

New Regulation Modules

The new regulation modules under the *Body Corporate and Community Management Act 1997* commenced on 30 August 2008.

The following is a general summary of the differences between the repealed and the new Standard and Accommodation Modules:



F.Cromo, 2008

The new regulations prevent stacking of the committee by majority lot owners.

Eligibility for committee membership

Under the repealed regulations there was an oversight in the requirements for eligibility for committee membership that allowed a nominee to be validly elected to the committee notwithstanding that the

nominating entity owed a body corporate debt at the time the nominee was elected. The new regulations have plugged that hole.

The new regulations also provide that a person who owes a body corporate debt in relation to *a lot or lots owned by the person at the time voting members are chosen, or a person nominated by that person* is ineligible to be a voting member of the committee. In other words, if a person owns multiple lots and owes a body corporate debt in relation to any of those lots, they (and their nominees) are ineligible to be a voting member of the committee.

Multiple Nominations for Committee membership

Under the repealed regulations an owner of multiple lots had the ability to stack a committee by nominating one person as a voting member of the committee for each lot they owned.

The new regulations provide that a lot owner, who owns 3 or more lots in a scheme comprising 7 or more lots, is entitled to nominate one individual for committee membership for each lot they own, up to a maximum of 3 nominations. However, if the total number of lots in the scheme comprises 6 or less, an owner of multiple lots may only nominate up to 2 individuals for committee membership.

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Scrutiny of votes

The repealed regulations provided that the chairperson was solely entrusted with certain duties relating to the scrutiny of open and secret ballot papers for the election of committee members.

The new regulations provide that the chairperson may delegate these duties to a person attending the meeting who is not a candidate for a position and is, in the chairperson's opinion, sufficiently independent to perform that function.

Sanja Gjenero 2007



If the body corporate has resolved to reserve a decision for ordinary resolution at a general meeting, a schedule of reserved issues must accompany every AGM notice.

Who may call a general meeting?

The repealed regulations provided that the secretary or another member of the committee may call a general meeting if authorised by the committee.

The new regulations have clarified the position by providing that any member of the committee, including a non-voting member, can call a general meeting in the event that the committee resolves to authorise them to call a particular meeting.

Restricted issues for the committee

The new regulations provide that any restricted issue (or issues) that are reserved by ordinary resolution of the body corporate for decision by ordinary resolution of the body corporate are to be recorded in a *register of reserved issues*. The register must contain a description of the reserved issue and the date of the ordinary resolution of the body corporate that reserved the issue. The register must be included in every AGM notice.

Reimbursement of committee members

The new regulations increase the maximum yearly reimbursement to committee members (without authorisation at a general meeting) from \$200.00 to \$300.00.

Relevant Limit for Committee Spending

The default position under the new regulations for the relevant limit for committee spending is an amount worked out by multiplying \$200.00 by the total number of lots in the scheme (for the purpose of this calculation, where the body corporate is a principal body corporate in a layered scheme, the total number of lots is taken to be the total number of lots for all of the subsidiary schemes).

However, that limit can be increased unconditionally if authorised by an ordinary resolution of the body corporate.

Because there is potentially no limit to the amount the committee can be authorised to spend, there may be circumstances where the relevant limit for committee spending is greater than the relevant limit for major spending for the scheme. The new regulations have addressed this possibility by requiring the committee to obtain at least two quotes prior to resolving a motion to spend above the relevant limit for major spending.

Further, the new regulations require copies of the quotes to accompany the minutes of the relevant committee meeting or the record of the motion voted on other than at a committee meeting.

The relevant limit for committee spending is exclusive of GST.

Relevant Limit for Major Spending

The default position under the new regulations for the relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$1,100.00 (capped at \$10,000.00) (for the purpose of this calculation, where the body corporate is a principal body corporate in a layered scheme, the total number of lots is taken to be the total number of lots for all of the subsidiary schemes).

The new regulations provide that the limit can now be increased unconditionally if authorised by an ordinary resolution of the body corporate.

A limit set by ordinary resolution will remain current until the body corporate resolves to change the limit.

The relevant limit for major spending is exclusive of GST.



Improvements to Common Property by the Body Corporate

The new regulations provide that the body corporate can make improvements to the common property if authorised as follows:

- Committee resolution – if the cost of the improvement is not more than \$300.00 multiplied by the total number of lots in the scheme (the *basic improvements limit*);
- Ordinary resolution – if the cost of the improvement is higher than the basic improvements limit but not more than \$2,000.00 multiplied by the total number of lots in the scheme (the *ordinary resolution improvements range*). A body corporate may only authorise improvements to the common property in this fashion once in any financial year;
- Special resolution – if the cost of the improvement is higher than the ordinary resolution improvements range (or if the body corporate has already authorised an improvement within the ordinary resolution improvements range by ordinary resolution in the same financial year).



Improvements to Common Property by an Owner

The new regulations provide that the body corporate can authorise a lot owner to make improvements to the common property for the benefit of the owner's lot if authorised as follows:

- Committee resolution – if the cost of the improvement has an installed value of \$3,000.00 or less and the improvement does not detract from the appearance of any lot or the common property and the body corporate is satisfied that the use and enjoyment of the improvement is not likely to promote a breach of the owner's duties as an occupier;
- Ordinary resolution – if the improvement does not qualify for authorisation by the committee.

Payment of amount on Transfer

The new regulations provide that a transfer fee is payable when a body corporate approves the transfer of management rights within **two** years of the beginning of the resident manager's tenure at the complex. The fee is 3% if the transfer occurs in the first year and 2% if the transfer occurs in the second year.

For the purpose of calculating the transfer fee, it is now irrelevant that the management rights agreements have been replaced or topped-up during the resident manager's tenure.

The two-year period in which the transfer fee must be imposed begins on the day that the resident manager becomes the service contractor and/or letting agent at the scheme and ends on the day that the body corporate approves the assignment to a new resident manager.

There is some ambiguity in the new regulations in respect of the determination of the start date of the two-year period in which the transfer fee is payable. In our view, the position is as follows:

1. where a resident manager is the first service contractor and letting agent at the scheme the relevant start date is the date written on the management rights agreements;
2. where the resident manager was not the first service contractor and letting agent at the scheme, the start date is the "assignment date" (i.e. the settlement date of the management rights contracts) upon which the resident manager became the resident manager at the scheme – not the date of the deed of assignment and not the date that the body corporate approved the assignment.

The genuine hardship exemption provisions in the new regulations require a resident manager to advise the body corporate of any genuine hardship claim and provide supporting evidence of that claim at the time that it seeks the body corporate's approval to the transfer.

If a resident manager has requested the body corporate's approval to an assignment of management rights prior to 30 August 2008, the provisions of the repealed regulations continue to apply. If the body corporate has already approved an assignment of management rights but the transfer was not completed by 30 August 2008, the provisions of the repealed regulations continue to apply.

The new regulations provide that if the body corporate is required to insure one or more buildings in the scheme for full replacement value then it must, at least every five years, obtain an independent valuation stating the full replacement value of the building or buildings.

Areas of Practice

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Valuation for insurance purposes

The new regulations provide that if the body corporate is required to insure one or more buildings in the scheme for full replacement value then it must, at least every five years, obtain an independent valuation stating the full replacement value of the building or buildings.

The full replacement value and the date of the most recent valuation must be included in the AGM notice (or a note attached to the proposed administrative fund budget to be considered at that AGM) each year.

A body corporate must obtain a valuation under the new provisions by 30 August 2009 unless it has already obtained one in the period between 31 August 2004 and 30 August 2008. If it has obtained one in that period, then the date of the valuation is the date from which the 5-year period is to be calculated for the new provisions.

Transitional provisions for meetings

Generally, if a meeting was called or a procedural step was taken in relation to a meeting (including nominations for committee membership) prior to 30 August 2008, the repealed regulations will continue to apply to that meeting.

If you have any queries or comments about the new regulations, please contact Andrew Suttie on 3226 3955 or ajs@nicholsons.com.au