



# FACT SHEET

The Body Corporate can appoint a Body Corporate Manager to assist them in adhering to the various and multiple requirements of the BCCM Act and other industry and building legislations that they must comply with.

The Body Corporate Manager can only be appointed at a General Meeting through a motion wherein all Lot Owners have the opportunity to vote. The Body Corporate and Community Management Act (Standard Module) Regulation 2008 states the following regarding Body Corporate Managers:

**114 Authority To Make Engagement Or Give Authorisation, Or Amend Engagement Or Authorisation**

- (1) The Body Corporate may:
  - (a) Engage a person as a Body Corporate Manager or service contractor; or
  - (b) Authorise a person as a letting agent; or
  - (c) Agree to an amendment of an engagement or authorisation mentioned in paragraph (a) or (b).
- (2) The Body Corporate may act under subsection (1) only if:
  - (a) The Body Corporate passes an ordinary resolution approving the engagement, authorisation or amendment and, for the passing of the resolution, no votes are exercised by proxy; and
  - (b) The motion approving the engagement, authorisation or amendment is, for any of the following, decided by secret ballot:
    - (i) an authorisation of a person as a letting agent;
    - (ii) an engagement of a person as a service contractor if the person is to be a caretaking service contractor;
    - (iii) an agreement to amend a person's engagement as a service contractor, or a person's authorisation as a letting agent, to include a right or option of extension or renewal; and

(c) The material forwarded to members of the Body Corporate for the general meeting that considers the motion approving the engagement, authorisation or amendment includes:

- (i) For an engagement or authorisation—the terms of the engagement or authorisation, including:
  - (a) When the term of the engagement or authorisation begins and ends; and
  - (b) The term of any right or option of extension or renewal of the engagement or authorisation; and
- (ii) For an agreement to amend a person's engagement as a service contractor, or a person's authorization as a letting agent, to include a right or option of extension or renewal—an explanatory note in the approved form explaining the nature of the amendment; and
- (iii) For another agreement to amend an engagement or authorisation—the terms and effect of the amendment.

(3) However, subsection (2)(b) does not apply if all the lots included in the community titles scheme have identical ownership.

**BODY CORPORATE MANAGER**

## 116 Form Of Engagement

- (1) The engagement of a person as a Body Corporate Manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must:
  - (a) Be in writing; and
  - (b) State the term of the engagement, including:
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (c) State the functions the Body Corporate Manager or service contractor is required or authorised to carry out; and
  - (d) State the basis for working out payment for the Body Corporate Manager's or service contractor's services; and

### Examples

1. A Body Corporate Manager's payment could be calculated on the basis of an amount per lot.
2. A Body Corporate Manager's payment could include charges calculated on the basis of a stated amount per telephone inquiry or a stated amount for attendance fees for additional Committee or general meetings.

(e) For an engagement of a Body Corporate Manager—state any powers of an executive member of the Committee the Body Corporate Manager is authorised to exercise.

- (3) The engagement must not be in the form of a by-law.

## 118 Term Of Engagement Of Body Corporate Manager

- (1) The term of the engagement of a person as a Body Corporate Manager (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 3 years.

### Example

*The engagement of a Body Corporate Manager begins on 1 January 2009 and is for a term of 3 years. The engagement can not end later than 31 December 2011.*

- (2) If the term purports to be longer than 3 years, it is taken to be 3 years.
- (3) To remove any doubt, it is declared that at the end of the term:
  - (a) The engagement expires; and
  - (b) The person can not act again as the Body Corporate Manager without a new engagement.

## s118 Body Corporate and Community Management Act 1997 – Code of Conduct

- (1) The code of conduct in schedule 2 applies to:
  - (a) A Body Corporate Manager in performing obligations under the person's engagement as the Body Corporate Manager; and
  - (b) A caretaking service contractor in performing obligations under the person's engagement as a service contractor.
- (2) The provisions of the code are taken to be included in the terms of the contract providing for the person's engagement.
- (3) If there is an inconsistency between a provision of the code and another term of the contract, the provision of the code prevails.
- (4) If the contract was in force immediately before the commencement of this section, this section applies only for things done or omitted to be done by the person after the commencement.

### CODE OF CONDUCT

The codes apply to the performance of a Body Corporate Manager, a caretaking service contractor and letting agent for the scheme – sec 118. The provisions of the code are taken to be included in terms of the contract for an engagement or authorisation and prevail over the terms of the contract.



## SCHEDULE 2

### Code Of Conduct For Body Corporate Managers And Caretaking Service Contractors

#### KNOWLEDGE OF ACT, INCLUDING CODE

A Body Corporate Manager or caretaking service contractor must have a good working knowledge and understanding of this Act, including this Code of Conduct, relevant to the person's functions.

#### HONESTY, FAIRNESS AND PROFESSIONALISM

(1) A Body Corporate Manager or caretaking service contractor must act honestly, fairly and professionally in performing the person's functions under the person's engagement.

(2) A Body Corporate Manager must not attempt to unfairly influence the outcome of an election for the Body Corporate Committee.

#### SKILL, CARE AND DILIGENCE

A Body Corporate Manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

#### ACTING IN THE Body Corporate's BEST INTERESTS

A Body Corporate Manager or caretaking service contractor must act in the best interests of the Body Corporate unless it is unlawful to do so.

#### KEEPING Body Corporate INFORMED OF DEVELOPMENTS

A Body Corporate Manager or caretaking service contractor must keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate.

#### ENSURING EMPLOYEES COMPLY WITH THE ACT AND CODE

A Body Corporate Manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

#### FRAUDULENT OR MISLEADING CONDUCT

A Body Corporate Manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

#### UNCONSCIONABLE CONDUCT

A Body Corporate Manager or caretaking service contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

*Examples of unconscionable conduct:*

- (1) Taking unfair advantage of the person's superior knowledge relative to the Body Corporate.
- (2) Requiring the Body Corporate to comply with conditions that are unlawful or not reasonably necessary.
- (3) Exerting undue influence on, or using unfair tactics against, the Body Corporate or the owner of a lot in the scheme.

#### CONFLICT OF DUTY OR INTEREST

A Body Corporate Manager or caretaking service contractor for a community titles scheme (the *first scheme*) must not accept an engagement for another community titles scheme if doing so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme.

#### GOODS AND SERVICES TO BE SUPPLIED AT COMPETITIVE PRICES

A Body Corporate Manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

#### Body Corporate Manager TO DEMONSTRATE KEEPING OF PARTICULAR RECORDS

If a Body Corporate or its Committee requests, in writing, the Body Corporate Manager to show that the Manager has kept the Body Corporate records as required under this Act, the Manager must comply with the request within the reasonable period stated in the request.



**SOURCES:**

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpStr08.pdf>

Body Corporate and Community Management (Standard Module) Regulation 2008 Act, Reprint 1F effective 30 September 2011, s114, s116, s118

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpAcMR08.pdf>

Body Corporate and Community Management (Accommodation Module) Regulation 2008 Act, Reprint 1F effective 30 September 2011, s112, s114, s116

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpCoR08.pdf>

Body Corporate and Community Management (Commercial Module) Regulation 2008 Act, Reprint 1F effective 30 September 2011, s79, s81, s83

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpSmSMR08.pdf>

Body Corporate and Community Management (Small Schemes Module) Regulation 2008 Act, Reprint 1F effective 30 September 2011, s60, s61, s62

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpSTSR11.pdf>

Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2008 Act, Reprint 1F effective 30 September 2011, s11, s12, s13.

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BodyCorpA97.pdf>

Body Corporate and Community Management Act 1997, Reprint 6 effective 28 February 2012, Schedule 2, section 118 and schedule 6, definition *code of conduct*, pp341-343.

Richardson, A, 2008, *A Layman's Guide to the Body Corporate and Community Management Act 1997, as amended and Standard Module Regulation, in force 30<sup>th</sup> August 2008*, National Library of Australia Cataloguing-in-Publication data

