

Body Corporate and Community Management Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 40

made under the

Body Corporate and Community Management Act 1997

General Outline

Short title

Body Corporate and Community Management Legislation Amendment Regulation 2024

Authorising law

Sections 169B(4)(a), 205(2), 205AAB(2), 315A(2) and 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. To achieve this object, the BCCM Act provides for the establishment, operation and management of community titles schemes.

To provide the required flexibility of governance arrangements for the wide range of community titles schemes, management processes and procedures are provided through regulation modules designed for different types of schemes. Five regulation modules have been made under the BCCM Act:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Accommodation Module)
- *Body Corporate and Community Management (Commercial Module) Regulation 2020* (Commercial Module)
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (Small Schemes Module)
- *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Specified Two-lot Schemes Module)
- *Body Corporate and Community Management (Standard Module) Regulation 2020* (Standard Module).

The *Body Corporate and Community Management and Other Legislation Amendment Act 2023* (BCCMOLA Act) received assent on 22 November 2023.

The BCCMOLA Act amends the BCCM Act to:

- allow for termination of uneconomic community titles schemes to facilitate renewal and redevelopment;
- provide adjudicators from the Office of the Commissioner for Body Corporate and Community Management with the power to approve alternative insurance arrangements, rather than the Commissioner, where the body corporate is not able to comply with insurance requirements under the regulation modules; and
- modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters.

These amendments to the BCCM Act commence on 1 May 2024.

The BCCMOLA Act included heads of power in the BCCM Act to prescribe matters in the regulation modules to support implementation of the amendments to the BCCM Act.

The first policy objective of the *Body Corporate and Community Management Legislation Amendment Regulation 2024* (Amendment Regulation) is to prescribe the following matters for the BCCM Act:

- the period within which a body corporate or its committee must decide whether to grant written approval to keep or bring an animal on a lot or the common property, or to permit an invitee to keep or bring an animal on a lot or the common property;
- fees payable for inspecting or obtaining the body corporate records of other community titles schemes in a layered arrangement of community titles schemes;
- the way in which a body corporate must give documents or other information it is required to give under the BCCM Act to an owner or other person whose address for service is required to be given to the body corporate; and
- the way in which a body corporate must give a person a copy of a body corporate record if the body corporate and the person who has requested the copy do not agree on how the copy will be given.

The second policy objective of the Amendment Regulation is to make consequential amendments to the regulation modules that are needed because of amendments in the BCCMOLA Act to introduce arrangements for adjudicators to make alternative insurance orders and to remove the requirement for a body corporate to have a seal.

The third policy objective of the Amendment Regulation is to enable a body corporate to give a notice to the original owner (usually the developer) for a community titles scheme requesting that certain documents be given if they have not been provided by the original owner at the time the original owner was required to give the documents. This amendment is based on a recommendation of the independent review of Queensland's property laws conducted for the Queensland Government by the Commercial and Property Law Research Centre at the Queensland University of Technology.

The above amendments are necessary to ensure that, following passage of the BCCMOLA Act, a full supporting framework is in place in the regulation modules from 1 May 2024.

Achievement of policy objectives

The following amendments are made to the regulation modules to achieve the policy objectives.

Prescribe period for decision on requests for written approval to bring or keep an animal on a lot or the common property

Section 11 of the BCCMOLA Act inserts a new section 169B into the BCCM Act which provides that, if a body corporate by-law requires an occupier to obtain written approval from the body corporate or the committee to bring or keep an animal on a lot or the common property, the body corporate or the committee must decide whether to grant written approval within the time prescribed by the regulation module applying to the community titles scheme.

The Amendment Regulation inserts new provisions in the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to prescribe the period within which a body corporate or a committee must decide a request for written approval.

If a decision about a request for written approval in relation to the keeping or bringing of an animal on a lot or common property may be made by the committee, the committee must decide the request within 21 days after the request is made. If the committee does not decide the request within the prescribed time, the committee is taken to have decided to approve the request.

If a decision on the request for written approval is required to be made at a general meeting of the body corporate, a general meeting must be called within 21 days after the request is made, and the request must be decided within six weeks after the notice of the meeting is given. If a general meeting is not called within 21 days, or a meeting is called but the body corporate does not decide the request within six weeks after the notice of the meeting is given, the body corporate is taken to have decided to approve the request.

To enable decisions relating to the keeping of animals to be given effect as soon as possible, the Amendment Regulation amends the Standard Module to provide that the ability for owners to give the committee a notice of opposition opposing the giving of effect to a committee resolution does not apply where the resolution relates to a decision on a request for written approval in relation to the keeping or bringing of an animal.

The Amendment Regulation also amends the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to require specific information about requests for written approval in relation to keeping or bringing of an animal on a lot or common property to be included in the minutes of a committee meeting or the records of motions, including whether a written approval is subject to any conditions.

The Amendment Regulation includes transitional provisions to provide that requests received prior to the commencement must be decided under the regulation as in force before the commencement.

The Amendment Regulation does not amend the Specified Two-lot Schemes Module to prescribe a period for deciding a request for written approval in relation to the keeping or bringing of an animal on a lot or the common property. The BCCM Act provides that lot

owner agreements for a Specified Two-lot Scheme Module must be made within a reasonable time.

Prescribe fees for inspecting, or obtaining copies of, body corporate records of other community titles schemes in layered arrangements of community titles schemes

Section 25 of the BCCMOLA Act inserts new section 205AAB into the BCCM Act. New section 205AAB allows bodies corporate, lot owners and occupiers in a community titles scheme in a layered arrangement to inspect or obtain a copy of the body corporate records of another scheme in the layered arrangement by making a written request accompanied by the fee prescribed under the regulation module applying to the other scheme.

The Amendment Regulation will amend the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to prescribe fees for new section 205AAB. These are the relevant regulation modules for layered arrangements.

The prescribed fee for inspecting the records is 18.25 fee units if the person inspecting the records is the owner of a lot in another scheme in the layered arrangement or a body corporate for another scheme in the layered arrangement, and 35.10 fee units if the person is another person (for example, the occupier of a lot in another scheme in the layered arrangement). The prescribed fee for obtaining a copy of records is 0.65 fee units for each page supplied.

These fees are effectively an extension (and are consistent with) the existing fees payable for a person to access to body corporate records under the regulation modules.

Prescribe the way in which a body corporate must give documents or other information it is required to give under the BCCM Act to an owner or other relevant person

Section 39 of the BCCMOLA Act inserts a new section 315A into the BCCM Act to provide that the body corporate must give documents or other information it is required to give under the BCCM Act to lot owners, or other persons who are required to give their address for service to the body corporate, in the way prescribed under the regulation module applying to the scheme.

The Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module, Specified Two-lot Schemes Module and Standard Module to prescribe that the body corporate must give a copy of a document or information to an owner or other person whose address for service is required to be given to the body corporate:

- by delivering it to the owner, or other person, personally;
- by sending it to the owner's, or other person's, address for service; or
- in accordance with an agreement between the body corporate and owner, or relevant person, that nominates another way for the document or information to be given.

Prescribe how a body corporate must give a copy of a body corporate record

Section 205 of the BCCM Act, as amended by section 24 of the BCCMOLA Act, and new section 205AAB of the BCCM Act, as inserted by section 25 of the BCCMOLA Act, require a body corporate to give particular persons a copy of a record kept by the body corporate in the way agreed between the person and the body corporate or, if the person and body

corporate do not agree on the way the copy will be given, in the way prescribed under the regulation module applying to the scheme.

The proposed Amendment Regulation will amend the Accommodation Module, Commercial Module, Small Schemes Module, Specified Two-lot Schemes Module and Standard Module to prescribe that if the body corporate and an interested person who requests to obtain body corporate records cannot agree on how the documents will be given to the interested person, then the records must be given to the person personally or by posting it to the person.

Consequential amendments due to introduction of arrangements for adjudicators to make alternative insurance orders

Section 36 of the BCCMOLA Act inserts new section 281A into the BCCM Act, enabling an adjudicator to make an alternative insurance order if the adjudicator is satisfied of particular matters.

The Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module, Specified Two-lot Schemes Module and Standard Module to remove provisions allowing the Commissioner for Body Corporate and Community Management to authorise the body corporate for a community titles scheme to put in place alternative insurance, as these provisions are now redundant.

Consequential amendments due to removal of requirement for body corporate to have a body corporate seal

Section 4 of the BCCMOLA Act omits section 34 of the BCCM Act to remove the requirement for a body corporate for a community titles scheme to have a seal.

Consequential to this amendment, the Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to remove the requirement for the original owner for a community titles scheme to give the body corporate seal to the body corporate at the first annual general meeting and to remove provisions relating to the keeping, use and return of the body corporate seal.

The Amendment Regulation also makes consequential amendments to the Specified Two-lot Schemes Module to remove the requirement for the original owner to give the body corporate seal to the other owner or owners in the scheme after the original owner no longer owns one or both lots in the community titles scheme and to remove provisions relating to the keeping, use and return of the body corporate seal.

The regulation modules include processes for the body corporate to approve and give effect to the following transactions:

- the sale or other disposal of common property;
- the granting or amending of a lease or licence over common property;
- the grant or surrender of easements over common property; or
- the acceptance of the grant or surrender of an easement over common property.

The instrument lodged for registration under the *Land Title Act 1994* to give effect to these transactions must be accompanied by a certificate under the body corporate's seal certifying the transaction has been appropriately authorised by the body corporate, or a

copy of the resolution or resolutions (or lot owner agreement for schemes to which the Specified Two-lot Schemes Module applies) authorising the transaction certified under the body corporate's seal.

Given the removal of the requirement for a body corporate to have a seal, the Amendment Regulation amends the regulation modules to remove the requirements for the certificate or copy of the resolution (or lot owner agreement) to be certified under the body corporate seal.

Instead, the Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to provide requirements for the signing of the certificate or copy of the resolution on behalf of the body corporate.

The Amendment Regulation also amends the Specified Two-lots Scheme Module to provide requirements for the signing of the certificate that must accompany an instrument to give effect to the sale or disposal of common property, or the lease or licence of common property to be signed by the owner of each lot, or a representative of the owner of each lot. However, the Amendment Regulation will not include new requirements to sign the lot owner agreement that is required to accompany an instrument to give effect to the grant or surrender of an easement over or affecting the common property, given that the lot owner agreement (as an agreement entered into between the parties) already indicates the relevant approval of the owner of each lot, or a representative of the owner of each lot.

Transitional provisions in the Amendment Regulation ensure that:

- documents the body corporate had executed under the body corporate seal before the commencement to certify the relevant transactions may accompany an instrument lodged to give effect to the transaction after the commencement; and
- the new requirements for certification of the relevant transactions will apply in relation to transactions authorised before the commencement if the body corporate had not executed a document to certify the transaction under the body corporate seal before the commencement.

Enable a body corporate to give a notice to the original owner requesting that certain documents or material be given

The Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module to allow the body corporate to give the original owner of the scheme a notice requesting the original owner give the body corporate particular documents or information relating to the community titles scheme that the original owner is required to give to the body corporate. A maximum penalty of 20 penalty units applies if the person fails to comply with the notice. For a scheme to which the Specified Two-lot Schemes Module applies, the notice may be given by one or both of the owners of lots in the scheme.

A transitional provision will provide that the new notice provision does not apply retrospectively to documents or materials required to be given by the original owner before the commencement.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the BCCM Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments to the regulation modules contained in the Amendment Regulation support amendments to the BCCMOLA Act and have the benefits of:

- reducing barriers to the keeping of animals in community titles schemes;
- streamlining body corporate administrative and procedural requirements;
- improving transparency and accountability in body corporate governance; and
- ensuring bodies corporate are provided with documents necessary to perform their functions.

If a body corporate has a by-law requiring the body corporate's written approval to keep or bring an animal on a lot or the common property, the amendments to prescribe a period within which the body corporate or committee must decide whether to approve a request to keep or bring an animal may involve some additional costs for the body associated with holding meetings or votes outside committee meetings to decide the request. However, affected bodies corporate may minimise these costs by ensuring their committee is empowered to make decisions about requests for written approval to keep or bring an animal on a lot or common property (rather than requiring a decision to be made at a general meeting) and by using electronic methods of communication for the holding of meetings or votes outside committee meetings.

Prescribing fees for bodies corporate, lot owners and occupiers in a community titles scheme in a layered arrangement to inspect or obtain a copy of the body corporate records of another scheme in a layered arrangement will involve costs for the person seeking to access the body corporate records. However, it will at the same time allow the body corporate providing access to its records to recoup some or all of the costs of providing the access. It is considered appropriate that the person that benefits from the access to the records bear the costs of providing access to the records.

The other amendments contained in the Regulation Module are not considered to involve costs for the community titles sector.

The costs for Government associated with implementing the amendments to the BCCM Act made by the BCCMOLA Act are outlined in the explanatory notes to the Body Corporate and Community Management and Other Legislation Amendment Bill 2023. The costs of implementing the Amendment Regulation are not considered to significantly add to the costs outlined in the explanatory notes for the BCCMOLA Bill.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with fundamental legislative principles

(FLPs) in the *Legislative Standards Act 1992*. Aspects of the Amendment Regulation that raise possible FLP issues, and justifications for any potential breaches, are addressed below.

The Amendment Regulation amends the regulation modules to prescribe that a maximum penalty of 20 penalty units may be imposed on an original owner for their failure to comply with a notice requesting the provision of documents and other materials.

For legislation to have sufficient regard to the rights and liberties of individuals, new offences should be appropriate and reasonable, and the penalty should be proportionate to the offence.

Section 322(2) of the BCCM Act provides that a regulation may impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation, and the maximum penalty provided by the Amendment Regulation is within that power.

A transitional provision also makes it clear that the original owner may only be given a notice requesting the provision of documents and other materials if the original owner was required to give documents or materials to the body corporate after the commencement of the Amendment Regulation, meaning that the penalty does not operate retrospectively.

The penalty is also consistent with the penalty under existing provisions of the regulation modules that apply to a member of the body corporate or committee, a body corporate manager or a service contractor who fails to comply with a body corporate notice requiring the relevant person to return a body corporate asset, a body corporate record or other document of a body corporate.

Accordingly, it is considered the new penalty is appropriate, reasonable and proportionate to the offence.

Consultation

The reforms in the BCCMOLA Act have been subject to consultation, as outlined in the explanatory notes for the BCCMOLA Bill. Given the amendments in the Amendment Regulation generally support the amendments to the BCCM Act made by BCCMOLA Act, by prescribing matters for the amendments to the BCCM Act or making consequential amendments, consultation was not undertaken for all of the amendments.

Targeted consultation was undertaken with stakeholders regarding the prescribed timeframe within which a body corporate or its committee must decide whether to approve a request to keep or bring an animal between 16 February 2024 and 4 March 2024 through release of an issues paper.

Members of the Community Titles Legislation Working Group were invited to provide feedback on the consultation paper. The Working Group is comprised of:

- Australian College of Strata Lawyers;
- Australian Resident Accommodation Managers Association;
- Owners Corporation Network;
- Queensland Law Society (QLS);
- Real Estate Institute of Queensland;

- Strata Community Association;
- Unit Owners Association of Queensland Inc.

Other invited stakeholders who provided feedback on the consultation paper are: Australian Apartment Advocacy, My Community Legal Inc., the Queensland University of Technology, RSPCA, Strata Owners Speak Out, Townsville Lot Owners Group, and Urban Development Institute of Australia.

Targeted stakeholder consultation regarding the timeframe within which a body corporate or its committee must decide whether to approve a request to keep or bring an animal revealed a variety of views. The majority of stakeholders supported reducing the 28-day timeframe that was initially proposed for a committee to make a decision about a request to keep a pet. As a result, the Amendment Regulation provides for a 21-day timeframe for a committee to make a decision about a request to keep a pet.

Stakeholders were also consulted on a proposal to require that, where a decision about a pet is required to be made at a general meeting, bodies corporate must call a general meeting within 14 days after receiving a request for approval to keep a pet, and that a general meeting must be held within six weeks after the meeting is called.

Stakeholders provided a range of differing views about general meeting timeframes, with some suggesting that a 14-day timeframe to call a general meeting was unreasonable and other stakeholders suggesting that bodies corporate should be required to call and hold a general meeting within a shorter timeframe. Other stakeholders also suggested that the legislation should require the committee to make all decisions about requests to keep a pet.

To ensure some level of alignment with the timeframe within which a committee must decide a request for approval to keep an animal, the Amendment Regulation requires that, where a decision on a pet request must be made at a general meeting, the general meeting must be called within 21 days after a request is received. The meeting must then be held within six weeks after the meeting is called.

The majority of stakeholders supported a request to keep a pet being deemed to be approved if a decision about the request is not made within the timeframe prescribed for a committee or a general meeting decision.

Regulatory Impact Assessment

A Summary Impact Analysis Statement has been prepared for the Amendment Regulation. Most of the amendments were identified as not requiring regulatory impact assessment under the *Queensland Government Better Regulation Policy* as the amendments:

- make consequential amendments necessary to reflect changes in other legislation; or
- are deregulatory (remove regulation), and do not increase costs or regulatory burden on business or the community.
- The remaining amendments were assessed as having some (but not significant) impacts.