

Impact Analysis Statement

Summary IAS

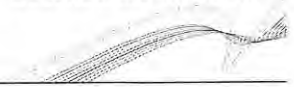
Details

Lead department	Department of Justice and Attorney-General
Name of the proposal	Amendments to regulation modules under the <i>Body Corporate and Community Management Act 1997</i> .
Submission type (<i>Summary IAS / Consultation IAS / Decision IAS</i>)	Summary IAS
Title of related legislative or regulatory instrument	Body Corporate and Community Management Legislation Amendment Regulation 2024
Date of issue	April 2024

Proposal type	Details
Regulatory proposals where no RIA is required	<p>A) <i>Proposals that make consequential amendments necessary to reflect changes in other legislation. No regulatory impact analysis is required under the Better Regulation Policy.</i></p> <p><u>Consequential amendments due to removal of requirement for body corporate to have a body corporate seal</u></p> <p>The <i>Body Corporate and Community Management and Other Legislation Amendment Act 2023</i> (Amendment Act) received assent on 22 November 2023 and relevant provisions will commence on 1 May 2024.</p> <p>The Amendment Act amends the <i>Body Corporate and Community Management Act 1997</i> (BCCM Act) to remove the requirement for a body corporate to have a seal.</p> <p>As a result, the proposed Amendment Regulation makes consequential amendments to the regulation modules to:</p> <ul style="list-style-type: none"> remove the requirement for the original owner for a community titles scheme to give the body corporate seal to the body corporate at the first annual general meeting and to remove provisions relating to the keeping, use and return of the body corporate seal. remove provisions requiring documents relating to particular dealings with scheme land to be certified under the body corporate seal, and provide alternative arrangements for these documents to be signed by particular persons. <p><u>Consequential amendments due to introduction of arrangements for adjudicators to make alternative insurance orders</u></p> <p>The Amendment Act amends the BCCM Act to enable an adjudicator to make an alternative insurance order if the adjudicator is satisfied of particular matters where the body corporate is not able to comply with the insurance requirements under the regulation modules.</p>



	<p>As a result, the proposed Amendment Regulation makes consequential amendments to the regulation modules to remove provisions allowing the Commissioner for Body Corporate and Community Management to authorise the body corporate for a community titles scheme to put in place alternative insurance.</p> <p><u>Prescribe fees for inspecting, or obtaining copies of, body corporate records of other community titles schemes in layered arrangements of community titles schemes</u></p> <p>The Amendment Act amends the BCCM Act to allow bodies corporate, lot owners and occupiers in a community titles scheme in a layered arrangement to inspect or obtain a copy of the body corporate records of another scheme in a layered arrangement by making a written request accompanied by the fee prescribed under the regulation module applying to the other scheme. This amendment extends the existing provisions allowing access to body corporate records.</p> <p>The proposed Amendment Regulation will make consequential amendments to all the regulation modules to ensure the existing fee payable to the body corporate for inspecting or obtaining body corporate records will also apply to requests to inspect or obtain records under the new provisions relating to layered arrangements.</p> <p><i>B) Regulatory proposals that are deregulatory (remove regulation), and do not increase costs or regulatory burden on business or the community. No regulatory impact analysis is required under the Better Regulation Policy.</i></p> <p><u>Prescribing how a body corporate must give a copy of a body corporate record</u></p> <p>The Amendment Act amends the BCCM Act to require the body corporate to give particular persons a copy of a record kept by the body corporate in the way agreed between the person and the body corporate or, if the person and body corporate do not agree on the way the copy will be given, in the way prescribed under the regulation module applying to the scheme.</p> <p>This amendment seeks to provide flexibility for bodies corporate and interested persons to agree to use modern forms of communication for the provision of copies of body corporate records (for example, on-line file sharing website etc.).</p> <p>The proposed Amendment Regulation will amend the regulation modules to prescribe that if the body corporate and an interested person who requests to obtain body corporate records cannot agree on how the document will be given to the interested person, then the records must be given to the person personally or by posting it to the person. This amendment does not increase costs for or otherwise impact on a body corporate as it reflects the existing arrangements for giving body corporate records.</p> <p><u>Prescribe the way in which a body corporate must give documents or other information it is required to give under the BCCM Act to an owner or other relevant person</u></p> <p>The Amendment Act amends the BCCM Act to provide that the body corporate must give documents or other information it is required to give under the BCCM Act to lot owners, or other persons who are required to give</p>
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	<p>their address for service to the body corporate, in the way prescribed under the regulation module applying to the scheme.</p> <p>The proposed Amendment Regulation will amend the regulation modules to prescribe the body corporate must give a copy of a document or information to an owner or other person whose address for service is required to be given to the body corporate:</p> <ul style="list-style-type: none"> • by delivering it to the owner, or relevant person, personally; or • by sending it to the owner's, or relevant person's, address for service (which may include an email address); or • in accordance with an agreement between the body corporate and owner, or relevant person, that nominates another way for the document or information to be given. <p>This amendment seeks to expand the ways in which a body corporate may give documents to include the flexibility for a body corporate and a lot owner to agree to use modern forms of communication for the giving of documents by the body corporate to the lot owner (for example, online file sharing website etc.). This will reduce the regulatory burden on bodies corporate.</p>
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What is the nature, size and scope of the problem? What are the objectives of government action?

Background

The proposed Amendment Regulation amends the regulation modules under the BCCM Act.

The primary object of the BCCM Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land in Queensland. For the achievement of this object, the BCCM Act provides for the establishment, operation and management of community titles schemes.

To provide the required flexibility of governance arrangements for the wide range of community titles schemes, management processes and procedures are provided through regulation modules designed for different types of schemes. Five regulation modules have been made under the BCCM Act:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020*
- *Body Corporate and Community Management (Commercial Module) Regulation 2020*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020*
- *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*
- *Body Corporate and Community Management (Standard Module) Regulation 2020.*

The Amendment Act received assent on 22 November 2023, and relevant provisions will commence on 1 May 2024.

The proposed Amendment Regulation amends the regulation modules to:

- prescribe matters in the regulation modules under new heads of power inserted into the BCCM Act by the BCCMOLA Act;
- make amendments to the regulation modules that are made as a consequence of an Act being enacted or subordinate legislation being made; and
- enhance the ability of a body corporate to request certain documents from the original owner if they haven't been provided at the time required.

The following amendments in the proposed Amendment Regulation require further regulatory impact analysis:

- prescribing the period within which a body corporate or its committee must decide whether to grant written approval to keep or bring an animal on a lot or the common property, or to permit an invitee to keep or bring an animal on a lot or the common property; and
- enabling a body corporate to give a notice to the original owner (usually the developer) for a community titles scheme requesting that certain documents be given if they haven't been provided by the original owner at the time the original owner is required to give the documents.

Prescribed period for decision on requests for written approval to bring or keep an animal on a lot or the common property

The Amendment Act amends the BCCM Act to provide that a body corporate by-law cannot prohibit the keeping or bringing of animals on a lot or the common property, or restrict the number, type, or size of animals that may be kept or brought.

However, the Amendment Act also provides that a by-law may provide that an occupier must not keep or bring an animal on a lot or the common property, or permit an invitee to do so, without the written approval of the body corporate or its committee. If a body corporate has such a by-law, the Amendment Act sets out requirements for the body corporate or the committee in relation to requests received for written approval to keep or bring an animal.

Feedback received during development of the Amendment Act considered it was important to specify a timeframe for a body corporate decision on whether to approve a request to keep or bring an animal on a lot or common property, to ensure that a timely decision is made. If a body corporate or its committee does not make decisions about whether to grant approval to keep a pet in a timely manner, this can have consequences for owners and occupiers, including that a pet owner may need to find alternative long-term accommodation for their pets until a decision is made. It may also hinder a prospective owner's decision about whether to enter into a contract of sale to purchase a lot in the scheme or a prospective occupier's decision to enter into tenancy agreement for a lot in the scheme.

The Amendment Act therefore includes a requirement that if a body corporate has a by-law that requires written approval of the body corporate to keep or bring an animal on a lot or the common property, the body corporate or its committee must decide whether to grant the approval *within the period prescribed by the regulation module applying to the scheme*.

Currently, a body corporate for a community titles scheme may make decisions through its committee or through general meetings of the body corporate (except for schemes that operate under the Specified Two-lot Schemes regulation module, where decisions are made by lot owner agreement).

The regulation modules currently require a committee to consider a motion (for example, a request for body corporate approval to keep or bring a pet) from an owner of a lot in the scheme as soon as reasonably practicable, and within the 6-week period after the motion is submitted. The committee may advise the owner that the committee requires additional time (up to an additional 6 weeks) to decide the motion. If the committee does not make a decision within the required timeframes, then the committee is taken to have decided against the motion.

A body corporate committee may approve a request to keep or bring an animal, except where:

- the body corporate has decided by ordinary resolution at a general meeting that decisions about whether to approve the keeping or bringing of an animal are restricted issues which may not be made by the committee and instead, must be decided upon at a general meeting; or
- the body corporate has implemented a by-law stating the approval of the keeping or bringing of an animal may only be given by a decision made at a general meeting of the body corporate.

If the decision on whether to approve a request to keep or bring an animal must be made at a general meeting, the owner or occupier who has made the request may potentially have to wait up to a year for consideration of their request. Although a committee may call general meetings through the year as required, the committee is only required to call the following general meetings:

- an annual general meeting (AGM); and
- an extraordinary general meeting if 25% of all owners in the scheme request the meeting.

The objective of government action in prescribing a timeframe is to ensure that bodies corporate make decisions in relation to requests to keep an animal in a timely manner.

Enable a body corporate to give a notice to the original owner requesting that certain documents or information be given

The original owner for a community titles scheme (usually the developer) is required to give the body corporate specific documents and materials at the first annual general meeting (AGM) under the Accommodation Module, Commercial Module, Small Schemes Module or Standard Module. Also, if these documents come into the original owner's possession after the body corporate's first AGM, the original owner must give the documents to the secretary at the earliest practicable opportunity.

In a community titles scheme to which the Specified Two-lot Schemes Module applies, the original owner must give specific documents and material to the body corporate within 2 months of no longer being the owner of one or both of the lots in the scheme. Also, if these documents come into the original owner's possession after 2 months of no longer being the owner of one or both of the lots in the scheme, the original owner must give them to the body corporate at the earliest practicable opportunity.

The documents required to be given by the original owner of a community titles scheme (for example, the developer) provide important information about the scheme that is necessary for the future administration and management of the scheme, for example, insurance policies, plans for the scheme, and details of body corporate assets. It is, therefore, important that a body corporate has a range of mechanisms available to ensure these documents are given.

The Property Law Review conducted by the Commercial and Property Law Research Centre at the Queensland University of Technology for the Queensland Government recommended that a body corporate should be able to request the original owner to hand over any documents or other materials required to be handed over to the body corporate at the first AGM if, after the first AGM, those documents or other material have not been handed over.¹

The regulation modules provide a process for a body corporate to request the return of body corporate assets or records from a person who took possession of the property in the person's capacity as a member of the body corporate, committee member, or body corporate manager. The body corporate may serve a prescribed notice requiring the person to give the property to another person named in the notice. A maximum penalty of 20 penalty units may be imposed for failure to comply with the notice.

Given failure of the original owner to hand over required documents at the required time will result in the original owner having possession of the body corporate's records, it is appropriate for the body corporate to be able to require the return of the records in the same way as other body corporate records and property.

The objective of government action is to enable bodies corporate to be empowered to ensure the original owner provides the documents that the body corporate requires to effectively administer the scheme.

What options were considered?

Prescribed period for decision on requests for written approval to bring or keep an animal on a lot or the common property

Option 1

Option 1 is to prescribe the following periods within which a body corporate or its committee must make a decision whether to grant approval to a lot owner or occupier to keep or bring an animal:

- if the decision may be made by the committee – the committee must make a decision within 28 days after receiving a request; and
- if the committee is not permitted to make the decision (for example, because the issue is a restricted issue for the committee) – the committee must call a general meeting to consider a motion about the approval within 14 days of receiving the request and the meeting must be held to decide the issue within six weeks after the notice of the meeting is given.

¹ Recommendation 52, Government Property Law Review: Final Recommendations - Procedural issues under the *Body Corporate and Community Management Act 1997*.
https://www.justice.qld.gov.au/_data/assets/pdf_file/0008/529784/final-recommendations-procedural-issues-paper.pdf

Option 1 is also to provide that an approval request is deemed to be approved if a decision about the keeping of the animal is not made within the proposed prescribed period. It is considered this may be in line with the policy intent of ensuring a body corporate makes a decision in a timely manner.

By providing that an approval request is deemed to be approved if a decision is not made within the prescribed timeframes, the onus is on the body corporate to make a timely decision on whether to grant written approval to an owner or occupier. In any case, there are limited grounds for refusal of a request to keep an animal under the BCCM Act, so it is anticipated that in most cases a request to keep an animal would be approved by a body corporate.

This approach is consistent with section 184D of the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act), which provides that the lessor is taken to approve the keeping of the pet at the premises if the lessor does not respond to the tenant's request within 14 days after receiving the request.

New South Wales has implemented similar legislative provisions to provide that, if a decision of the owners corporation is required before an animal may be kept on the lot and the owners corporation failed to make a decision within a reasonable time, the animal is taken to have been approved.

It should be noted that it is not necessary to amend the Specified Two-lot Schemes Module to prescribe a timeframe, as the BCCM Act currently prescribes that lot owner agreements for a Specified Two-lot Scheme Module must be made within a reasonable time.

Option 2

Option 2 is to require the body corporate to decide on whether to approve a request to keep an animal within 14 days.

During consultation on the *Body Corporate and Community Management and Other Legislation Amendment Bill 2023* by the Legal Affairs and Safety Committee (LASC), some stakeholders suggested the period for a body corporate decision on whether to approve a request to keep an animal should be 14 days, to align with the period provided under RTRA Act for a lessor to decide a request from a tenant to keep an animal.

In its report on the Bill, the LASC recommended that the Queensland Government, in collaboration with the Community Titles Legislation Working Group (Working Group), review the interaction between the RTRA Act and the BCCM Act regarding timeframes for requests to keep pets.

The Government response to the LASC report on the Bill stated the Government did not directly support this Committee recommendation. The interaction between the relevant Acts regarding timeframes for requests to keep pets from a tenant is clear. The RTRA Act clearly states that an authorisation to keep a pet or animal is subject to body corporate by-laws. Therefore, even if a landlord of a property included in a community titles scheme approved the keeping of an animal under a lease, the tenant would also need to obtain the body corporate's approval if this is a requirement under body corporate by-laws.

The Government response further noted that the collective decision-making processes and timeframes involved in the management of community titles schemes do not enable a 14-day timeframe to be adopted for body corporate approval of a request to keep an animal.

Enable a body corporate to give a notice to the original owner requesting that certain documents or materials be given

Option 1

Option 1 is to amend the regulation modules to allow the body corporate to give the original owner of the scheme a notice requesting the original owner give the body corporate particular documents or information relating to the community titles scheme that the original owner is required to give to the body corporate under the regulation modules. For a scheme to which the Specified Two-lot Schemes Module applies, the notice may be given by one or both of the owners of lots in the scheme. A maximum penalty of 20 penalty fee units would apply if the person fails to comply with the notice.

Option 2

Option 2 is to retain the status quo. This option will not enable a body corporate to issue a notice (for which there is a penalty attached) to the original owner to incentivise the original owner to give documents it is required to give to the body corporate.

What are the impacts?*Prescribed period for decision on requests for written approval to bring or keep an animal on a lot or the common property*

Under the options explored for the proposed Amendment Regulation, owners and occupiers would be able to obtain a decision on their request for approval to keep or bring animals in a timely manner. For owners and occupiers with existing pets, they would not need to find alternative long-term accommodation for their pets while waiting for a body corporate decision.

The options would also enable prospective owners and occupiers to make informed decisions about whether to enter into a contract of sale, or a rental agreement, for a community titles scheme lot, as the body corporate or the committee would be obligated to decide any request to keep an animal within the prescribed timeframe.

The options may result in an increase in administration costs for bodies corporate arising from the body corporate needing to hold additional committee or general meetings, or conduct votes outside committee meetings, to decide requests for animals.

In most cases, the committee for the body corporate will make decisions about whether to approve a request to keep an animal. The regulation modules under the BCCM Act permit committees to make decisions at committee meetings (which may allow for committee members to attend electronically), or by voting on motions outside committee meetings (for example, by casting a vote on a relevant motion via email). As the committee is responsible for making routine decisions regarding the administration and management of the scheme, and given the regulation modules provide mechanisms for committees to reduce costs associated with making decisions, it is not anticipated that imposing a timeframe within which a committee must decide a request to keep an animal will impose unreasonable additional costs on bodies corporate.

Where a decision on a pet request is a restricted issue for the committee, a by-law requires a decision to be made by all owners at a general meeting, or the first AGM for a scheme has not yet been held, the body corporate will be required to call and hold a general meeting to decide a pet request. Imposing a requirement on a body corporate to call and hold a general meeting to decide a pet request in these circumstances will result in the body corporate incurring additional administrative costs that are associated with general meetings (including costs associated with preparing and distributing notices, agendas and voting papers to owners). The costs associated with calling and holding a general meeting will vary according to the size of the scheme.

However, a body corporate can avoid the costs associated with calling and holding a general meeting to decide a pet request by not making the approval of an animal a restricted issue for the body corporate committee, or by changing the by-law to allow a decision to be made by the committee.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office) provides dispute resolution and information and education services for those living, working and investing in community titles schemes established under the BCCM Act. As part of its ongoing services, and to support the implementation of amendments made by the proposed Amendment Regulation, it is proposed that the BCCM Office will provide information and education resources regarding the costs associated with decision-making and how bodies corporate can reduce these costs, including, for example, by not requiring decisions about pet requests to be made by all owners at a general meeting.

Enable a body corporate to give a notice to the original owner requesting that certain documents or materials be given

Option 1 would introduce a specific process to enable bodies corporate to request the original owner to provide important documents and other materials about the scheme that are necessary for the ongoing administration and management of the scheme. It is expected these documents will already be in the possession of the original owner, due to their role in establishing the scheme and therefore it is not anticipated that there would be significant costs for the original owner in complying with the notice requirements. A notice requiring the original owner to provide the documents will only be given where the original owner has failed to provide these documents as required under the regulation module.

There would be no costs on original owners associated with Option 2 (status quo); however, this Option would mean that bodies corporate may continue to be unable to easily obtain documents from original owners that are required for the ongoing management of the community titles scheme.

Who was consulted?

The Amendment Regulation makes amendments to the regulation modules to supports the amendments to the BCCM Act contained in the Amendment Act.

Many of the reforms in the Amendment Act were the result of the recommendations of an independent review of Queensland's property laws conducted by the Commercial and Property Law Research Centre at the Queensland University of Technology for the Queensland Government between August 2013 and January 2018. The review involved public consultation through the release of consultation papers.

The reforms in the Amendment Act were also informed by the views of the Community Titles Legislation Working Group, which is comprised of key stakeholders from the community titles sector, as well as other relevant stakeholders, via a consultation draft of the Body Corporation and Community Management and Other Legislation Amendment Bill 2023. Submissions on the consultation draft were sought between 17 May 2023 and 9 June 2023.

Targeted consultation was undertaken with stakeholders regarding the prescribed timeframe within which a body corporate or its committee must decide whether to approve a request to keep or bring an animal between 16 February and 4 March 2024 through release of an issues paper.

Members of the Community Titles Legislation Working Group were invited to provide feedback on the consultation paper:

- Australian College of Strata Lawyers;
- Australian Resident Accommodation Managers Association;
- Owners Corporation Network;
- Queensland Law Society (QLS);
- Real Estate Institute of Queensland;
- Strata Community Association;
- Unit Owners Association of Queensland Inc.

Other invited stakeholders who provided feedback on the consultation paper are: Australian Apartment Advocacy, My Community Legal Inc., the Queensland University of Technology, RSPCA, Strata Owners Speak Out, Townsville Lot Owners Group, and Urban Development Institute of Australia.

Stakeholders were specifically asked if they support a 28-day period being prescribed for body corporate committees to decide a request about the keeping of animals. The majority of stakeholders considered a 28-day timeframe was too long and proposed a shorter timeframe be imposed.

Stakeholders were also consulted on their preferred timeframe for situations where a body corporate may only decide a request to keep a pet by a general meeting decision. As part of the consultation process, it was proposed that bodies corporate be required to call a general meeting within 14 days after receiving a request for approval to keep a pet, and that a general meeting must be held within six weeks after the meeting is called.

Some stakeholders suggested it was unreasonable to require that a general meeting must be called within 14 days and a meeting held within six weeks to decide a request to keep a pet. Other stakeholders suggested the bodies corporate should be required to call and hold a general meeting within a shorter timeframe to ensure decisions about pet requests are made as soon as possible. Some other stakeholders also suggested that the legislation should require the committee to make all decisions about requests to keep a pet.

The majority of stakeholders supported an approval request being deemed to be approved if a decision about the keeping of the animal is not made within the prescribed period.

The results of this targeted consultation informed further development of the approach included in the Amendment Regulation (discussed below).

What is the recommended option and why?

Prescribed period for decision on requests for written approval to bring or keep an animal on a lot or the common property

The recommended option is a modified Option 1 which responds to stakeholder preferences during consultation for a period shorter than the period suggested in Option 1. The modified Option 1 is the recommended option because it achieves the objective of government action, which is to ensure a body corporate or a committee makes a timely decision about whether to approve a request to keep or bring an animal on a lot or the common property.

Option 2 is not supported, as collective decision-making processes and timeframes involved in the management of community titles schemes do not enable a 14-day timeframe to be adopted for the body corporate approval of a request to keep an animal. For instance, the regulation modules currently require committees to provide at least 7 days written notice to committee members and owners prior to a meeting. For general meetings, bodies corporate must provide at least 21 days written notice of a general meeting prior to the meeting date. It would not be possible for bodies corporate to adhere to the procedural requirements associated with body corporate decision-making (which are aimed at ensuring owners have sufficient notice of meetings to make informed decisions when casting their vote on a particular matter) if a requirement that a request to keep or bring an animal on a lot or common property must be decided within 14 days was imposed.

Modified option 1 is to prescribe the following periods within which a body corporate or its committee must make a decision about whether to grant approval to a lot owner or occupier to keep or bring an animal:

- where the decision may be made by the committee – the committee must make a decision within 21 days after receiving a request; and
- if the committee is not permitted to make a decision about approval of an animal – the secretary must call a general meeting to consider a motion about the approval within 21 days of receiving the request and the meeting must be held within six weeks after the notice of the meeting is given.

To ensure consistency with the timeframe within which a committee must decide a request for approval to keep an animal, modified option 1 requires that, where a decision on a pet request must be made at a general meeting, the general meeting must be called within 21 days of receiving the request and the meeting must be held within six weeks after the notice of the meeting is given.

Modified option 1 is also to provide that an approval request is deemed to be approved if:

- where the decision may be made by the committee – the committee has not made the decision within 21 days after receiving a request; and
- if the committee is not permitted to make a decision about approval of an animal – a general meeting is not called within 21 days of receiving the request OR if the body corporate calls a general meeting within 21 days of receiving the request, but the body corporate does not decide the request within six weeks after the notice of the meeting is given.

Enable a body corporate to give a notice to the original owner requesting that certain documents or materials be given

Option 1 is the recommended option, because it achieves the objective of government action of ensuring bodies corporate are empowered to ensure the original owner provides the documents that the body corporate requires to effectively administer the scheme.

Impact assessment

	First full year	First 10 years
Direct costs – <i>Compliance costs</i>	N/A	N/A
Direct costs – <i>Government costs</i>	N/A	N/A

Signed



Director-General

Date: 11. 04. 2024



Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family
Violence

Date: 15. 04. 2024