Transactions (Queensland) Act 2001 a legislative requirement to give information or a document is taken to be met if this is done electronically, provided the recipient of the information or document has consented (which can be inferred by conduct).
6. Lot owners cannot be forced to receive documents and information electronically. Therefore, if some owners wish to receive notices in paper form, then the body corporate must provide the notices in paper form.

**2. Electronic voting**

**Ordinary Resolution**

The Body Corporate hereby RESOLVES that:

- (a) voters may, in addition to the existing authorised methods of voting, cast votes electronically including, without limitation, a vote in relation to:
  - (i) all open motions at any general meeting of the Body Corporate;
  - (ii) all motions to be decided by way of secret ballot at any general meeting of the Body Corporate; and
  - (iii) all secret or open ballots for the election of committee members at any general meeting of the Body Corporate;
- (b) voters may, in addition to the existing authorised methods of attending a General Meeting, attend by way of teleconference, videoconference or the submission of an electronic voting paper and by so doing will be accepted as being present in person at the General Meeting;
- (c) committee members may, in addition to the existing authorised methods of voting, cast an electronic vote on any motion to be decided by the committee;
- (d) committee members may, in addition to the existing authorised methods of attending committee meetings attend by way of teleconference, videoconference or the submission of an electronic voting paper and by so doing will be accepted as being present in person at the committee meeting;
- (e) any documents which are required to be signed in connection with electronic voting may, in addition to any other lawful method of signing, be signed by way of electronic signature.

[Sections 71, 82, 86, 89 & 90 SM] [Sections 69, 80, 84, 87 & 88 AM]

[Sections 38, 49, 53, 56 & 57 CM] [Section 47 SSM]

**Explanatory note.** This motion is to provide the Body Corporate and lot owners with the flexibility of voting by electronic means, while also clarifying the way in which electronic votes may be cast. The methods of voting in this motion are supplementary to (and are not intended to limit in any way) the other lawful ways that votes may be cast under the BCCMA and Regulation Module and subject to the *Electronic Transactions (Queensland) Act 2001*.

Comments (not to be included on agenda):

1. This motion is designed to be used in conjunction with the amendment of committee election process motion below and aims to address the different level of general meeting authorisation that is required to amend committee election processes (being special resolution, whereas the electronic voting motion only requires an ordinary resolution). Alternatively, the motions could be combined and passed by special resolution.
2. The Regulation Modules specifically provide that voters may cast their votes electronically on open motions and secret ballots where the Body Corporate has passed an ordinary resolution to allow electronic voting [Sections 71, 82, 86, 89 & 90 SM] [Sections 69, 80, 84, 87 & 88 AM] [Sections 38, 49, 53, 56 & 57 CM] [Section 47 SSM].
3. This motion is not required under the STLSM as decisions are made by owners' agreement and under S. 5 of the STLSM, owner agreements may be entered into by way of electronic communications in accordance with the Electronic Transactions (Queensland) Act 2001.
4. It is also worth noting that under the Commercial and Small Schemes Modules, voting outside of a general meeting is permitted under S. 111 of the BCCMA [S. 162 CM] [S. 138 SM] but care should be exercised to ensure that the requirements of S. 111 of the BCCMA are fulfilled.
5. The quorum requirements for General Meetings still require 2 persons to be "personally present" at the meeting (1 person for schemes with 3 or less voters or where the General Meeting has been previously adjourned for lack of a quorum). The above motion will not in and of itself alleviate the need to have the required persons "personally present" under the Regulation Modules. However, we note that At the time of drafting, the COVID-19 Emergency Response Bill 2020, which is designed to give the Government the power to enact Regulations changing the way in which meetings are attended (among other things necessary to deal with COVID-19)

**3. Motion for election of the strata committee by electronic means                      Special Resolution**

The body corporate hereby SPECIALLY RESOLVES pursuant to section 99 of the BCCMA and section 15 of the BCCM Standard Module Regulation ("the Regulation Module") [or other relevant Regulation Module] to vary the committee nomination and election procedures set out in sections 16 to 28 [or other relevant sections outlined below] of the Regulation Module to the extent necessary to permit all nomination and election processes to occur electronically in accordance with the electronic voting motion, including without limitation:

- (a) signing and sending any and all documents electronically; and
- (b) attending any and all meetings electronically.

[Section 99 BCCMA] [Section 15 SM] [Section 16 AM] [Section 14 CM] [Section 14 SSM]

**Explanatory note.** This motion is to provide the Body Corporate and lot owners with the flexibility of enabling committee nominations and elections to be conducted by electronic means. The methods of voting in this motion are supplementary to (and are not intended to limit in any way) the other lawful ways that votes may be cast under the BCCMA and Regulation Module and subject to the *Electronic Transactions (Queensland) Act 2001*.

Comments (not to be included on agenda)

1. This motion is designed to be used in conjunction with the electronic voting motion above (or where the body corporate has already previously resolved to permit electronic voting) and aims to address the different level of general meeting authorisation that is required to amend committee election processes (being special resolution, whereas the electronic voting motion only requires an ordinary resolution).
2. Under Section 99 of the BCCMA, the Regulation Modules prescribe the way committee members are chosen. Under the Regulation Modules [S. 15 SM; S. 16 AM; S. 14 CM; S. 14 SSM; STL SM – not applicable], the members of the committee must be chosen by an election conducted in accordance with certain sections of those Regulation Modules [Ss. 16 to 28 SM; Ss.17 to 28 AM; Ss. 15 and 7(b) SSM], unless the body corporate decides by special resolution that the members are to be elected in another way.
3. For the Commercial Module, there are no election procedures prescribed under the Regulation Module, section 14(2) provides that the Body Corporate must decide upon the election procedures by way of a special resolution.
4. Therefore, Bodies Corporate may pass a special resolution to supplement or vary the committee election procedures in the relevant Regulation Module (or a previously passed special resolution) in order to facilitate electronic election of committee members in conjunction with an appropriate motion approving electronic voting generally as outlined above.

#### 4. Motion to adopt an electronic application of seal

#### Ordinary Resolution

The Body Corporate hereby RESOLVES that the seal of the Body Corporate may, in addition to the existing authorised methods for applying the seal, be imprinted by physical or electronic means upon any document and that the persons authorised under Section 192 of the BCCM Standard Module Regulation (“the Regulation Module”) [or other relevant Regulation Module] may attest to the imprinting of the seal by physical or electronic means.

[S. 34 BCCMA] [S. 192 SM] [ S. 190 AM] [S. 148 CM] [S. 126 SSM] [S.61 STL SM]

**Explanatory note.** This motion is to provide the Body Corporate and lot owners with the flexibility of applying the Body Corporate seal by electronic means, in addition to (and not intended to limit in any way) the other lawful ways that the seal may be applied under the BCCMA and Regulation Module and subject to the *Electronic Transactions (Queensland) Act 2001*.

Comments (not to be included on agenda)

1. S. 34 of the BCCMA provides that the Body Corporate seal must be kept and used in the way prescribed under the Regulation Module.
2. The Regulation Modules prescribe that the seal may be used in the way that the Body Corporate has authorised by ordinary resolution.

3. Under S 61 of the STLSM that the seal may be used in the way that is decided by owners' agreement.
4. Under Section 14 of the Electronic Transactions (Queensland) Act 2001, signatures can be electronic, and the term "sign" is defined under Schedule 1 of the Acts Interpretation Act 1954 to include the attaching of a seal and the making of a mark.
5. Therefore, we consider that there is a strong argument in favour of a Body Corporate resolving by way of ordinary resolution to keep and use the Body Corporate's seal electronically.
6. Our view is that the legislation does not contemplate use of an electronic seal nor the possibility of duplicate seals.
7. Whether the legislation would treat a duplicate or electronic seal as being invalid, or an act of affixing that seal as being a nullity, is a question that is open for debate. There are good reasons to believe that such a serious outcome could result, in particular that the affixing of the seal chiefly is of relevance with respect to registration of dealings with land, and allowing duplicates or electronic seals could facilitate fraudulent land dealings. Bodies Corporate really should consider having a technology protocol for the use of any electronic seal (such as password protection or some other cryptographic control/verification).
8. There are various circumstances where the affixing of the seal is not required as a matter of law and instead is just done as a matter of convention. In these cases, the Body Corporate or committee can determine to appoint a particular person, such as the Secretary, to execute certain documents on its behalf. Alternatively, the Body Corporate Manager may have the appropriate delegations to execute such documents on the Body Corporate's behalf without use of the seal. We would encourage use of these alternative measures wherever possible.
9. Under Section 310 of the BCCMA, where a person honestly, fairly and without notice of any irregularity enters into a contract with a member of the committee or a person with apparent authority to bind the Body Corporate, the contract will be valid and binding against the Body Corporate.
10. There are circumstances, however, where the law requires the affixing of the seal and execution in wet ink. Chiefly these relate to dealings and plans lodged with Land Registry Services. The affixing of the seal is either required by legislation, or required by a lawful direction of the Registrar-General. In those cases, there is no work-around for affixing the seal and signing in wet ink. Presumably, however, the Body Corporate Manager will be able to do this where the Body Corporate has authorised it by ordinary resolution.
11. At the time of drafting, the COVID-19 Emergency Response Bill 2020 was just passed in Parliament, which is designed to give the Government the power to enact Regulations changing the way in which documents are signed and witnessed (among other things necessary to deal with COVID-19)

## 5. Motion concerning the electronic inspection of records

## Ordinary Resolution

The Body Corporate hereby RESOLVES that, for the purposes of Section 205 of the Body Corporate and Community Management Act 1997 and Section 204 of the Body Corporate and Community Management (Standard Module) Regulation 2008[or other relevant Regulation Module], it elects to only permit the inspection of the Body Corporate's records by electronic access to the documents or to simply provide electronic copies of the documents requested.

**Explanatory note.** The intention of this motion is to provide that the Body Corporate's records are only to be inspected by way of electronic access.

Comments (not to be included on agenda):

1. Under S. 204 of the BCCMA, the Body Corporate must maintain the records of the Body Corporate in accordance with the applicable Regulation Module.
2. Under S. 205 of the BCCMA, the Body Corporate must, within 7 days of receiving a written request along with the prescribed fee from an interested person, either: allow the person to inspect the body corporate record; or give the person a copy of the record.
3. The Regulation Modules specifically provide for the maintenance of Body Corporate records electronically [S. 203(2) SM] [Ss. 201(2) AM] [S. 159(2) CM] [Ss. 135(2) SSM] [S. 68(3) STLMSM]
4. However, to pass this motion, the Body Corporate will actually need to be in a position to, in fact, provide electronic access or electronic copies of records. We recommend that you ensure that this is possible by liaising with your software service provider and IT infrastructure consultants.

#### Other considerations regarding financial aspects – budgeting, levies and recovery

##### 1. **Adjustment of budgets**

Bodies Corporate may wish to consider reviewing their existing budgets for the administrative and/or sinking fund to see if there are any items of expenditure which can be reduced or delayed. We note that each Body Corporate is different, and its own specific circumstances should be taken into consideration before adjusting the budgets. As Bodies Corporate and their committees are required to act reasonably, it is important to ensure that all relevant factors are considered and weighed appropriately to the Body Corporate's specific financial situation. We would recommend obtaining specialist advice, reports and forecasts as part of this process.

The Budgets may be adjusted by passing an ordinary resolution to approve new budgets. Most Body Corporate Managers have standard motions for adopting new budgets. However, please don't hesitate to contact us if you need any help or guidance with this.

##### 2. **Adjustment of levies**

Once new budgets are approved, the Body Corporate must then fix the new contributions, based upon those budgets. Most Body Corporate Managers have standard motions for striking levies. However, please don't hesitate to contact us if you need any help or guidance with this.

##### 3. **Levy recovery**

Lot owners that fail to pay their levies may:

- (a) lose the benefit of any discount (up to 20%) which the body Corporate has previously resolved by way of ordinary resolution to apply to the payment of levies by the date fixed in the levy notice;
- (b) become liable to pay penalty interest upon the outstanding amount of up to 2.5% per calendar month; and
- (c) become liable to pay the Body Corporate's reasonable costs incurred in recovering the debt from the lot owner.

A body corporate committee is authorised to make the decision to:

- (a) allow the lot owner to receive a discount on a levy, despite failing to pay by the due date,
- (b) waive the charging of penalty interest;
- (c) waive liability for any reasonable recovery costs; and
- (d) negotiate and enter into an agreement to pay the outstanding levies, such as a payment plan.