

Topic 2 - Calling a general meeting

Calling a meeting - time and place

A general meeting may be called by a member of the committee, including a non-voting member, if they are authorised to do so by a resolution of the committee. (SM. S65). An extraordinary general meeting may also be requested by lot-owners.

A **notice** of the general meeting must be given to all lot owners. If not personally delivered, the notice should be sent to the lot owner's address for service, which appears on the **body corporate roll**.

The address for service must be an Australian address (SM s194) but if no address for service is given, then the address for service is the residential or business address whether inside or outside Australia, as last notified to the body corporate by the lot owner.

The meeting must be held at least 21 days after the **notice** is given to lot-owners (SM. s74) and must be held not more than 15km (measured in a straight line on a horizontal plane) from scheme land unless the committee notifies owners of another location and gives owners a reasonable opportunity to object in writing. If owners of at least 25% of the lots in the scheme object, then the meeting cannot be held at the alternative venue (SM. s75).

There has been an adjudicator's order in which calculation of 21 days, and the definition of "given" is discussed. (Order 0496-2004 *Buon Vista CTS 14325*). There is a view that the Act intends to define a posted notice is "given" when it is sent out by the secretary, and not when it is likely to have been received in the ordinary course of posting. For hand delivery or physical delivery, the better view is that the notice is "given" when it is received.

Submitting motions

In general

Lot owners may submit motions at any time throughout the year to the secretary and those motions must be included on the next general meeting agenda at which it is practicable to include them (SM. s69(2)).

For the annual general meeting

When the secretary sends a notice out to lot-owners seeking nominations for committee member positions to be filled at the AGM (see Unit 1: The Committee, Topic 8: Nominations), the lot-owners must at the same time be invited to submit motions for inclusion on the AGM agenda.

Restrictions on motions

Certain motions must not be considered by the body corporate more than once in a body corporate's financial year (SM s69(4)). They are:

- a motion proposing that the regulation module for the scheme be changed;
- a motion proposing that remuneration paid to a particular service contractor be changed;
- a motion proposing the amendment of the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, if as a

result of the amendment, the engagement or authorisation would include a right or option of extension or renewal.

Note: A motion, submitted by a member of the body corporate, may only be included on the agenda for an **AGM** if the secretary receives the motion before the end of the body corporate's financial year (see Topic 8: The annual general meeting - What is the date of our financial year?) (SM s69). However, no such restrictions apply to the committee. The committee in preparing an agenda under Section 76 of the Standard Module may include motions proposed by the committee.

The notice of general meeting

The **notice** must be in writing and must state the time and place of the proposed meeting. It must be given to the owner of each lot in the scheme at least 21 days before the meeting is to be held, either in person or by sending to the owner's address for service.

The notice must contain:

- an **agenda**,
- a proxy form, and;
- if the lot owner is a company, a company nominee form to advise the body corporate of the name of the nominee who will cast the vote on behalf of the company.
- voting papers for open motions;
- the secret voting papers and associated material;
- an explanatory schedule where appropriate, as well as any documents which are required by legislation to accompany the notice.

Additionally, the notice of an annual general meeting must contain a copy of the Register of reserved issues (SM s201).

The agenda

The agenda for any general meeting must be prepared by the committee, and must include the substance of all the motions submitted by the committee, including, for a motion with alternatives, the substance of each alternative. The agenda must also contain all motions submitted by lot owners; and a motion to confirm the minutes (see Topic 4: Procedures at general meetings - Keeping minutes) of the last general meeting.

The voting papers

The secretary must prepare one voting paper for all "open" motions to be decided at the general meeting and a separate voting paper for any motions to be decided by a secret ballot, called "a secret voting paper." (SM. s71)

Voting papers for open motions

A voting paper must:

- state each motion in the form it was submitted without amendment;
- state the name and if applicable the lot number of the person who submitted it;
- state if the motion was submitted by the committee and if it is a statutory motion (see Topic 8: The annual general meeting - The statutory motions);

- state the type of resolution required to carry the motion e.g. a resolution without dissent, special resolution or ordinary resolution.

The voting paper must enable a voter to cast a written vote, for example, it must have space for a box with "Yes", "No" or "Abstain" to be ticked or circled. (SM. s71(5))

Secret voting papers and envelopes

A secret ballot is required for certain motions and some of the more common ones are listed below. In order to conduct a secret ballot the following voting material must be issued by the secretary.

- the secret voting papers;
- an envelope simply marked "secret voting paper" and either-
 - o a separate particulars envelope or;
 - o a particulars tab that forms part of the secret voting paper envelope.

The particulars envelope or the particulars tab must have space for certain information to be provided by the person voting. This information is necessary to confirm the persons entitlement to vote (e.g. if the person is an **un-financial** lot owner they are not entitled to vote). The particulars envelope or the particulars tab must list:

- The lot number (for which the vote is exercised).
- The name of the lot owner or;
- The name of the person having the right to vote; and
- The basis on which the person has a right to vote (e.g. a person acting under a power of attorney for a lot owner).

Motions which require a secret ballot are -

1. the engagement of a caretaking service contractor (SM. S114(2)(b)(ii));
2. the authorisation of a person as a letting agent (SM. S114(2)(b)(i));
3. an agreement to amend an engagement as a caretaking service contractor or as a letting agent to include a right or option of extension or renewal; (SM. S114(2)(b)(iii))
4. a motion where the body corporate has resolved by ordinary resolution at a general meeting that the motion be decided by secret ballot, or where the committee has recommended that the motion be decided by secret ballot; (SM. S88)

The secret voting paper must be marked with the words "secret voting paper" and must be accompanied by an envelope marked "secret voting paper". In addition, the secret voting paper envelope must have either a "particulars tab" on it which can be detached from the envelope without opening the envelope, or be accompanied by a second envelope into which the first envelope may be placed.

An explanatory schedule

In some circumstances, a voting paper must be accompanied by additional explanatory material in order to explain the effect or purpose of certain motions for the information of the voters. The explanation is contained in an **explanatory schedule**. The **explanatory schedule** is a separate document.

An explanatory schedule is required in the following circumstances -

1. to accompany a motion for the proposed budget to an AGM ;
2. where a motion is proposed to change the regulation module for the scheme;
3. where a motion with alternatives is proposed;
4. where an owner submits a brief explanatory note with his or her motion

The committee may also choose to send out explanatory material in a second separate "Committee Schedule" not related to one of the above topics, e.g. general explanatory material about new legislation or obligations of the body corporate (SM.S73(7)). Such additional material is restricted to providing appropriate background information.

A motion to change the regulation module

A motion to change the regulation module stated in the community management statement e.g. from Standard Module to Accommodation Module, must be accompanied by an explanatory schedule explaining the effect of the proposed change (SM. S73(5));

A motion with alternatives

A voting paper must be accompanied by an explanatory schedule if there is a **motion with alternatives** proposed. A motion with alternatives arises where 2 or more motions proposing alternative ways of dealing with the same issue are given to the secretary, (e.g., the secretary receives motions from 3 lot owners each proposing that a different body corporate manager is engaged).

The voting paper must list the substance of all the motions under **one motion** and that single motion becomes a motion submitted by the committee, e.g. " that a body corporate manager be engaged," and then the **alternatives** are listed under that motion with a blank space for voting purposes. A voter may vote for the motion and one of the alternatives, or vote against the motion. (SM. S72)

Note: If this procedure is not followed and more than one motion about the same issue is listed on the agenda or stated in the voting paper, all the motions about the issue are void. (SM. S72(5))

The explanatory schedule for a motion with alternatives must set out the original motion in the form in which it was submitted to the secretary; any explanatory note about the original motion from a lot-owner if the note is not longer than 300 words; and an explanation of how to vote **for** the motion and **one** alternative, or to vote **against** the motion.

For example

*"To vote on this motion, you must either vote **against** the motion OR vote **for** the motion and **1 alternative**."*

To vote against the motion-Mark 'No' opposite the motion on the voting paper. If you mark 'No', do not place a mark beside any of the alternatives.

To vote for the motion and 1 alternative-Mark the voting paper in 2 places. Firstly, mark 'Yes', opposite the motion on the voting paper. Secondly, mark 'Yes' opposite the alternative you want to vote for. You can vote for only 1 alternative."

A lot-owner's explanatory note

Where a lot owner submits a motion which itself contains an explanatory note of up to 300 words, the explanatory schedule sent by the secretary must include the lot-owner's exact words, and the explanatory material for such a motion must not contain material written by a person other than the submitter of the motion (SM. S73(6)) . This is to prevent comment on the motion which could lead to bias in the voting. For such a motion, the explanatory schedule may only give the number assigned to the motion, the submitter's name and the 300 words as submitted.

The proxy form

A voter who cannot attend a meeting in person may send along a proxy to vote for him or her. The proxy may be any named individual but must hold the voter's permission in the approved form which is BCCM Form 6 Proxy form for Body Corporate General Meetings available on the BCCM website (www.justice.qld.gov.au/bccm).

The proxy form only lasts until the end of the financial year or earlier time as may be stated on Form 6 by the giver of the proxy. A proxy cannot be irrevocable and cannot be transferred to a third person.

The proxy form must be given to the secretary before the start of the general meeting or at such earlier time up to 24 hours before the meeting as the body corporate may decide. (SM. S107).

Certain matters may not be voted on by a proxy vote e.g.

- an election for committee members (SM. S109(3)(c));
- a motion for approving the engagement of a body corporate manager, caretaking service contractor or letting agent (SM. S109(3)(f)); or
- any motion where voting is by secret ballot. (SM. S109(3)(g)).

The corporate nominee form

The body corporate must send out a **corporate nominee form** with the notice, even if the lot owner is not a corporation. This is not an approved form; however the Commissioner's Office has produced a form, "BCCM Form 8 Information for Body Corporate Roll" which includes a corporate owner nominee section.

Other documents

Other documents which must be sent out with a notice of a general meeting are :-

- disclosure of insurance details to an AGM (SM. S177);
- a copy of any audit to an AGM (SM. S155);
- a copy of the previous financial year's statement of accounts to an AGM (SM. S154);
- a copy of the proposed budgets for the forthcoming financial year to an AGM (SM. S139);
- any quotations for work the cost of which will render the works "major spending" (SM. S152);
- the ballot papers and an envelope marked " ballot paper" with particulars tab or separate particulars envelope for the election of committee by secret ballot, (SM.S21(6)), or
- the ballot papers and a self-addressed envelope to the secretary for the election of the committee by open ballot (SM. S22(6));

- a copy of the terms of the engagement or authorisation (if there is a motion to engage a body corporate manager , a service contractor or caretaking service contractor or to authorise a letting agent). This includes when the term of the engagement or authorisation begins and ends and any right or option of extension or renewal of the engagement or authorisation (SM. S114(2)(c)(i)). This provision would be most easily satisfied by sending a copy of the proposed contract;
- if there is a motion for an agreement to amend an engagement of a person or company as a service contractor, caretaking service contractor, or an authorisation as a letting agent, which includes a right or option of extension and renewal - an explanatory note in the approved form (BCCM FORM 20) explaining the nature of the amendment; (SM S114(2)(c)(ii)).
- if the motion is for another agreement to amend an engagement or authorisation, e.g. of a body corporate manager's contract - the terms and effects of the amendment. (SM S114(2)(c)(iii)) This provision would be most easily satisfied by sending a copy of the proposed contract.
- an explanatory note in the approved form "BCCM FORM 20" Explanatory note - proposal to amend (if there is a motion for an agreement to amend an engagement of a person or company as a service contractor, caretaking service contractor, or an authorisation as a letting agent, which includes a right or option of extension and renewal); (SM. s114(2)(c)(ii)).
- the terms and effects of the amendment (if the motion is for another agreement to amend an engagement or authorisation, e.g. a body corporate manager's contract) (SM. S114(2)(c)(iii)). This provision would be most easily satisfied by sending a copy of the proposed agreement.

CHECKLIST - DOCUMENTS FOR A GENERAL MEETING

- Notice including the following -
 - Agenda
 - Voting papers including -
 - Secret voting papers if required ;
 - Secret voting envelopes with particulars tab or separate envelope
 - An explanatory schedule if required
 - Any additional explanatory background material on a separate "Committee Schedule"
- Company nominee form
- Proxy form
- Other documents e.g. details of any contracts of engagement or agreements to amend contracts; Quotations for works for "major spending" if required
- Ballot papers [open or secret] for electing committee to AGM
- Proposed budget , financial statement of account, and audit if any to AGM
- Insurance details to AGM