Body Corporate and Community Management (Standard Module) Regulation 2020

Explanatory notes for SL 2020 No. 233

made under the

Body Corporate and Community Management Act 1997

General Outline

Short title

Body Corporate and Community Management (Standard Module) Regulation 2020

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.

A community titles scheme involves the subdivision of land or buildings into lots and common property. The lots can be owned separately whereas the common property is owned communally by all lot owners as tenants in common.

The collective ownership of certain property and assets that is inherent to community titles schemes requires a capacity for collective administration, through the formation of a body corporate comprised of the owners of lots included in the scheme. A legislative framework for community titles schemes is necessary because the complexities of collective ownership and administration require an appropriate and comprehensive set of rules within which self-governance processes can effectively operate.

Community titles schemes take a wide range of forms, including townhouses, low-rise unit blocks, high-rise apartment complexes, hotels, shopping centres and commercial offices. Schemes may be built for a single purpose, like residential accommodation, or for a mix of uses such as short-term accommodation, dining, and entertainment. There are also different groups of lot owners including owner occupiers, investors, corporations, and small businesses, each with potentially different ownership priorities and different needs and capacities relevant to scheme governance.

To provide the required flexibility of governance arrangements for this range of schemes, uses, and ownership types, the BCCM Act is constructed so that management processes and procedures are provided in regulation modules designed for different types of schemes. Five regulation modules have been made under the BCCM Act. These are the Accommodation, Commercial, Small Schemes, Standard and Specified Two-Lot Schemes Modules.

A body corporate may adopt a regulation module if the characteristics of the scheme meet the eligibility criteria for the regulation module. This allows schemes to operate under administrative and procedural rules that match the use of the scheme, and the needs of its owners and occupiers.

The *Body Corporate and Community Management (Standard Module) Regulation 2020* (new Standard Module) has been prepared to replace the existing *Body Corporate and Community Management (Standard Module) Regulation 2008* (expiring Standard Module). The expiring Standard Module was due to expire on 1 September 2018 by operation of section 54(1) of the *Statutory Instruments Act 1992* (SI Act), and the date of expiry has been extended by extension regulations under the SI Act.

The new Standard Module is suitable for a wide variety of community titles schemes and is the default regulation module that applies to a community titles scheme if no other regulation module is applicable. Each of the other regulation modules is designed for a specific type of community titles scheme and has governance arrangements tailored for those scheme types, where the typical characteristics of schemes or lot owners means a more flexible, less prescriptive approach may be more appropriate.

The new Standard Module provides the most comprehensive set of governance rules of the five modules. This is partly to ensure it is appropriate for a diverse range of community titles schemes. These schemes can vary widely in size and characteristics, ranging from, for example, four-lot schemes with simple common property elements, to schemes with more than 100 lots and several common property facilities.

It is also appropriate that the Standard Module provides the most comprehensive set of governance rules because it applies to any scheme that is registered without a specific regulation module chosen, regardless of the use or characteristics of the scheme and its individual lots.

Achievement of policy objectives

The new Standard Module achieves the policy objective of providing a management and administration framework for community titles schemes by providing for:

- the body corporate committee;
- general meetings of the body corporate;
- proxies for committee meetings and general meetings;
- the engagement of body corporate managers and service contractors, and the authorisation of letting agents;
- financial management;
- property management and insurance; and
- administrative matters including recordkeeping.

The new Standard Module continues many existing management arrangements for community titles schemes under the expiring Standard Module, except where enhancements have been made as described below. Continuing management arrangements provided under the expiring Standard Module, where suitable, ensures appropriate standards for scheme governance continue to be provided, while also minimising disruption to bodies corporate implementing the new Standard Module.

Review of body corporate procedural issues

The new Standard Module includes enhancements to management processes identified in a review of administrative and procedural issues impacting on bodies corporate, which was conducted for the Government by the Commercial and Property Law Research Centre of the Queensland University of Technology (QUT).

QUT's recommendations report, titled 'Final recommendations: Procedural Issues under the *Body Corporate and Community Management Act 1997*', made 64 recommendations. A substantial proportion of the recommendations were for legislative change specific to one or more of the regulation modules, while the remaining recommendations supported the existing legislative approach.

During consultation undertaken by the Department of Justice and Attorney-General (DJAG) on QUT's recommendations, additional beneficial reforms were identified.

The enhancements implemented in the new Standard Module facilitate the adoption of communication and information technology platforms that will enable bodies corporate to share information, deliver services, and administer the scheme more effectively. They improve the clarity and operation of the regulation, providing more flexible body corporate procedures, reducing body corporate costs, and enhancing protections for lot owners.

The enhancements to the Standard Module are described in detail below.

Committee membership and meetings of the committee

Under the expiring Standard Module, a body corporate must elect a committee at each annual general meeting. The committee provides executive governance and administration functions for the body corporate. The new Standard Module includes several reforms relevant to committee membership, elections and procedures.

Committee membership restrictions: co-owners and family members

The eligibility and nomination rules of the expiring Standard Module follow the general principle that the eligibility of any two committee members cannot derive from ownership of the same lot (apart from in very limited circumstances).

The new Standard Module clarifies rules about committee membership for co-owners and representatives of lot owners. The relevant new provisions will ensure that the restriction on more than one co-owner, owner or family member being elected to the committee based on ownership of a lot, is applied separately for each lot that is owned.

Deemed committee membership for schemes with only three owners

The expiring Standard Module allows committee membership to be deemed in certain circumstances, rather than determined by election, when there are only two lots in the scheme, or there are more than two lots, but fewer than three lot owners.

The new Standard Module also allows committee membership to be deemed where there are three or more lots, and only three owners, with the relevant owners to decide between themselves which executive positions each holds.

Committee elections – electronic voting

The new Standard Module allows electronic votes, and systems of electronic voting, to be used for both open ballot and secret ballot committee elections, by ordinary resolution of the body corporate. Lot owners can waive requirements for receiving hard copy secret ballot materials where electronic voting is in place, to further assist in reducing the costs of committee elections.

Calls for nominations for ordinary member positions at a general meeting

Under the expiring Standard Module, for a general meeting where there are fewer committee members than the ***required number*** of voting members for the committee, the chair must invite a number of nominations for ordinary member positions sufficient to bring the number to not more than the required number. The required number is defined by range from three up to seven members (or the number of lots if there are fewer than seven lots). The wording of this requirement, and use of a range for required number, has caused some confusion about whether a number of nominations must be called for to bring the number of voting committee members to the minimum of three, or alternatively to seven (or the number of lots if there are fewer than seven lots).

The new Standard Module clarifies the requirements for when, and how many nominations must be invited at the meeting. When there are fewer than the defined ***maximum number*** of voting committee members, which is seven (or the number of lots if there are fewer than seven lots), nominations must be invited. The number of nominations for ordinary member positions that must be invited is the number required to bring the voting members of the committee to the maximum number.

Clarify requirements for removal of committee members by ordinary resolution

Under the expiring Standard Module, there are two means by which a committee member can be removed from office: by ordinary resolution; or by way of issuing a notice for breach of the code of conduct followed by subsequent removal by ordinary resolution. However, the relevant provisions do not make it clear that these are two distinct means of removing a committee member from office. To reduce confusion around the options for removing a committee member from office, the new Standard Module sets out that removal under the code breach process, by way of issuing a notice for breach of the code of conduct followed by removal by ordinary resolution, is a distinct process that causes a committee member's position to become vacant, separate to removal from office by ordinary resolution of the body corporate where no notice for breach of the code of conduct is issued.

Ballots for engagement of body corporate manager to act for the committee

A body corporate manager can be engaged to carry out the functions of a committee and its executive members where, in specified circumstances, the committee for the body corporate does not have sufficient members (commonly known as a 'Part 5 engagement'). Under the expiring Standard Module, a secret ballot must be used for a motion about this type of engagement. Given that efforts to appoint sufficient committee members must have already failed prior to consideration of a Part 5 engagement, the requirements for a secret ballot may place additional cost and procedural burdens on schemes.

The new Standard Module allows a body corporate to decide by ordinary resolution that a Part 5 engagement can be decided by an open ballot, rather than secret ballot.

Principal schemes – maximum committee size of 12

The BCCM Act provides for layered arrangements of community titles schemes, where a lot within a scheme may itself be a scheme comprising lots and/or other subsidiary schemes. The top layer in such arrangements is a ‘principal scheme’.

Community titles schemes are increasing in average size, and complexity, with this trend expected to continue. The new Standard Module allows the body corporate for a principal scheme to decide, by ordinary resolution, to increase the maximum number of committee members for the principal scheme to 12 members. This provides for broader representation where there are many subsidiary schemes, without allowing excessively large committees that would likely prove unworkable.

Restricting benefits to committee members from service contractors

The new Standard Module restricts committee members from receiving direct or indirect benefits from caretaking service contractors and service contractors unless the body corporate has authorised the receipt of the benefit by ordinary resolution. This does not apply to the supply of, or payment for, routine services the contractor has been engaged by the body corporate, or lot owner, to supply. The measure is intended to prevent inducements or rewards being given to committee members for preferential consideration of a contractor.

Motions from members of the body corporate to be considered by committee

Committees are routinely asked to consider motions proposed by lot owners, for example, regarding the application of by-laws.

To encourage involvement of lot owners in scheme governance, as well as ensuring committees are responsive to the concerns and interests of other members of the body corporate, the new Standard Module provides an explicit right for a member of the body corporate to submit a motion for consideration by the committee. The provisions set a timeframe of six weeks, which may be extended to 12 weeks if required, for the committee to decide the motion. Motions not decided by the committee within the timeframe are deemed to be decided against. Limits are placed on the number of motions submitted by the same lot owner that the committee must consider, to ensure committees are not overburdened and to discourage lot owners from exercising their ability to submit motions to the committee in an unreasonable or excessive manner.

Electronic attendance at meetings of the committee

The new Standard Module clarifies that voting members of the committee may attend and vote at a meeting of the committee by electronic means when authorised by the committee. Similarly, non-voting members of the committee, and persons who are not committee members but are either lot owners or their representatives, or other persons invited to attend, are able to attend electronically if authorised.

Extend right to attend committee meetings to representatives of lot owners

The new Standard Module extends the right to attend a committee meeting to the representative of a lot owner, subject to the representative providing specified information sufficient to demonstrate that the person is the lot owner's representative.

Debtor members of the committee ineligible for committee vote

The new Standard Module provides that a committee member who owes a body corporate debt, or who was nominated by an entity that owes a body corporate debt, is a ***debtor member*** and ineligible to vote at a committee meeting, or to vote outside a committee meeting. A debtor member is not eligible to vote as a proxy for another voting member, and another voting member is not be able to vote as the debtor member's proxy.

Deemed decision rule for votes outside committee meetings

Under the expiring Standard Module, a vote outside a committee meeting may result in a motion that is not decided for an extended period of time (or at all) where insufficient votes are received to determine the motion, because there is no limitation on the period allowed for decision. To ensure there is adequate certainty around motions presented for a vote outside committee meetings, the new Standard Module deems that a motion is not agreed to if after three weeks the motion is not decided. The new approach also clarifies how a motion can be decided at the point sufficient votes are received to make the outcome clear.

General meetings

The body corporate for a community titles scheme under the Standard Module must hold an annual general meeting each year to decide key issues of scheme governance including annual budgets, contributions payable by lot owners, insurance, and committee elections. The body corporate may also hold extraordinary general meetings as required to consider other matters. The new Standard Module includes several reforms to meeting procedures and requirements.

First annual general meeting: motions submitted by lot owners

The first annual general meeting of the body corporate must be called by the original owner (developer) shortly after commencement of the scheme. The new Standard Module requires that a motion submitted by a member of the body corporate before the first annual general must be included on the agenda for the meeting if it is practicable to do so.

First annual general meeting

At the first annual general meeting, the original owner is required to give listed documents and material to the body corporate. To facilitate effective scheme governance the new Standard Module requires additional items be provided to the body corporate, including:

- a copy of a development approval if one was required;
- the scheme's community management statement;
- copies of documents relating to any claim made against a policy of insurance taken out by the original owner for the body corporate;

- a copy of any fire and evacuation plan required under the *Fire and Emergency Services Act 1990*;
- copies of any contracts or agreements for the supply of utility services to the body corporate;
- copies of any documents relating to warranties for: buildings or improvements forming part of scheme land; common property plant and equipment; and any other body corporate asset;
- a copy of any proxy form under which the original owner is the proxy for an owner of a lot; and
- a copy of any document under which the original owner derives representative capacity for an owner of a lot.

Each of the documents must be provided in hard copy and electronic form to ensure information can be easily accessed and suitably archived.

The community management statement is a document recorded under the *Land Title Act 1994*, that identifies the scheme land (comprising all lots and the common property for the scheme) and contains a range of other important particulars relevant to the scheme, such as the by-laws for the scheme, the lot entitlements for the scheme, and the regulation module that applies to the scheme. A new community management statement must be recorded where relevant changes are made to the scheme. For this reason, the electronic copy of the community management statement provided must be editable.

Improved procedures for multiple motions submitted on the same issue

Under the expiring Standard Module, a motion with alternatives provides a way to combine original motions submitted by lot owners on the same issue into a single motion. However, the rules for deciding outcomes lack clarity where different alternatives require different types of resolutions, and voters are also restricted to a choice of one alternative.

The new Standard Module improves the procedure for dealing with motions submitted on the same issue. These are dealt with as a ***group of same-issue motions***. Voters can vote for or against or abstain from voting on more than one of the same-issue motions, and the motion chosen as the decision (if any) is the motion most preferred by voters that also receives votes sufficient to satisfy the type of resolution required for the motion.

The new Standard Module also sets out specific procedural requirements for listing a group of same-issue motions on the agenda for a meeting, as well as requirements for an explanatory note to accompany an agenda that contains a group of same-issue motions.

The power to amend a motion at a general meeting is modified so that it does not apply to original motions that are part of a group of same-issue motions. This prevents ‘gaming’ of the outcome of a group of same-issue motions by way of removing unfavoured alternatives.

More flexible general meeting quorum requirements

The new Standard Module clarifies how the number of voters for a meeting is calculated. Bodies corporate are provided the power to reduce the number of voters required to be present at a meeting to achieve a quorum, within certain limits, and to reduce the number of voters that must be personally present to one. Bodies corporate are also able to decide that a person is personally present if they can cast a vote electronically at the meeting (for example, by teleconference).

Restricting inappropriate use of powers of attorney

The new Standard Module restricts inappropriate use of powers of attorney to prevent concentration of voting power that may impact negatively on a scheme's collective decision making, by strictly limiting circumstances in which a person can act as a representative of a lot owner under a power of attorney, for more than one lot. Exceptions are provided for family members, owners of multiple lots, and specified powers of attorney given to the original owner.

General meetings – electronic voting

The new Standard Module regulation allows more flexibility in the use of electronic voting at general meetings. The regulation sets out that a system for receiving electronic votes can allow voters to cast electronic votes 'live' at the meeting. Provisions are also included to allow voters to withdraw secret ballot votes made electronically. The regulation also includes additional minimum requirements for electronic voting systems.

The new Standard Module allows lot owners to waive requirements for receiving hard copy secret ballot materials where the body corporate has decided to use electronic voting for secret ballots.

Proxy voting for owners of lots at the principal scheme level

Voting by proxy at a general meeting of the principal body corporate in a layered arrangement of schemes is permitted if the person giving the proxy is the owner of a lot at the principal scheme level. The prohibition on exercising votes using proxies given by representatives of subsidiary schemes at the principal scheme level is retained.

Recording reasons for ruling a motion out of order

The new Standard Module clarifies the requirement to record reasons for ruling a motion at a general meeting out of order, by expanding the definition of full and accurate minutes to include reasons for such rulings.

Body corporate managers and caretaking service contractors

A body corporate may engage a body corporate manager to assist with the administration of the scheme. A body corporate manager may also be engaged to carry out the functions of the committee for a scheme. A caretaking service contractor is a person who is both an authorised letting agent, and a service contractor (usually caretaking and maintenance services) for the scheme. Due to their close involvement in scheme governance, including assisting the committee and body corporate to procure products and services for the scheme, body corporate managers and caretaking service contractors are automatically non-voting members of the committee.

Disclosure of monetary benefits

The new Standard Module clarifies and improves requirements for a body corporate manager or caretaking service contractor to disclose any commission, payment or other benefit they are entitled to receive that is associated with a contract the body corporate is considering entering into (including insurance). Specifically, where a benefit is monetary, the disclosure must include the amount of the benefit.

Financial management

Under both the expiring Standard Module and new Standard Module, the body corporate for a community titles scheme is responsible for financial management of the scheme, including setting budgets, determining lot owner contributions, and ensuring spending within the scheme complies with the rules that apply to spending under the regulation.

Allowing committees to take out or renew required insurance

For many schemes under the expiring Standard Module, taking out or renewing insurance is a responsibility of the body corporate at a general meeting because the cost of insurance will exceed the relevant limit for committee spending. This has caused difficulties where there is limited time between insurance renewal dates and general meetings, or lapses in insurance coverage.

To make it easier for schemes to arrange necessary insurance cover, under the new Standard Module, committees are permitted to put in place, or renew, a required policy of insurance, despite the decision requiring spending above the relevant limit for committee spending, unless the body corporate makes such a decision a restricted issue for the committee. If the cost of the insurance is more than the relevant limit for major spending, the committee must obtain and consider at least 2 quotations for the policy of insurance.

Property management

Under both the expiring Standard Module and new Standard Module, the body corporate is responsible for certain property management functions, which include obligations to maintain common property and assets in good condition, and requirements to take out insurance for common property and assets.

Improving disclosure requirements for insurance policies

The requirements for disclosure of details about each policy of insurance held by the body corporate at the annual general meeting are expanded in the new Standard Module to include the name of any insurance broker or intermediary involved with the taking out of the policy. The details of any benefit given, or to be given, by any insurance broker or intermediary to the body corporate or its members, a committee member, a body corporate manager, service contractor, or associates of any of the above, must be provided.

This ensures the body corporate is adequately informed of any additional benefits that may have been received by parties potentially involved in arranging the policy of insurance on behalf of the body corporate.

Utility infrastructure examples

The expiring Standard Module provides that a lot owner is responsible for maintaining utility infrastructure on common property that relates only to supplying utility services to the owner's lot. A list of examples of relevant utility infrastructure is included. The new Standard Module adds contemporary examples of relevant utility infrastructure.

Body corporate duty to consider preparing a defect assessment report

To encourage the early discovery of building defects in community titles schemes, new provisions set out that a body corporate is required to consider a motion proposing the engagement of an appropriately qualified person to prepare a defect assessment report.

This applies to property (apart from assets) the body corporate must insure for full replacement value. The motion must be included on the agenda of the scheme's second annual general meeting.

Where a scheme is being developed progressively, a defect assessment motion must be included on the agenda for the annual general meeting called directly after new property is included on scheme land and recording of a new community management statement is requested.

New provisions also allow a body corporate for a community titles scheme that contains standard format plan lots with stand-alone buildings to establish a voluntary defect assessment plan for the benefit of the owners of the relevant lots.

Administrative matters

The new Standard Module includes several reforms to provide more flexible options for communication and provision of notices and information within a community titles scheme, as well as clarifying and improving record keeping requirements.

Email address for service

The new Standard Module assists streamlining and modernising communication in bodies corporate by enabling documents, notices or other information that may be given under the BCCM Act or regulations to be emailed to a lot owner if the lot owner has provided an email address as part of their address for service.

Agreements about receiving documents and information

The new Standard Module allows a body corporate and the owner of a lot to enter into an agreement about how particular documents or information may be given to the owner (for example, through a file-sharing service).

Timeframes for giving and recording information for the roll

The time within which the owner of a lot or mortgagee in possession of a lot must give certain notices relevant to dealings with the lot is reduced from within two months of the event happening to within one month of the event happening.

The new Standard Module also clarifies the information provided by lot owners to the body corporate that must be recorded on the body corporate roll, including information in notices establishing persons as representatives of lot owners or subsidiary schemes, or relating to transfer of ownership or change of address. The body corporate will be required to record relevant information on the roll within 14 days of receiving the information.

Allowing body corporate managers to receive documents intended for the secretary

In many community titles schemes, notices and information that must be given to the secretary of the committee (for example, completed voting papers) are received by the body corporate manager on behalf of the secretary. However, the expiring Standard Module does not explicitly provide for such arrangements. The new Standard Module provides that where a body corporate has authorised a body corporate manager to exercise some or all of the powers of the secretary of the body corporate, that a requirement to give a document or information to the secretary is satisfied if it is given to the body corporate manager.

Transitional Issues

The new Standard Module includes general transitional provisions that:

- allow new provisions to be dealt with as replacements of the provisions of the expiring Standard Module;
- provide for the continuation of matters dealt with under the expiring Standard Module; and
- provide for matters not dealt with in the expiring Standard Module that are dealt with under the new Standard Module.

Specific transitional provisions are provided to ensure that:

- the expiring Standard Module continues to apply for procedural steps and conduct of a general meeting or committee meeting called but not held before commencement (of the new Standard Module);
- the new requirement for a defect assessment motion applies to schemes that have not called the relevant annual general meeting prior to commencement, but not to schemes where the relevant meeting was called but not held prior to commencement;
- committee elections for which notices inviting nominations have been sent before commencement, but that have not yet been held, are to be conducted under the relevant provisions of the expiring Standard Module;
- processes to remove a committee member for breach of the code of conduct that have begun but are not completed before commencement continue under the provisions of the expiring Standard Module;
- disclosure requirements of the expiring Standard Module continue to apply to disclosures about commissions or benefits associated with a contract where a disclosure notice has been provided prior to commencement, but the body corporate had not yet made a decision;
- where a committee meeting has been called but not held prior to commencement, and there is a proposal involving spending above the relevant limit for committee spending, the provision of the expiring Standard Module that limits committee spending continues to apply;
- forms approved prior to commencement remain current until 31 April 2021;
- savings provisions of the expiring Standard Module that preserve the effect of earlier transitional provisions for authorisations, engagements and debt recovery matters are retained;
- new requirements for entering information from certain notices on the roll, within a specified timeframe, do not apply for notices given before commencement; however, the body corporate must as far as practicable and as soon as practicable comply with the requirement; and,
- where a relevant person gave an email address to the body corporate for the purpose of receiving a document or information before commencement, the email address is taken to be the person's email address as part of an address for service.

Consistency with policy objectives of authorising law

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

The new Standard Module provides management processes that can be applied to a wide range of community titles schemes. The new Standard Module, in conjunction with the other regulation modules under the BCCM Act, 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.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

The new Standard Module is the most effective and appropriate way of achieving the policy objective of providing management processes for a wide range of community titles schemes.

It ensures that effective and well-established management arrangements of the expiring Standard Module are continued for these schemes. It also incorporates beneficial reforms to ensure the Standard Module continues to support the BCCM Act’s object of providing for flexible and contemporary communally based ownership arrangements.

Alternative options considered for achieving the policy objective include remaking the expiring Standard Module without changes, or no regulation.

Remaking the expiring Standard Module without changes would continue the existing governance framework for Standard Module schemes that stakeholders are familiar with, and that is largely effective. However, remaking the expiring Standard Module without changes would forego the implementation and benefits of reforms developed following extensive stakeholder and community consultation.

The Standard Module provides a comprehensive governance framework for the body corporate, including provisions relating to decision-making by the body corporate; the engagement of body corporate managers, letting agents and service contractors; financial management; property management; and recordkeeping. It is not practical to not provide management processes for community titles schemes. Each scheme would need to adopt its own ad hoc governance structures and rules. Without a legal basis for many key requirements of communal ownership (for example, levying contributions on owners for budgets) the administration and financial circumstances of schemes, and the property rights of lot owners, would be negatively impacted.

Benefits and costs of implementation

Benefits and costs for the community

The consultation conducted as part of QUT’s property law review has confirmed that the community titles sector considers the current regulatory framework, comprising the BCCM Act and its supporting regulation modules, is necessary for the continued effective, efficient and flexible management of community titles schemes in Queensland.

Implementing the new Standard Module ensures that the well-known provisions of the expiring Standard Module are remade and ensures continuity in the management of schemes that operate under the expiring Standard Module.

The new Standard Module's management arrangements involves some costs for bodies corporate and other persons who have obligations under the Standard Module, but these are considered to be outweighed by the benefits of the established arrangements for management community titles schemes continued by the new Standard Module.

The reforms included in the new Standard Module improve flexibility of body corporate governance, provide for potential reductions in costs, and improve protections for lot owners, as discussed in detail below. The beneficial effects of these reforms outweigh the costs, which are expected to be minimal, and mostly limited to the demands of transitioning to the new Standard Module.

Committee membership and meetings of the committee

Changes to committee membership restrictions involving co-owners and family members make it easier for schemes to ensure that lot owners and representatives are appointed to the committee appropriately, reduce the likelihood of disputes about committee elections, and promote better scheme governance.

Deeming committee membership for schemes with only three owners reduces costs for relevant schemes as a committee election does not need to be held.

Electronic voting for committee elections, and an allowance to waive provision of hard copy secret ballot materials, benefits schemes by allowing more flexible and efficient election processes, and potentially reduces costs associated with production, delivery and processing of hard copy voting materials. It also provides opportunities for businesses to provide new services and improve the efficiency of services provided.

Providing clarity about when (and how many) nominations for ordinary membership of the committee should be invited at a general meeting benefits scheme governance by promoting lot owner involvement and larger committees, and reducing the potential for disputes.

Clarifying how committee members may be removed from the committee reduces the potential for disputes about the removal of committee members.

Allowing a body corporate to decide that a Part 5 engagement of a body corporate manager to perform the functions of the committee can be authorised by open ballot provides flexibility of governance arrangements and reduces general meeting costs for relevant schemes.

Allowing bodies corporate of principal schemes to have a committee with up to 12 members improves flexibility of governance arrangements and may improve protections for lot owners in layered schemes that include many subsidiary schemes, through enhanced committee representation.

Prohibiting committee members from receiving certain direct or indirect benefits from service contractors without body corporate authorisation will improve committee governance.

Requiring committees to decide motions submitted by lot owners, with some restrictions, benefits schemes by increasing lot owner engagement with scheme governance, and improves protections for lot owners by ensuring decisions affecting them are made in a timely manner. For large schemes, this may result in some additional costs associated with additional meetings or votes outside committee meetings, however this potential is mitigated by protections designed to avoid undue burden on committees.

Allowing electronic attendance of voting and non-voting committee members, as well as lot owners and invitees, provides flexibility for committee meetings and potentially reduces costs of holding meetings. It may provide opportunities for businesses to provide new services to facilitate electronic voting and attendance and improve the efficiency of services provided.

Giving lot owner representatives a right to attend committee meetings enhances protections for lot owners by ensuring the interests of persons not able to attend can be adequately represented.

Making debtor members of the committee ineligible to vote on committee motions (including through the use of a proxy) improves committee governance by encouraging committee members to meet their financial obligations to the scheme, and also improves committee governance by removing debt related conflicts of interest from affecting decisions.

Deeming decisions for votes outside committee meetings before all votes are received but when the outcome is certain, or after the timeframe for decision has lapsed, benefits the scheme and lot owners by providing certainty about committee decisions and makes it easier for lot owners to dispute outcomes if necessary.

General meetings

Requiring motions submitted by members of the body corporate for the first annual general meeting be included on the agenda if practicable enhances protections for lot owners and promotes effective scheme governance. This may result in a minor additional burden on original owners in relation to preparing materials for votes on relevant motions.

The expanded list of documents the original owner must provide at the first annual general meeting, and the requirement for hard copy and electronic copy provision enhances the quality of scheme governance and protections for lot owners in the long term. It ensures critical documentation is readily available both for routine administration, maintenance and decision making, as well as in the event there is a relatively technical dispute to be resolved relevant to, for example, building work, contractual arrangements, and exclusive use issues. There may be a slight increase in costs for original owners associated with collating handover documentation. However, the cost is expected to be minimal because these documents are typically already in the possession of the original owner.

Replacing motions with alternatives with improved rules for a group of same-issue motions enhances scheme governance and lot owner protections. The reform ensures that rules for decisions involving competing options acknowledge that a lot owner may legitimately support multiple options, and also ensures that any motion that passes satisfies the voting threshold requirements that would apply if it was a single motion. The procedural clarity provided by the new provision should also reduce dispute costs. There may be minor costs to businesses or bodies corporate incurred in updating materials or systems used for motions with alternatives.

Provisions clarifying how the number of voters for a meeting is calculated, providing for adjustment of quorum requirements, and allowing electronic personal attendance at a meeting potentially reduce costs of governance by reducing the number of adjournments required, and enhance governance by potentially increasing lot owner engagement through electronic means. The reforms may also provide opportunities for businesses providing services relevant to electronic attendance and voting.

The restriction on inappropriate use of powers of attorney improves protections for lot owners and enhances scheme governance, by ensuring voting power cannot be accumulated to pursue outcomes that do not necessarily reflect the preferences of the relevant voters.

The inclusion of more flexibility in the use of electronic voting at general meetings, including the capacity to vote ‘live’ at the meeting, enhances scheme governance by encouraging engagement, potentially lowers costs of scheme governance, and provides opportunities for businesses to provide services to bodies corporate. The changes may also reduce costs of producing and posting voting materials.

Relaxing restrictions for voting by proxy at general meetings of principal schemes ensures individual lot owners in these schemes are afforded the same right to give a proxy as individual owners not in principal schemes.

Clarifying the requirement to record reasons for ruling a motion out of order improves scheme governance and record keeping and may assist the resolution of disputes about such rulings.

Body corporate managers and caretaking service contractors

Clarifying and improving requirements for disclosure of commissions, payments and other benefits by body corporate managers and caretaking service contractors enhances protections for lot owners and contributes to effective scheme governance. The additional burden on persons who must make these relatively simple disclosures is minimal as they are aware of their commission, payment or benefit arrangements.

Financial management

Allowing committees to put in place required insurance for the scheme without being restricted by committee spending limits simplifies scheme governance and helps to avoid lapses in insurance coverage.

Property management

Improving disclosure requirements for insurance policies to also include details about insurance intermediaries and benefits given by those intermediaries to persons relevant to the decision to take out insurance enhances protections for lot owners and contributes to effective scheme governance. The additional burden on persons who must provide the relatively simple information to be disclosed is minimal.

Providing additional examples of utility infrastructure that a lot owner is responsible for maintaining assists compliance with relevant requirements and improves scheme governance by clarifying lot owner and body corporate responsibilities.

Requiring the body corporate to consider preparing a defect assessment report improves scheme governance, enhances lot owner protections, and potentially reduces costs associated with remedying defective building work, by ensuring the issue of defects is attended to at a time when action on the issue will be most effective. This is also expected to benefit professionals and businesses contracted to prepare these reports.

Setting out how a body corporate may put in place a voluntary defect assessment plan for the benefit of lot owners enhances lot owner protections by raising the issue of defects within stand-alone buildings at an appropriate time, and reducing longer-term costs associated with defects. A collective approach to arranging reports may allow cost savings for individual lot owners.

Administrative matters

Allowing an email address to be included in an address for service makes providing and accessing information more convenient for bodies corporate and lot owners and may also reduce associated costs.

Allowing a body corporate and an owner of a lot to enter into an agreement about how documents or information may be given to the owner makes providing and accessing information more convenient for bodies corporate and lot owners, and may also reduce associated costs.

Requirements for additional information from notices relevant to dealings with lots and other matters to be added to the roll, and requiring that this be done within 14 days, assists scheme governance, and enhances protections for lot owners by ensuring details about persons who must be provided notices and information under the regulation or BCCM Act is up to date and comprehensive. This places a small additional administrative burden on the body corporate.

Shortening the time within which a lot owner or mortgagee in possession must give certain notices to the body corporate to one month assists scheme governance and enhances protections for lot owners.

Allowing appropriately authorised body corporate managers to receive notices and information on behalf of the secretary of the committee supports existing customary governance arrangements, and reduces administrative burdens on relevant committee secretaries.

Benefits and costs to government

DJAG will incur implementation costs, including costs associated with developing information and training resources for lot owners, committees, body corporate managers, departmental staff, and other stakeholders about the new Standard Module.

Impact on demand for dispute resolution services provided by the Office of the Commissioner for Body Corporate and Community Management, or through the Queensland Civil and Administrative Tribunal, is expected to be minimal. While there may be some disputes about new requirements and processes included in the new Standard Module, there is also likely to be fewer disputes involving other elements of the regulation where reforms to clarify and improve provisions have been implemented.

Consistency with fundamental legislative principles

Some provisions in the new Standard Module raise fundamental legislative principle issues. However, it is considered the new Standard Module reasonably balances fundamental legislative principles with intended community benefits.

Many of the provisions of the new Standard Module are identical in effect to provisions of the expiring Standard Module and raise the same fundamental legislative principle issues.

Sufficient regard to the rights and liberties of individuals

The new Standard Module prescribes requirements and restrictions relevant to a body corporate's engagement of a person as a body corporate manager or service contractor, or authorisation of a person as a letting agent.

These provisions may restrict the capacity of parties to contract freely and establish and enforce their contractual entitlements through traditional legal means. These provisions and their rationale are set out below.

Form of engagement or authorisation

The new Standard Module provides that an engagement or authorisation is void unless it is in the form required by the module. This restriction is a consumer protection measure that seeks to ensure full disclosure to the body corporate about, for example, the term of the contract, the basis of payment for services and the role to be performed. This information is necessary so the body corporate can make an informed decision about whether to engage or authorise a person.

Term of engagement or authorisation

The new Standard Module prescribes the maximum term of an engagement of a person as a body corporate manager, an engagement of a person as a service contractor, and an authorisation of a person as a letting agent. The term of an engagement of a body corporate manager must not be longer than three years. The term of an engagement of a service contractor and the term of an authorisation of a letting agent must not be longer than 10 years.

These limits were put in place to prevent such agreements from being everlasting agreements over which the body corporate had no control. Across the operation of the expiring Standard Module, the limits set for the engagement of a service contractor and the authorisation of a letting agent appear to have been sufficient to allow a service contractor/letting agent a reasonable prospect of obtaining a return on investment.

Transfer of engagement or authorisation

The new Standard Module prescribes that a person's rights under an engagement as a body corporate manager or service contractor, or an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer. The body corporate may have regard to several factors in deciding whether to approve a proposed transfer but cannot unreasonably refuse a transfer and must not require or receive a fee or other consideration for approving the transfer.

These transfer provisions provide flexibility to body corporate managers, service contractors and letting agents to assign their rights to another party. This provision offers protection to letting agents and service contractors, who have usually invested significant funds in purchasing the letting or caretaking rights, from significant financial loss if they are unable to continue their role.

However, this flexibility is balanced with provisions that protect owners from being disadvantaged by the transfer by allowing the body corporate to refuse a transfer to a particular transferee on reasonable grounds and to also seek reimbursement for costs reasonably incurred in considering the transfer. The interests of owners are also protected by the requirement that a service contractor or letting agent must pay a transfer fee to the body corporate if the contractor or agent transfers their rights under an engagement or authorisation within a prescribed period, unless certain circumstances exist (for example, genuine hardship that was not foreseeable at the initial contract date).

Termination of engagement or authorisation

The new Standard Module provides that the body corporate may terminate a person’s engagement as a body corporate manager or service contractor, or authorisation as a letting agent.

A body corporate can terminate an engagement or authorisation under the BCCM Act, by agreement or under the engagement or authorisation. The body corporate may also terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person:

- is convicted of an indictable offence involving fraud or dishonesty or is convicted on indictment of an assault or an offence involving an assault;
- carries on a business involving supply of services to the body corporate and the carrying on of the business is contrary to law; or
- transfers an interest in the engagement or authorisation without the body corporate’s approval.

It is important that body corporate managers, service contractors and letting agents act within the law and it is reasonable that serious failures to do so may be an appropriate reason for the body corporate to terminate the engagement or authorisation.

The body corporate may also terminate a person’s engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person:

- engages in misconduct, or is grossly negligent, in carrying out functions/obligations required under the engagement/authorisation;
- fails to carry out duties under the engagement/authorisation;
- contravenes the relevant code of conduct;
- fails to comply with disclosure requirements (body corporate manager and caretaking service contractors only); or
- fails to meet certain financial management requirements under the module (body corporate manager only).

If the relevant contractor does not provide the expected standard of service under their engagement/authorisation and does not act according to the standards set in the relevant code of conduct, it is reasonable to allow the engagement or authorisation to be terminated. The rights of a contractor are protected by a requirement that the body corporate cannot exercise its power to terminate on these grounds unless the contractor has been given a notice and the opportunity to undertake necessary action to remedy the behaviour that is the ground for the termination.

Lien against body corporate property

The new Standard Module requires stated persons to return assets, documents and the seal of the body corporate on being given a notice requiring the return of the property. A person who is given the notice cannot claim a lien on the body corporate records and seal. This provision is considered necessary because the records and seal are essential for the functioning of the body corporate. The provision does not extend to other body corporate property.

Sufficient regard to the institution of Parliament

The new Standard Module will operate within the structure of the existing legislative framework provided by the BCCM Act. In its consideration of the *Body Corporate and Community Management Bill 1997*, the Scrutiny of Legislation Committee reported concern about certain matters being dealt with in the regulation modules rather than in the BCCM Act.

In particular, the committee was concerned by clauses of the Bill which provide that the relevant regulation module may:

- prescribe certain details about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent;
- make specified provision for financial management arrangements applying to a scheme;
- provide for making improvements to the common property of the scheme;
- make provision about, for example, the conditions in an exclusive use by-law and the obligations imposed; and
- require the body corporate to put in place insurance for the scheme.

The primary object of the BCCM Act is to provide flexible and contemporary communally based arrangements for the use of freehold land. To achieve flexibility in the legislative framework to accommodate the management needs of diverse types of schemes, the BCCM Act provides management processes and procedures through a set of regulation modules designed for the different types of schemes. Including management provisions tailored to different types of schemes in the BCCM Act would be impractical and cumbersome and unlikely to achieve the same level of flexibility and simplicity as the current regulatory framework.

It is considered that the division of matters between the BCCM Act and the regulation modules is appropriate given the intent of the legislation to provide flexible management arrangements for community titles schemes and given the successful operation of this legislative framework to date.

Consultation

The reforms in the new Standard Module are the result of a review of body corporate administrative and procedural issues conducted by DJAG. The review considered the body corporate administrative and procedural recommendations of a review of Queensland's property laws conducted for the Government by QUT.

QUT's report titled *Final Recommendations - Procedural Issues under the Body Corporate and Community Management Act 1997* made 64 recommendations aimed at providing more efficient and effective procedural arrangements for bodies corporate and was informed by extensive consultation, including meetings with stakeholder groups and release of a public consultation paper titled *Property Law Review Issues Paper: Procedural Issues under the Body Corporate and Community Management Act 1997* between 1 December 2015 and 22 February 2016, which attracted 198 submissions.

DJAG released QUT's recommendations report on procedural issues for public consultation from 10 July 2017 to 6 October 2017 and received 67 submissions.

During consultation on QUT's recommendations report, DJAG also identified other beneficial procedural reforms.

DJAG conducted targeted consultation sessions about proposed procedural reforms to the five regulation modules under the BCCM Act with:

- Australian College of Strata Lawyers;
- Australian Resident Accommodation Managers Association;
- Owners Corporation Network;
- Strata Community Association ;
- Unit Owners Association of Queensland; and
- Urban Development Institute of Australia.

DJAG released a draft of the new Standard Module for public consultation from 23 August 2019 to 1 December 2019. DJAG released drafts of other new regulation modules and amendments to the Specified Two-lot Schemes Module for public consultation from 4 October 2019 to 1 December 2019. One hundred and three individuals and organisations provided submissions to the combined consultation process for the reforms to the regulation modules. Submissions strongly supported the need for the expiring Standard Module to be remade and were generally supportive of the reforms included in the new Standard Module. While there are a small number of issues that individual stakeholders have different views about, the new Standard Module is considered to appropriately balance the competing interests of stakeholders.

In accordance with the *Queensland Government Guide to Better Regulation* (the Guide), the Queensland Productivity Commission (QPC) was consulted on the new Standard Module. The QPC advised that as the reforms included in the new Standard Module were unlikely to result in significant adverse impacts, no further regulatory impact analysis was required. The QPC also advised that the requirements for a sunset review of the expiring Standard Module, as set out in the Guide, had been satisfied.