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QUT Review – BCCM
C/ Office Regulatory Policy
Department of Justice and Attorney-General
GPO BOX 3111
BRISBANE QLD 4001

VIA EMAIL: QUTreview-BCCM@justice.qld.gov.au

Dear Attorney

RESPONSE TO ISSUES PAPER – PROCEDURAL ISSUES UNDER THE BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

We refer to the above Options Paper.

Strata Community Australia (Qld) Limited (“SCA (Qld)”), the Australian Resident Accommodation Managers’ Association Queensland (“ARAMA Qld”) and the Owners Corporation Network Queensland (“OCN Qld”) thank the Attorney-General for inviting responses to the Options Paper.

INTRODUCTION

SCA (Qld), ARAMA Qld and OCN Qld are the leading non-profit organisations in the strata and community title sector in Queensland. Collectively we represent more than 378,000 unit owners living or investing in strata units, around 90 body corporate management firms and approximately 3,000 management rights buildings.

SCA (Qld), ARAMA Qld and OCN Qld have formed the Stakeholder Umbrella Group to collaboratively represent common interests. The Group’s focus is to remove costs for owners, increase productivity, and reduce red tape. In 2015 the Group has jointly submitted its response to the Options Paper “Body Corporate Governance”. In this, the group aligned in 27 out of 29 questions.

On this occasion, the Stakeholder Umbrella Group has consulted one another again regarding the Issues Paper above to compare each of the above mentioned stakeholder’s individual submissions in relation to the 89 questions outlined in the Paper.

In addition to each organisation’s own submission we further submit a combined response. This submission does not represent each body’s individual views but reflects a consensus that was reached by discussion and agreement.

In summary, the Stakeholder Umbrella Group strongly agreed that body corporate seals are archaic and there is no need to retain them. The Group embraces technology neutral communication options such as electronic voting and electronic attendance at meetings. However, there were three major discussion points where the group has found some consensus but emphasises that their individual submissions reflect their views, notwithstanding the consensus in this submission:

- Questions 3-12 and 51-55 regarding spending limits
- Question 18 regarding a two quote requirement for body corporate managers
- Question 32 regarding voting rights for resident letting agents.

SCA (Qld), ARAMA Qld and OCN Qld retain their individual submissions, but with regard to overall sector improvement came to the conclusions stated below.

RESPONSE TO THE ISSUES PAPER:

General meeting procedure

1. Should the body corporate be able to pass a motion to change the financial year of the scheme? What type of resolution should be required to pass a motion changing the financial year for the scheme?

The group agrees that the body corporate should be able to pass a motion to change the financial year by ordinary resolution.

2. Should bodies corporate have the ability to set the date of the AGM, regardless of the end of the financial year for the scheme, without requiring an adjudicator's order changing the financial year for the scheme?

Following discussion of SCA (Qld) and OCN Qld's differing views on this matter, the umbrella group agreed in principle to support the submission of SCA (Qld) in this instance, based on QUT's recommendations.

3. Should the timeframes for calling general meetings be changed?

4. If yes, should there be a shorter time when calling an EGM as opposed to calling an AGM?

As is. Question 4 – refer for individual submissions

5. Should the decision to renew an insurance policy for the scheme be a restricted issue that cannot be decided by the committee? If so, how should provision be made for insurance policies that must be renewed prior to the AGM?

The Umbrella Group agrees that renewal should be a decision for the committee.

6. Should the statutory motion to review insurance policies be amended to refer to approving or confirming the insurance?

The Umbrella Group agrees with this proposal.

7. When determining whether a quorum is present, if a person owns several lots in a scheme, should that person be counted as a voter for each lot owned?

The Umbrella Group agrees that one vote per person should apply.

8. Should a lot owner (who is present personally) who holds the proxy of another lot owner (who is not present) be counted as one voter or as two?

The Umbrella Group agrees it should be counted as two.

9. When determining whether a quorum is present, should a lot owner who owes a body corporate debt be counted as a voter?

The Umbrella Group agrees they should be counted.

10. If a quorum is not present after 30 minutes, should the meeting go ahead anyway (chaired by the body corporate manager or the chairperson) thus eliminating the need to hold a second meeting one week later (and saving the expense of the second meeting)?

The Group submits that the meeting should not go ahead.

11. Should the body corporate have the ability to hold the general meeting ‘on the papers’ (that is, decided by the voters present by written and electronic voting papers even if no voters are present personally)?

The Umbrella Group agrees with this proposal.

12. Should the legislation safeguard the interest of lot owners by giving them an opportunity to object to motions carried at an AGM with a deemed quorum? If so, how should this be done?

The Umbrella Group disagrees that an opportunity should be given to object to carried motions.

13. Is the current relevant limit for major spending appropriate for matters considered at general meetings of the body corporate?

14. Should two quotes continue to be required for motions involving expenditure above the relevant limit for major spending?

15. Should the default relevant limit for major spending be increased or removed altogether?

16. Should the relevant limit for major spending be different for small schemes (e.g. 10 or fewer lots) and large schemes (e.g. 100 or more lots)?

There was discussion amongst the Group whether the spending limits in general should be changed. Notwithstanding each organisation’s individual submission of comment, the Group discussion addressed the relevant repercussions spending limits have, and agreed that the relevant major spending limit should be \$500 per lot.

The Umbrella Group agrees with a two quote requirement above major spending limits.

17. Should one quote be required for any motion being considered by the body corporate at a general meeting that involves expenditure?

After discussion the Group agrees on ARAMA Qld’s position that one quote should be required for any motion except where the exact amount cannot be quantified but a range is specified.

18. Should a motion to appoint or reappoint a body corporate manager be exempt from the requirement to provide two quotes? Why or why not?

There were strong feelings about this question as no other industry seems to discriminate against existing service providers by asking the provider to get a competitor quote. OCN Qld had concerns about the abolishing of a two quote requirement for body corporate managers. It was discussed at length that an exemption of a two quote requirement does not mean the Committee cannot obtain a second quote.

After a lengthy discussion, the Umbrella Group agrees to remove the two quote requirement for one year agreements and where they seek longer (up to a maximum of three years), then the relevant major spending should be \$500 per lot. Irrespective if the spending limit will not be changed, the Group seeks exclusion from the two quote requirement for one year body corporate management agreements.

19. Is there any reason to keep the requirement for a resolution without dissent? Would it make more sense to replace it, where it is required, with a special resolution (or some higher threshold that is lower than unanimous)?

As a Group there was agreement that this matter is not an issue at the present time.

20. If the resolution without dissent is removed, what additional safeguards should be put in place to protect minority interest? For example, should the BCCM Act provide a right for lot owners in the minority to challenge a decision of the body corporate to an adjudicator on grounds other than the reasonableness of the decision?

Not applicable for the purpose of this submission.

21. Is there any reason to keep the requirement for a majority resolution? Should it be replaced with a special resolution, a resolution without dissent or some other threshold that is based on the number of votes cast rather than the number of lots in the scheme? As a Group there was agreement that this matter is not an issue at the present time.

22. If the majority resolution is removed, what safeguard should be put in place for the letting agent?

Not applicable for the purpose of this submission.

23. What types of ordinary resolutions are commonly decided by a poll?

Not applicable for the purpose of this submission.

24. Are there any reasons to retain the ability to call for a poll on a motion to be decided by an ordinary resolution at a general meeting?

The Group did not see this as an issue, hence retention of the poll is favourable.

25. Is there any other information that should be included in the minutes to ensure they are full and accurate?

The current legislation is sufficient.

The committee of the body corporate

26. Should the maximum number of voting members of the committee be increased above seven? If so, in what circumstances?

The Group objects to the proposal.

27. If the body corporate is a principal body corporate for a layered scheme that has more than seven subsidiary schemes, should there be one committee representative for each subsidiary scheme?

The Group is in agreement with this proposal.

28. Should a body corporate be able to engage a body corporate manager under a part 5 appointment without the need to hold an EGM?

The Group agreed to this proposal.

29. Should the vote to appoint a body corporate manager under a part 5 appointment require a secret ballot?

Due to the costs involved that owners have to carry, it should not require a secret ballot.

30. Should a body corporate be able to engage a body corporate manager to perform all of the functions of the committee and still retain a committee?

The Group does not support a change to existing arrangements.

31. If so, should this be limited to bodies corporate with less than a particular number of lots? If yes, how many?

Not applicable.

32. Should a resident manager be eligible to be a voting member of the committee for the body corporate (but excluded from voting on motions relating to the renewal or performance of the caretaking service contract)?

Yes.

SCA (Qld) supports ARAMA Qld's submission that a resident manager who also owns a lot in the scheme be eligible to be a voting member of the committee provided the conflict of

interest must be declared and any decision impacting the resident manager (tendering, assigning, performance, renewal etc.) must be excluded. ARAMA Qld notes that s53 SM provides for conflict of interest. The Resident Manager would need to be financial and lot owner with one vote as per all other lot owners. As part of the Umbrella Group, OCN Qld abstains from submitting a joint position.

33. Is the definition of 'associate' too broad, given that deemed association may stop an otherwise eligible lot owner from being able to act as a voting member of the committee?
No.

34. Should there be consistency across the Standard Module, Accommodation Module and Commercial Module regarding the method of electing committee members?

The Group doesn't see an issue, however agrees the Modules shouldn't be consistent.

35. If yes, what method should be used?

Not applicable for the purpose of this submission.

36. If there are three or more lots in a scheme but only three different lot owners, should the lot owners (or their nominees) automatically be the executive members of the committee without the need to hold an election?

The Group agrees that should be the case.

37. Should the legislation clarify the two removal options and enumerate the situations in which each may be used to remove a committee member?

The Group agrees that should be the case.

38. Should the procedure for removing committee voting members for a breach of the code of conduct be made shorter so that it can be done without the need to hold two general meetings (for example, by allowing the committee to decide to issue a written notice detailing the breach, without the need for a general meeting)?

The Group supports this.

39. Does the code of conduct for committee voting members address relevant issues? Are there any additional issues that should be addressed in the code of conduct?

No changes required from the industry's point of view.

40. Should lot owners who have been removed from the committee be prohibited from renominating for a committee position?

No.

41. Should the BCCM Act and the Regulation Modules specify whether the body corporate can remove the entire committee with a single motion or should a separate motion be required to remove each committee member?

All three parties agree it should be an individual motion.

42. Should the non-voting members of the committee also be subject to the code of conduct in schedule 1A (for committee voting members)?

No amendment is required because there is a Code of Conduct applicable to them.

43. What should happen if a body corporate manager or a caretaking service contractor breaches the code of conduct in schedule 2 or schedule 3 of the BCCM Act?

All are in agreement that the current remedial process is sufficient but that there should be a way to remove a manager.

44. Do the codes of conduct for non-voting members and letting agents address relevant issues? Are there any additional issues that should be addressed in the codes?
As is.

45. Should greater notice of the committee meetings be given to lot owners who are not members of the committee?

46. Should there be a greater ability for lot owners, who are not on the committee, to have items of interest added to the agenda for a committee meeting?

Both questions are answered with no by the Group.

47. Should lot owners be able to compel the committee to hold a meeting?

The Group agrees that reasonable costs should be met if a meeting is compelled.

48. Should the legislation specify a maximum amount of time after a notice and advice of a motion to be decided outside of a committee meeting have been given by which a vote must be returned?

The Group agrees there should be an expiry limit between 3 and 14 days.

49. Should the legislation specify a minimum amount of time after a notice and advice of a motion to be decided outside of a committee meeting have been given before the result can be declared?

The Stakeholder Umbrella Group strongly agrees with SCA (Qld)'s suggestion that compulsory notice to all owners be removed.

50. Should the notice of opposition be available under the other Regulation Modules?

The Group agrees with SCA (Qld)'s position, that a notice of opposition shouldn't be available.

51. Is the current relevant limit for committee spending appropriate?

SCA (Qld) prefers higher spending limits but understands for the purpose of this Group that it may be appropriate (refer to question 13 following for the Group's suggested compromise).

52. Should the default relevant limit for committee spending be different for small schemes (e.g. 10 or fewer lots) and large schemes (e.g. 100 or more lots)?

No.

53. Is the current approach to situations where the relevant limit for committee spending is higher than the relevant limit for major spending for a scheme appropriate? If not, how should the legislation deal with this situation?

It is not. The Group agrees that a resolution could be SCA (Qld)'s suggestion of a per lot basis.

54. Should the body corporate be required to consider and set the relevant limit for committee spending at each AGM?

No.

55. Should the Commercial Module have a relevant limit for committee spending?

The Group agrees that commercial schemes should be run like a corporation, hence there shouldn't be a limit.

56. Should the BCCM Act permit schemes to appoint a professional committee member? Should particular schemes be required to appoint a professional committee member?

SCA (Qld) feels that the body corporate manager is a professional supporting a committee in its activities. For large schemes OCN and ARAMA see a professional company director model, for example a CEO type situation. The Umbrella Group agrees with ARAMA's submission that there should be permission to appoint a professional committee member within parameters as described in their submission (large schemes etc).

57. What minimum qualifications should a professional committee member have?

Refer to individual submissions.

Electronic notices, minutes and voting

58. Should a lot owner's address for service include an email address in addition to a physical address?

59. Should the BCCM Act allow the body corporate to send notices of general meetings and minutes of general meetings to lot owners via email?

60. Should the BCCM Act allow the body corporate to send notices of committee meetings and minutes and record of motion voted on outside of committee to lot owners via email?

61. Should making documents available on a website, and providing lot owners with instructions to access the website satisfy the requirement to give notices of meetings and minutes under the BCCM Act?

The Group is in favour of all proposals in Questions 58-61.

62. Should lot owners be able to 'opt-in' to receive all meeting notices, agendas and minutes (or record of motion voted on outside of a committee) via e-mail or by accessing a website? If yes, what form should the opt-in take?

An opt out approach is favoured by all stakeholders.

63. Should lot owners who do not opt-in be required to pay the printing and postage costs associated with delivering the notices and minutes (so that this cost is not borne by the other lot owners)?

No.

64. Should the BCCM Act and the Regulation Modules allow electronic voting as the default option so that owners who do not wish to vote electronically must opt-out of electronic voting (or vote in writing or in person at a general meeting)?

No.

65. Should the same rules that apply to electronic voting under the Standard Module, Accommodation Module and Commercial Module also apply under the Small Schemes Module?

The Group agrees to this.

66. Should committee members be able to attend committee meetings by telephone or video conference?

Yes.

67. Should the body corporate be required to authorise electronic attendance at committee meetings by an ordinary resolution in a general meeting?

No.

68. If the BCCM Act facilitates electronic distribution of meeting notices and electronic voting, is there any reason to continue to allow the use of proxies for general meetings?
The Group feels there is.

69. If the use of proxies is prohibited for general meetings, should the use of proxies also be prohibited for committee meetings?
No, it shouldn't.

70. If telephone or video conference attendance is allowed for committee meetings, is there any need to keep proxies?
They should be kept.

First AGM

71. Are there other items that should be included on the agenda for the first AGM?
Refer to individual submissions.

72. Should the documents and materials required to be handed over by the original owner at the first AGM expressly include the development approval for the site?
All agreed that this should be a mandatory requirement.

73. What other documents should be expressly listed for hand over by the original owner at the first AGM?
Refer to individual submissions.

74. Should disputes about contraventions of the BCCM Act between the body corporate and the original owner be added to the definition of dispute under chapter 6 of the BCCM Act so that the body corporate can take action against the original owner through the BCCM Commissioner's office?

75. Should the original owner produce a management plan for the scheme, setting out the lifecycle and maintenance requirements for body corporate assets and significant infrastructure?

The Group is in favour of both proposals.

Dispute resolution

76. Should the definition of dispute in the BCCM Act include disputes between a principal body corporate and a lot owner in a subsidiary scheme?

77. Should the BCCM Act allow notices of applications for adjudication to be given electronically to lot owners?

78. Should the body corporate be able to satisfy the requirement to 'give' a copy of an adjudication application to lot owners if the application is made available electronically and the body corporate gives each lot owner instructions on how to access the application?

The Group is in favour of the suggestions in Questions 76-78.

79. Should the legislation limit the length of an application for adjudication to a statutory maximum number of pages?

All stakeholders agree that there shouldn't be a limit.

80. Should the applicant be required to pay for the cost of printing and distributing the application to lot owners in the scheme?

The Group objects to the applicant having to carry the costs of distribution.

81. Should the legislation limit the length of a submission in response to an application for adjudication to a statutory maximum number of pages?

As above, it should not.

Miscellaneous issues

82. Is there any reason to retain the requirement to use a body corporate seal?

The Stakeholder Umbrella Group sees no need for a body corporate seal to be retained.

83. If the requirement to use the body corporate seal is removed, who should be able to execute documents on behalf of the body corporate? Two executive committee members, one executive member and one ordinary member or two ordinary members?

Refer to individual submissions.

84. If the requirement to use the body corporate seal is removed, what safeguards should be placed in the legislation for third parties dealing with bodies corporate?

Section 310 adequately deals with that.

85. Should bodies corporate be required to update the address for service? If the address has not been given or is out of date, what should be the default address?

All agree, there should be a requirement and the address should be the body corporate address (ie street address).

86. Should the address for service of the body corporate include an email address?

Yes.

87. How should the BCCM Act deal with the issue of settling legal proceedings? Should a special resolution be required or should the BCCM Act authorise the chairperson or the committee to decide to settle or discontinue legal proceedings, if that decision is supported by written advice from a solicitor?

The Group agrees that there is no change required.

88. If the body corporate is unable to pass a budget at a general meeting, should the contributions from the previous year continue to apply until such time as a new budget and new contributions are passed? Why or why not?

Yes.

89. What is the best way to educate committee members about their responsibilities beyond the AGM after they are elected?

Refer to individual submissions

The Stakeholder Umbrella Group endeavours to assist in making good law better and aims to support legislative change that reduces costs to owners. In this spirit the Group commits to continue working collaboratively with one another and the Queensland Government and/or its agencies to achieve consensus in the interests of good governance in strata and community title schemes in Queensland.

FURTHER INFORMATION

SCA (Qld), ARAMA Qld and OCN appreciate the opportunity to provide this joint submission and are available to discuss this joint submission and the proposed reforms with an appropriate Government representative or QUT representative. In this regard, the Government may contact:

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We, the undersigned, submit this unity statement in support of our respective submissions.

Sincerely



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