

12 April 2021

Policy & Strategy
Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Dear Sir/Madam

FURTHER EXTENSION OF STRATA AND COMMUNITY LANDS COVID-19 REGULATIONS

Thank you for the opportunity to respond to the proposed extension of COVID-19 Regulations.

OCN does not support the extension of this emergency arrangement for alternative electronic methods for meeting or voting, for the following reasons:

First, the pandemic conditions that led to this temporary arrangement do not now exist. The amendment to the principal Act was an extraordinary that enabled the minister to use regulation making power to override substantive provision of the principal act. It was a convoluted and extraordinary measure in a public health emergency taken to overcome a technical point, which should not be treated as a precedent for a major change of policy.

There is no public health order that prevents strata committees or owners corporations from meeting, therefore extending this measure to achieve a change of policy is not, in our view, a rational or legitimate for use of executive power.

Second, importantly, OCN does NOT support permanent alteration to the Act, and Government should not pre-empt the result of the current 5 year review consultation. OCN has significant concerns about the misuse of these arrangements and extension of the measure risks entrenching these practices without proper consideration of rationale underlying the existing policy.

Third, it is vitally important for consumer protection and functioning strata, that the preferred model if that owners meet face to face for discussion, especially about complex and/or contentious issues where questions and answers can be explored and people heard. This model supports the development of a scheme culture and social cohesion that is too easily lost.

Fourth, under the Act every scheme would still retain the right to decide collectively and consciously to take up the option of alternative electronic methods of meeting and voting, and can determine what those methods will be or the circumstances in which they will apply. This is an important democratic control especially for scheme that include people or their representatives who have conflicts of interest, seek to misuse 'electronic methods' to control the scheme or avoid transparency.

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Fifth, OCN believes there have been unintended real-world consequences and potential misuse of the temporary measures. In particular, there needs to be close examination of the use of pre-meeting voting combined with alternative methods of 'electronic meeting' during the pandemic.

OCN believes this had been used to avoid 'in person' meetings of any type. It has been used for the convenience of strata managers who have not needed to travel or be present in any form or be more accountable to the client (the scheme).

OCN has also been concerned that strata managers have used pre-meeting voting combined with 'alternative electronic methods' with questionable legality to extend strata committees without proper AGM processes. As an example, in one scheme the owners were presented with pre-meeting vote that included the extension of the strata committee for another year. The committee had co-opted new members, none of whom have faced a vote by owners. The actual meeting was simply held on the papers, no teleconference or video conference meeting and no opportunity for owners to attend or observe.

While electronic voting has been said to increase participation, this will only occur when it is in fact used to hold 'face to face' meetings via tele conference or video conference. This method is not available via all strata managers, many of whom do not have the facilities or skills to provide this service and prefer email paper 'meeting' at their desk. The video conference is also not an ideal method for large schemes with hundreds of lots, that generally have community meeting spaces.

In our view, there is nothing to be gained by removing the requirement that schemes must make their own conscious decisions about alternative electronic methods of meeting and voting, especially in new schemes with naive or uninformed new owners or older schemes with an entrenched and possibly dominating Chair or Secretary and below average strata management services. Far from encouraging participation, in this environment it has caused confusion, and allowed decisions that may not have occurred with more participation.

Finally, the development of policy must take account of the reality of the strata environment in NSW and take steps to avoid sharp practice. The environment is a complex one and it involves people fundamental property rights. OCN fears that many strata managers and committees have taken advantage of the pandemic to include resolutions to continue 'electronic meetings' without owners fully understanding all the implications.

OCN Recommendation

The Act should not be amended to remove the requirement that an owners corporation must make a conscious decision to use alternative electronic methods.

The emergency measure that overrides the Act should be allowed to expire.

Sincerely

A handwritten signature in black ink that reads "K Stiles". The signature is written in a cursive, slightly slanted style.

Karen Stiles
Executive Officer

Annexure 1
CASE STUDY ON THE EFFECTS OF PRE-MEETING VOTING

Background

- Strata Scheme with 115 lots
- Pre-meeting and electronic voting permitted by previous resolution
- Strata Committee proposes major changes to outdoor landscaping – value approx. \$28,000
- Discussed at SC meeting but no owner survey conducted
- Strata manager / secretary issues Notice of General Meeting providing 3 weeks' notice
- Notice of General Meeting contains standard explanatory note re motion for this change to common property. First time many owners are aware of proposal
- A group of owners is concerned at lack of consultation and no opportunity to put forward an opposing case to owners (*secretary / strata manager did not seek alternative motions from owners ahead of issuing Notice*)
- Pre-Meeting Voting Form enclosed with Notice of Meeting (*appears to have been actioned by those who chose to vote soon after its receipt*)
- Opposing owners campaign against change taking approx. 2 weeks to obtain strata roll and mail out a flyer to all owners.
- General Meeting held with voting by both those physically present and those joining the meeting electronically in real time.
- Extended debate on the motion.
- Motion by Special Resolution failed to obtain the necessary 75% support of both physical attendees and electronic attendees voting at the meeting.
- However, when Pre-meeting votes were counted in, the motion was Carried.

Commentary

1. Despite a majority of those engaging with the general meeting opposing the motion, the final voting outcome in favour of the change to common property was ultimately determined by the weight of pre-meeting votes cast ahead of the meeting and the Special Resolution passed.
2. The numbers (shown as no. of lots although of course counted by u/e) were as follows:

Total No of lots in scheme	115
Voting - Physical & electronic attendance at general meeting	
For	10
Against	<u>11</u>
Total	21
Voting - Pre-Meeting email votes	
For	33
Against	<u>2</u>
Total	35
Total technical Attendance at Meeting	56
Outcome - Motion carried	
For	43
Against	<u>13</u>
Total	56

3. Despite a majority of those owners voting at the General Meeting opposing the motion, even a motion that required a Special Resolution (*no more than 25% voting against*) was carried due to the weight of Pre-meeting votes.
4. If it had been an Ordinary Resolution being voted on, it would have been even easier for pre-meeting votes to determine the outcome; in the above case only 19 pre-meeting votes in favour of the motion would have been required.
5. The pre-meeting votes were cast by owners uninformed by
 - a. the debate that took place at the General Meeting
 - b. any information provided as to the “case against”
6. Many of the pre-meeting votes were actually cast within days of the Notice of Meeting being received and prior to a group of owners being able to put forward an opposing case by mailout.

Learnings

1. This case demonstrates the effect of pre-meeting votes when a physical meeting is also held. Were a matter to be determined solely by electronic voting, then the effects of uninformed pre-meeting voting would be further amplified.
2. Pre-Meeting voting, as opposed to real time electronic voting at a meeting, gives weight to those who vote uninformed by participation in any debate.
3. The uninformed nature of the votes is further exacerbated by the ability of secretaries / strata managers to issue Notices of General Meeting without including any information on the “Case Against”. This provides a bias towards voting in favour of any proposal as set out in the Notice (*cf Corporate Takeover Legislation where a case for and a case against must be stated*)
4. As long as pre-meeting voting is permitted and it remains an “easy choice” for owners and strata managers, the above perverse outcomes will continue and the value of owner interaction at general meetings will be diminished.

Strata Answers Pty Ltd
12th April 2021