



Meeting in the time of COVID-19

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How do Bodies Corporate and their Committees continue to conduct their affairs during the Coronavirus outbreak?

Can a Committee or general meeting still be conducted or attended?

The starting proposition is that the body corporate must act reasonably in carrying out all its functions given to it under the *Body Corporate and Community Management Act (Act)*. This would include the body corporate making a decision on whether, whilst the outbreak is current, to:

- hold a Committee or general meeting; and
- allow participation in person at such a meeting.

What is 'reasonable' decision making in the circumstances will depend on the particular situation of each individual body corporate and may also change over time based on the status of the outbreak at any one given point of time.

A person may have contracted the virus and be experiencing symptoms or, alternatively show no symptoms but still be a carrier of the virus. Therefore, it's not always possible to be sure whether a person should be in self-isolation during the outbreak. The safest course of action for bodies corporate is therefore to avoid a physical Committee or general meeting wherever possible, until the risk abates.

The question then becomes, if the body corporate or its Committee must conduct meetings during this time, how does it do so?

Committees

Firstly, the Committee can make decisions either at a Committee meeting or by a vote outside committee meeting (VOC). Therefore, if at all possible, a Committee should seek to vote by a VOC if permitted to do so under the applicable Regulation Module, because a VOC can be conducted electronically (e.g. by email).

However, if the Committee must conduct a meeting (rather than a VOC) it should do so by conducting a teleconference or video conference. This is in line with Adjudicators' findings that Committee members may attend a Committee meeting by skype, teleconference or other technology. There are many providers who can provide the appropriate set up for the teleconference or video conference.

If a teleconference or video conference is held, no Committee member should be refused attendance at that meeting for reasons relating to self-isolation. Whilst it may be tempting to use self-isolation as a means to refuse the attendance of an irritating or disruptive Committee member, that would not be a valid (that is, reasonable) reason for a refusal.

Bodies Corporate

If at all possible, a general meeting should be delayed until the risk of infection of the virus has significantly abated. The meeting should then be conducted as soon as possible after that. If delay is not a viable option, for example on the basis that urgent approvals are required, what means are available to bodies corporate to safely conduct their affairs?

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The first is to conduct the meeting, but to ensure that the least number of people have to attend it. This can occur, for example, if the body corporate has previously decided by ordinary resolution that voters may record votes electronically. In such a case, as few as two lot owners being personally present at the meeting may be enough.

Even if electronic voting has not been previously approved, proxies and written voting papers can be used as well, to achieve the same result; that is, the least number of lot owners at the meeting. When using proxies however, the special rules concerning their use must be remembered; including that they may not be used in respect of some motion types.

If a body corporate decides to proceed with holding a physical general meeting then the body corporate should also:

- comply with any gathering rules of the Government in place at the time. For instance, if the maximum gathering size is reduced to a size below the number of proposed attendees at the meeting, the general meeting should not be held;
- ensure attendance from lot owners or their proxies (sufficient to achieve a quorum) who are not currently self-isolated or required to be;
- ensure others attending the meeting (for instance a returning officer or person conducting the meeting) are also not required to be self-isolated;
- carefully consider the location selected for the meeting, keeping in mind the present risks with transfer of the virus;
- check to make sure the body corporate manager is prepared to attend; and
- request all attendees to confirm that they are not, and are not required to be, in self isolation and that in the last 14 days they:
 - o have not travelled overseas; or
 - o have not been in close contact with a person who has returned from overseas; and
 - o are not suffering from any flu like symptoms.

If a physical meeting is out of the question, but business must still be conducted, there is a both a statutory and common law way, for all owners in a scheme to decide an issue (for example to approve electronic voting for future meetings!) without having to go to a meeting.

The statutory method is within section 111 of the Act. What that section allows, for some schemes, is for a general meeting resolution to be passed if all owners vote in favour of it, in writing. However, that process is only available to community titles schemes under the Commercial and Small Schemes Modules.

Section 111 is a statutory version of a common law principle; the doctrine of unanimous consent. That doctrine provides, in effect, that if all shareholders of a company agree something (outside a shareholders meeting), within the shareholders competency to agree at a shareholders meeting, then that agreement is binding on the company. It is this doctrine that (in our view) can apply to bodies corporate, irrespective of whether section 111 applies.

That unanimous consent would need to be obtained on a form containing an appropriate resolution approving the electronic voting. That approval would need to be given by each and every owner in the scheme signing (in the presence of a witness) the form. The form would need to be carefully drafted with detailed instructions to owners on how they can execute and return the form. Bodies corporate should obtain legal assistance, if this method of conducting business is to be used.

Conclusion

The above methods of conducting business are not exhaustive. They are also only intended as a general guide to help bodies corporate appreciate how they can approach body corporate business during this remarkable time.

As always, seek advice from your lawyer, and when it comes to COVID-19 seek advice from your doctor!

If your Body Corporate would like more information concerning meetings, then Stratum Legal can help you.