

# Recommended Electronic Strata Meeting Processes to reduce the Spread of Coronavirus

In light of the current issues surrounding Covid-19 and the need to minimise potential exposure, prudent managing agents and committees for owners corporations are investigating means by which they can comply with their obligations to hold meetings under the Strata Schemes Management Act 2015 safely and effectively.

***Please note: The below options are available under the Strata legislation, but are not all applicable to Community Schemes until commencement of the new reforms (anticipated to commence later this year).***

In the current climate, managing agents want to avoid, as much as possible, the need for large gatherings, particularly owners corporation meetings.

Thankfully, a number of changes introduced with the commencement of the Strata Schemes Management Act 2015 assist in relation to new methods for participation in meetings, including:

- Attending meetings from a remote location by electronic means, e.g. online video conferencing.
- Making decisions prior to a meeting by pre-meeting electronic voting, either by electronic ballots papers or voting website.

Arranging attendance, either by video conferencing, where available, or pre-meeting electronic voting, will ensure that owners will be able to attend and vote without the need to be physically present.

There also remains the ability to have attendance by proxies made out to employees of the managing agent with express directions on how to vote.

Whatever approach is most appropriate in each circumstances, it will be important for managing agents to be clear in their communication to owners in relation to the changes in approach and the reasons for it.

We would recommend that managing agents include a note on the cover letter to the notice of meeting to explain that people are not to attend in person and that if they attempt to they will not be admitted. Bannermans will be providing some template wording to its Compliance Pack members.

The strata manager can then act as the Chairperson for any meeting in accordance with their delegated functions.

The points to remember in relation to the different options are:

- **Electronic Participation**

Regulation 14(1)(a) provides that an owners corporation or strata committee can resolve to conduct a meeting on the basis that participants may participate and vote by electronic means, such as video conferencing, teleconference or email. There would still be a physical meeting and it would otherwise be conducted in the usual way.

Clause 28 of Schedule 1 of the SSMA 2015 states in relation to general meetings:

*28 Manner of voting*

*(1) A vote at a meeting by a person entitled to vote or by a proxy must be cast in person unless the owners corporation, by resolution passed at a general meeting, determines that a vote may be cast by some other specified means.*

Clause 10 of Schedule 2 of the SSMA 2015 states in relation to committee meetings:

*10 Manner of voting*

*(1) A vote at a meeting by a person entitled to vote must be cast in person unless the strata committee, by resolution, determines that a vote may be cast by some other specified means.*

The effect of clause 28 of Schedule 1 and clause 10 of Schedule 2 is to require two separate resolutions – a committee resolution in relation to committee meetings, and an owners corporation resolution at a general meeting in relation to general meetings.

There are a number of resources that are currently available to assist in relation to attendance by a large number of attendees. Google Hangout, for instance, can accommodate 25 video connections, or 150 telephone links.

- **100% Proxy Attendance**

- While it may have some limited utility for smaller managing agents, due to the 5% cap on proxies, it is open to the managing agent to provide a proxy form to owners utilising the substitute proxy options to allow owners to send in a completed proxy form made out to a series of employees of the managing agent.
- If everyone in a scheme does this, there will need to be at least 20 people present at the meeting, each holding 5% of the proxies to allow for a maximum of 100% attendance. Bannermans has a template proxy plus form that can incorporate the proxy nomination plus 19 alternate proxies, which is available in the Compliance Pack.

- In order to avoid any criticism as to how the employees of the managing agent exercise the proxy giver's vote, it would be prudent for the proxy giver to be requested to nominate how the proxy giver wishes the proxy holder to vote on all motions, and include a note that where not addressed, the proxy will be counted for the purpose of quorum, but no votes will be cast on behalf of that proxy giver.
  - In taking this approach, managing agents will need to be mindful of the restrictions in relation to votes on matters in which they have a pecuniary interest under clause 25(7) of Schedule 1– most commonly any re-appointment.
  - In addition, as there would be no interested party present, it will be necessary to specify that all nominations of the committee will need to be in writing ahead of time, with the nominee's written consent.
  - In order to permit the proxy givers sufficient time to consider all available candidates it may be prudent to give a shorter timeframe for the giving of nominations so that all owners have notice of the candidates in order to direct the proxy-holder how they wish them to vote.
  - While the SSMA 2015 allows nominations to be made up to, and at the meeting, practically if the proxy givers do not have notice of the nomination before issuing their proxy, that nominee will still be validly nominated, and should be reflected as such on the minutes, but will not receive any votes.
  - Managing agents will also need to be mindful of the requirement in large schemes (greater than 100 lots) for proxies to be given 24h in advance of the general meeting.
- **Pre-meeting electronic voting**

Subject to the above comments in relation to motions to adopt attendance by other means, regulation 14(1)(b) provides that an owners corporation or strata committee can resolve to make a decision, other than an election, prior to the relevant meeting by pre-meeting electronic voting.

There are a range of options, including use of a voting website, use of electronic ballot papers and voting by email. However, the legislation does impose some rules and requirements. In particular:

- This method is only available for motions. For an election, a physical meeting will be required, although participants can participate in that meeting by electronic means, if so resolved (workarounds in relation to this are addressed below).
- When convening a meeting, the owners corporation or strata committee needs to decide whether the matter will be decided wholly or partly by pre-meeting electronic voting, as different rules apply to each. In particular:

- If the matter will be decided wholly by pre-meeting electronic voting, the motion may not be amended at the relevant meeting.
- If the matter will be decided partly by pre-meeting electronic voting:
  - the motion may not be amended at the relevant meeting, if the effect of the amendment is to “change the subject matter of the original motion”.
  - the relevant motion may be amended by a further motion given at the meeting and the notice of meeting must include a statement warning that this can occur and that the pre-meeting vote may be of no effect.
- If the motion is amended, the minutes of the meeting to be distributed to owners must be accompanied by notice of the amendment and advice as to the potential to requisition a further meeting by qualified request under Section 19 of the Act.
- Regulation 15 sets out the procedures to be followed by the Secretary in relation to pre-meeting electronic voting, including the information to be provided to owners. Regulation 15 also deals with closure of the ballot, which occurs 24 hours before the commencement of the meeting for owners corporation meetings and immediately before the commencement of the meeting for strata committee meetings.
- Regulation 16 deals with informal votes and provides that, where pre-meeting electronic voting is to be by means of a voting website or other electronic application, the website or application must have the functionality of a warning message that a proposed vote will be informal, if that is the case.
- Regulation 17 deals with determination and declaration of the result of the vote. The Secretary is to ascertain the result and inform the persons present at the relevant meeting.
- **Dealing with Elections**
  - In relation to elections, this is expressly excluded from pre-meeting electronic voting in the regulations, so pre-meeting voting will not be acceptable for this purpose.
  - The best work-around, if available would be to arrange attendance by video conference, or other electronic means, however this will not always be practical.
  - The approach in relation to 100% attendance by proxies, detailed above, also addresses this point.

- Where electronic attendance cannot be accommodated, and physical attendance would otherwise be required to permit the owners corporation to vote on an election, the scheme may wish to consider not voting on the election at the meeting.
- Where a new committee has not been elected, the current committee will not have been vacated. If the owners are ok with this, then pre-meeting voting can go ahead, but no vote will count in relation to an election.

- **Records**

Regulation 41 provides that the owners corporation must retain records relating to electronic voting on motions for resolutions by an owners corporation.

Section 180 of the Act provides that these must be retained for 7 years, unless they relate to a secret ballot and do not relate to a matter concerning part 10 of the Strata Schemes Development Act 2015, in which case they need only be retained for 13 months.

- **Issues and Risks**

While most owners will be sympathetic to the reasons for the above approach, and appreciate Managing Agents attempting to facilitate the ongoing functioning of the owners corporation, it is important to be mindful of the fact that, absent amendments to the legislation to accommodate the current circumstances, an owner could, in all circumstances except a meeting held wholly by pre-meeting electronic voting, insist on attending the general meeting in person.

While an owner may have this entitlement, in the current climate, it would appear entirely reasonable for a Managing Agent to not accommodate this, including to go so far as to refuse to permit entry to their premises in the event that they show up.

This may expose the owners corporation to proceedings under section 25 in relation to the owner complaining that they were denied their vote. It is important to note, however, that section 25 is only enlivened if the failure to allow the vote would have changed the outcome and they were “improperly denied the vote”. Even then, it is discretionary, and in the current circumstances if reasonable steps have been taken to provide alternative options, it would be anticipated that the Tribunal would be unsympathetic to the claim and may go so far as to find that the denial was not “improper”.

**Prepared by Bannermans Lawyers**

**6 May 2020**