

Change is afoot – What do Bodies Corporate need to know?

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Let's buckle up...

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (**New Act**) is now not just on the horizon – it's here!

While some amendments came into effect on 9 December last year, the bulk of the new provisions come into force from 9 May 2023. It is critical that Body Corporate Committees not only come to grips with the changes, but also prepare themselves from a practical perspective.

What does the New Act do?

The New Act introduces a raft of changes, with an overarching objective of providing greater protections for those owning or buying unit title properties. This is achieved by:

- **Strengthening governance for Bodies Corporate:** Effective governance is essential to ensure that Bodies Corporate function smoothly and fairly. The new measures improve the way a Body Corporate is run, and foster transparency by ensuring conflicts are identified and declared.
- **Providing prospective buyers with comprehensive information:** When buying unit titled property, it is critical that potential buyers receive all the necessary information before going ahead with a purchase. In order to achieve this, there are changes to the ways that Bodies Corporate retain and disclose information. The changes to the disclosure regime are wide-ranging. This article will not cover those changes, as the full implications will not be known until Stage 3.
- **Improving the professionalism of Body Corporate managers:** Body Corporate managers play a vital role in managing unit titled property. The New Act introduces measures to improve both performance and conduct. While the new definition of Body Corporate Manager is in force, other provisions (including a new form of agreement) will come into force in Stage 3. A further article will also outline those changes.
- **Ensuring adequate planning and funding for long-term maintenance projects:** Regular maintenance is essential to keep unit titled property in good condition and anticipate repairs. The New Act encourages Body Corporate Committees to plan ahead and allocate sufficient funds for long-term maintenance projects.

When do the changes come into effect?

The New Act came into law on 9 May 2022. The provisions take effect in three distinct phases:

- **Stage 1: 9 December 2022:** The temporary rules that were put in place as part of the emergency response legislation for the pandemic are made permanent.
- **Stage 2: 9 May 2023:** The bulk of the provisions come into force.
- **Stage 3: 9 May 2024:** The rest of the provisions of the New Act will be in effect. These are the provisions that require further regulations to be drafted, and/or additional detail to be refined in order for them to be implemented.

Guidance for Body Corporate Committees

What practical changes do Body Corporate Committees need to implement under the New Act?

The table below summarises the **key changes of Stages 1 and 2**, and some practical steps that Body Corporate Committees can take to tackle those changes. A follow up article for Stage 3 will be provided once we know more on those changes (likely towards the end of 2023/early 2024). *Note: this table is not intended to be exhaustive.*

Date	Practical guidance for Body Corporate Committees
<p>Stage 1: 9 December 2022 onwards</p> <p>Section 88, Section 102 and Regulation 27(A)</p> <p>These amendments solidify the changes introduced by the pandemic emergency response legislation. In short, the changes allow both general meetings and committee meetings to be held and attended remotely.</p>	<p>The New Act does not explicitly state whether attendees are also entitled to attend in person if a virtual option is available. There has been some debate as to whether 'hybrid' meetings are permissible under the new changes. We consider the wording ('may' attend remotely) means that individual owners retain the right to attend either:</p> <ul style="list-style-type: none"> • In person; • By proxy; • By postal vote; or • Remotely (note – there is no definition of 'remote access' in the New Act). <p>Body Corporate Committees therefore need to consider how to deliver hybrid meetings from a practical perspective, so that both in-person and remote attendees are heard and able to participate equally. Body Corporate Committees should:</p> <ul style="list-style-type: none"> • Use video conferencing: This allows remote participants to see and hear what's happening in the room and vice versa. It also helps to build a sense of connection and engagement between in-person and remote attendees. • Have the Body Corporate Manager facilitate: Having the Body Corporate Manager in charge of the meeting who can help manage the flow of the conversation and make sure everyone has a chance to speak. • Ensure good audio and visual quality: Make sure that everyone can hear what's being said and see any presentations clearly. This can involve using high-quality microphones and speakers, as well as making sure that any visuals are visible on both the in-person and remote screens. • Encourage participation: It's important to create an environment where everyone feels comfortable speaking up and contributing. This can involve actively soliciting input from remote attendees, using tools chat functions to encourage engagement, and making sure that everyone has an equal opportunity to participate. • Chat function: The chat function in Zoom (or other video conferencing platforms) can be a useful way to ask questions. This allows attendees to type out their questions and submit them. The Body Corporate Manager can then read out the questions and respond to them during the meeting. • Q&A feature: Some video conferencing platforms have a built-in Q&A feature that allows attendees to submit their questions anonymously or with their name attached. The presenter can then select which questions to answer and respond to them in real-time. • Raise hand function: Many video conferencing platforms have a function that allows attendees to signal that they have a question or comment. This can be useful in larger meetings or when multiple people have questions at the same time. The Body Corporate Manager can then call on attendees one at a time to ask their questions. • Consider time zone differences: If you have remote attendees in different time zones, be mindful of scheduling the meeting at a time that works for everyone (and be flexible on that).
<p>Stage 2: 9 May 2023 onwards</p> <p>The bulk of the provisions come into force.</p> <p>These cover:</p> <ul style="list-style-type: none"> • New definitions; • Utility interest reassessments; • Changes to rights of owners; • Documents held and disclosed by the Body Corporate; • Procedures of general meetings; • Committee responsibilities; 	<p>Select practical guidance:</p> <ul style="list-style-type: none"> • A key change is the new definition of a 'large body corporate' – a complex with 10 or more units. A number of new requirements exist for a large body corporate, including that the body corporate of a large development must: <ul style="list-style-type: none"> ○ have a committee, unless 75% of owners vote against that; ○ engage a body corporate manager, unless 75% of owners vote against that; ○ have a long-term maintenance plan covering at least 30 years; ○ review the long-term maintenance plan at least every three years; and ○ engage and consult an appropriately qualified building professional when developing the long-term maintenance plan, unless 75% of owners vote against that. • Committee responsibilities have changed: It is imperative that Committees are up to speed with their obligations, including ensuring Committee members: <ul style="list-style-type: none"> ○ Formally disclose conflicts of interest; ○ Maintain a conflicts register (for example, by stating what is deemed to be a conflict (e.g., voting on a renovation of a member's unit), and regularly updating and reviewing the register); ○ Comply with the code of conduct (below); ○ Act in the best interests of the Body Corporate; and ○ Provide minutes of committee meetings. • There is a new definition of 'Body Corporate manager': Until now, this term has not been defined. The New Act states that a Body Corporate Manager is 'a person employed or engaged to undertake record-keeping, financial and/or regulatory compliance services' for the Body Corporate. While the new definition of Body Corporate Manager is in force, other provisions (including the form of agreement) will come into force in Stage 3. A further article will outline those changes.

Date	Practical guidance for Body Corporate Committees
<ul style="list-style-type: none"> • Changes to body corporate managers; • Service contracts; • Disclosure requirements; • Planning and funding for long term maintenance matters; and • Tenancy Tribunal jurisdiction and filing fees. 	<ul style="list-style-type: none"> • There are changes to utility interest under the New Act: A utility interest assignment may be a single uniform interest, or a multiple set of interests each targeted at a particular service or amenity (and may be assigned to some units only). • New decision-making procedures: The New Act introduces a range of new procedures. These include those to ensure the Committee operates in a transparent and accountable manner, providing unit owners with timely and accurate information. There are a number of measures, including: <ul style="list-style-type: none"> ○ For AGMs and EGMs, quorum is clarified to be 25% of owners who are eligible to vote and attending. Quorum does not include owners who have not paid their levies and therefore cannot vote. ○ There must be an agenda for each committee meeting. ○ Minutes of committee meetings must be taken, and provided to unit owners within one month of a meeting. Email is fine, however physical copies may be requested by owners. ○ Committee resolutions are by simple majority and must be recorded in the minutes. ○ The Committee is required to report on its meetings and activities. This report must be presented at each AGM, and a written report should be provided with the agenda at each committee meeting. This will allow owners to stay informed on the Committee's actions; to assess whether Committee members have complied with their delegation; and provides transparency around how Committee members have performed their duties and powers. An important note here – we consider this means including details of any email correspondence in that report. • Documents held and disclosed by the Body Corporate and disclosure requirements are changing – but the full changes are not yet known: There are extensive changes to the way Committees hold and disclose documents. As these changes are extensive, and some do not come into effect until stage 3, we will provide a follow up article when the full scope and impact of these changes are known.

Code of Conduct

A critical aspect of the new Code of Conduct is acquiring knowledge of the legislation. To gain a thorough understanding, there are several effective strategies that Body Corporate Committees can implement. For example, attending seminars and actively seeking relevant information on how the New Act works can be helpful. In cases where any confusion or uncertainty arises, the Body Corporate Committee should seek legal advice, which it should take into account when considering the best path forward.

Code of conduct for Body Corporate committee members

1 Commitment to acquiring understanding of Act, including this code

A member must have a commitment to acquiring an understanding of anything in this Act and the regulations, including this code of conduct, that is relevant to the member's role on the committee.

2 Honesty, fairness, and confidentiality

- (1) A member must act honestly and fairly in performing the member's duties as a committee member.
- (2) A member must not unfairly or unreasonably disclose information held by the Body Corporate, including information about an owner of a unit, unless authorised or required to do so by law.

3 Acting in Body Corporate's best interests.

A member must act in the best interests of the Body Corporate in performing the member's duties as a committee member, unless it is unlawful to do so.

4 Complying with Act and this code

A member must comply with the Act, these regulations, including this code, and any other applicable legislation relating to matters for which the committee has responsibility in performing the member's duties as a committee member.

6 Conflict of interest

A committee member who is eligible to vote must disclose to the committee any conflict of interest the member may have in a matter before the committee.

*This article is intended to provide general information on the changes introduced by the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022. It is not to be, and should not be, construed as providing legal advice. The application of this new legislation will vary depending on the specific facts involved, and this article is not a substitute for legal advice. Please contact Batchelor*Smith for advice tailored to your specific circumstances.*