



STRATA COMMUNITY EDUCATION SEMINARS

12 MAY 2021

#smartstrata21

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Welcome to the Smart Strata educational seminar explaining the legislative changes impacting strata communities being delivered by industry legal expert James Nickless, Partner at Chambers Russell Lawyers.

Housekeeping:

- ✓ Mobile phones to silent
- ✓ Amenities
- ✓ Emergency exits

Nicky Lonergan, CEO





www.smartstrata.com

info@smartstrata.com

[#smartstrata](https://twitter.com/smartstrata)



Each year Smart Strata holds a seminar series across Queensland, keeping body corporate committees informed and educated on matters of importance.

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www.abcm.com.au

info@abcm.com.au



GOLD COAST
P: 07 5552 0700

PO Box 10664
Southport BC
QLD 4215

BRISBANE
P: 07 3220 9400

GPO Box 3025
Brisbane
QLD 4001

SUNSHINE COAST
P: 07 5458 4500

PO Box 1191
Mooloolaba
QLD 4557

WHITSUNDAYS
P: 07 4946 3000

PO Box 668
Airlie Beach
QLD 4802

TOWNSVILLE
P: 07 4722 2782

PO Box 1064
Townsville
QLD 4810

CAIRNS
P: 07 4045 7400

PO Box 2676
Cairns
QLD 4870



**James Nickless, Partner
Chambers Russell Lawyers**

James Nickless is a Partner of Chambers Russell Lawyers and manages the firm's Queensland practice.

James is an expert in strata title law and litigation with extensive experience in general commercial litigation, building and construction disputes, debt recovery and insolvency.

James served on the legislation committee of Strata Community Association (QLD) from 2013 to 2019, was elected to its Board of Directors in 2016 and is the current President of Strata Community Association (QLD), having been elected to that position in 2019.

New BCCM Regulations 2020

James Nickless

The great Australian dream...



The Australian dream... “strata-fied”



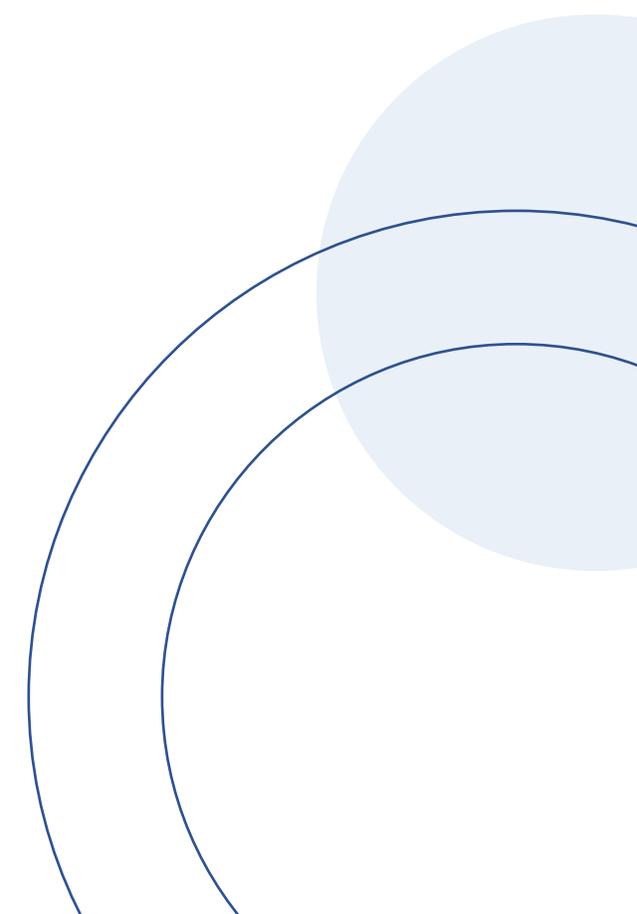
Most Impactful Changes

- Voting member of Committee – Co-owners, family members & POA
- Minor committee
- Electronic Voting Changes
- Lot owner may now submit motion for consideration at a committee meeting
- Service of documents or information on secretary generally



Most Impactful Changes

- Receipt of particular benefits by committee
- Group of same-issue motions
- Documents and materials to be handed over to the body corporate at first general meeting expanded
- Debtor member of Committee



Most Impactful Changes

- Quorum for general meetings (ability to reduce)
- Meaning of voter for general meeting (limitation of representatives)
- Disclosure of commission or other benefit
- Committee may exceed spending limit to obtain insurance
- Mandatory defect assessment motion



Less Impactful Changes

- Utility infrastructure providing a utility service Minor committee – further examples
- Removing committee members (clarification)
- Requirement to minute reasons for ruling motions out of order
- Non committee members (& representatives) may now attend committee meetings



Voting member of Committee – Co-Owners, family members, POA

- Section 11 - Introduction of a new subsection 2 which allows co-owners of lots to be voting committee members for each lot they own. This provides more flexibility where people co-own multiple lots.
- 2)Also, for each lot that is owned, or co-owned, by an individual, only 1 of the following persons can be a voting member of the committee on the basis of ownership of the lot, at a time—
 - (a) the individual owner of the lot;
 - (b) a member of the individual owner’s family;
 - (c) a person acting under the authority of a power of attorney given to the person by the individual owner of the lot.

Minor committee

- Section 13 - A committee can now be elected outside of an AGM for schemes with:
 - (a) 3 or more lots; and
 - (b) No more than 3 owners.
- This will be called a “minor committee”. All owners are automatically members of the minor committee. The owners (or their nominees) must decide amongst themselves which executive committee positions are held. If they cannot agree, then the executive positions are held jointly.



Electronic Voting Changes

New sections provide for:

- The conduct of committee elections by secret ballot or open ballot, ballots generally to be carried out by electronic voting, if the body corporate approves electronic voting and the body corporate can operate a system that meets the requirements under the legislation;
- Attendance at Committee and General Meetings by electronic means;
- Provision of documents such as meeting notices electronically



Lot owner may now submit motion for consideration at a committee meeting

- A lot owner may now submit motion for consideration at a committee meeting or be decided on outside a committee meeting.
- The committee is required to make a decision on the motion as soon as reasonably practicable and within a 6-week period. That period may be extended of no more than 6 more weeks, but the committee is required to give reasons for the extension.



Service of documents or information on secretary generally

- If a lot owner is required or permitted to give or serve a document or information on the secretary, then that document or information may be given or served on a body corporate manager who has been authorised under section 119(2) of the BCCM Act to exercise some or all of the powers of the secretary.
- This section has been introduced to authorise lot owners giving voting papers to a body corporate manager. In *Whitsunday Waters Resort* [2020] QBCCMCMr 84, an Adjudicator cast doubt on the validity of this practice by finding that a voting paper could only be given to the secretary, not the body corporate manager.

Receipt of particular benefits by committee

A committee member must not receive a direct or indirect benefit from a caretaking service contractor or service contractor, other than a 'permitted benefit', unless the body corporate authorises receipt of the benefit.



Group of same-issue motions

- Previously was a ‘motion with alternatives’.
- Motions dealing with same issued are identified and grouped together on voting paper.
- The motions are voted on separately.
- An original motion that receives the required number of votes to pass qualifies (a qualifying motion) to be a decision of the body corporate.
- If there is only 1 qualifying motion, that motion is the body corporates decision for the group of same-issue motions.
- If there is more than 1 qualifying motion, the motion with the most votes in favour is the body corporates decision.
- In unlikely event of a “tie” - decide by chance in the way that the meeting decides

Documents and materials to be handed over to the body corporate at first general meeting expanded

- Copy of DA, CMS, copies of documents of any claims made against insurance policy taken out by original owner for body corporate;
- Copy of Fire & Evacuation plan copies of contracts or agreements for the supply of utility services;
- Warranties for: buildings or improvements forming part of scheme land; common property plant and equipment; and any other body corporate assets;
- Copy of any proxy form under which the original owner is the proxy for an owner of a lot; and
- A copy of any document under which the original owner derives representative capacity for an owner of a lot.
- (These can be provided in hard copy or electronic form)

Debtor member of Committee

- If a voting committee member or person who nominated them owes a body corporate debt – that committee member is a ‘debtor member’ and will be ineligible to vote at the committee meeting affects proxies also.
- A ‘debtor member’ may still be counted towards the quorum of the meeting



Quorum for general meetings (ability to reduce)

- A body corporate may resolve to change how the quorum is to be calculated.
- The amended quorum cannot be less than 10% of the number of voters for the meeting or more than 25% of the number of voters for the meeting.



Meaning of voter for general meeting (limitation for representatives)

- A person may no longer act as a representative of more than one owner of a lot. This has been introduced to close a loophole in the industry whereby a person would collect powers of attorney from multiple lot owners and exercise significant voting power in general meeting.
- The only exceptions to this will be if the attorney is a member of the lot owner's family or if the powers of attorney are given under sections 211 and 219 of the BCCM Act (i.e. powers of attorney held by the original owner).



Disclosure of commission or other benefit

- The specific monetary amount of any commission to be received must be disclosed before a contract is entered into by the Body Corporate
- Other non-monetary benefits must be disclosed also



Committee may exceed spending limit to obtain insurance

- Committee may spend above the relevant limit for committee spending for the purpose of obtaining insurance, if it is not a restricted issue for the committee.



Mandatory defect assessment motion

- Body corporate must include a defect assessment motion on the agenda for the next annual general meeting of the body corporate that is called after the first annual general meeting.
- In practice, this will likely be too late for non-structural defects (only 6-12 month defect liability period)



Questions?



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