

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 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.

One of the requirements of the BCCM Act is that a Body Corporate must appoint a Committee. If a Body Corporate is unable to form a full Committee at their Annual General Meeting (AGM), the Body Corporate Manager is required to schedule an Extraordinary General Meeting (EGM) to further request the Body Corporate to form a Committee. At the EGM the Body Corporate can either:

1. Form a full Committee.
2. Elect their Body Corporate Manager to a Part 5 Agreement (A 'Part 5' is basically an agreement the Body Corporate has with their Body Corporate Management company wherein the Body Corporate Management company is appointed to hold the power and functions of the Committee of the Body Corporate).

The following information is from the BCCM Act and is more detailed in the explanation of Part 5 Agreements:

Part 5 Engagement Of Body Corporate Manager To Carry Out Functions Of Committee And Executive Members—act Section 122

58 When Body Corporate Manager May Be Engaged To Carry Out Functions Of A Committee And Its Executive Members

- (1) The Body Corporate may:
- (a) Engage a Body Corporate Manager to carry out the functions that would, if there were a Committee for the Body Corporate, be carried out by the Committee and each executive member of the Committee; and
 - (b) Agree to an amendment of the engagement.

Notes

Under section 7 (Requirement for Committee—Act, s98), there is no Committee for the Body Corporate if the Body Corporate engages a Body Corporate Manager under this part to carry out the functions of a Committee and each executive member of a Committee.

See also section 120 (Schemes for which there is no Committee for the Body Corporate) of the Act.

(2) The Body Corporate may act under subsection (1) only if:

- (a) The original owner control period has ended; and
- (b) The Body Corporate passes a special resolution approving the engagement or amendment and, for the passing of the resolution, no votes are exercised by proxy; and

(c) For an engagement—the motion approving the engagement is decided by secret ballot at a General Meeting mentioned in subsection (3); and

(d) The material given to members of the Body Corporate for the General Meeting that considers the motion includes:

- I. For an engagement—the terms of the engagement and an explanatory note in the approved form explaining the nature of the engagement; or
- II. For an agreement to amend an engagement—the terms, and an explanation of the effect, of the amendment.

(3) For subsection (2)(c), the General Meeting can be:

- (a) An Annual General Meeting where:
 - i. At least 1 executive member position on the Committee is not filled; or
 - ii. The total number of voting members of the Committee elected is fewer than 3; or

(b) An Extraordinary General Meeting called under part 2, division 2, subdivision 2 if, after any appointment under section 31 of persons as executive or ordinary members of the Committee:

- i. At least 1 executive member position on the Committee is not filled; or
- ii. The total number of voting members of the Committee is fewer than 3; or

(c) A General Meeting called under section 38 if, after the election to fill all vacant positions on the Committee is conducted at the Meeting:

- i. At least 1 executive member position on the Committee is not filled; or
- ii. The total number of voting members of the Committee is fewer than 3.

(4) However, if the Body Corporate is the Body Corporate for a community titles scheme of a type mentioned in section 13(3), paragraph (a), (b), (c) or (d), the General Meeting for subsection (2)(c) can be any General Meeting of the Body Corporate.

59 Form Of Engagement

(1) The engagement of a Body Corporate Manager under this part must:

- (a) Be in writing; and
- (b) State that the Body Corporate Manager is required to carry out all the functions of the Committee and each executive member of the Committee; and
- (c) State that the Body Corporate Manager is authorised to exercise the powers of the Committee and each executive member of the Committee; and

(d) State the basis for working out payment for the Body Corporate Manager's services.

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

60 Term Of Engagement

(1) Subject to subsection (2), the term of a person's engagement as a Body Corporate Manager under this part ends:

- (a) At the end of the Body Corporate's next Annual General Meeting held after the General Meeting where the engagement was approved; or
- (b) 12 months after the day the engagement began; whichever is earlier.

(2) However, the Body Corporate may terminate the person's engagement under chapter 6, part 5.

Note:

Under the Act, section 120(3) (Schemes for which there is no Committee for the Body Corporate), the Body Corporate, in writing, may revoke the Body Corporate Manager's authorisation to exercise powers at any time.

(3) During the term of the engagement, the Body Corporate may not choose or purport to choose a person as a Committee member.

61 Functions And Powers

A Body Corporate Manager engaged under this part has:

- (a) The functions of a Committee and each executive member of the Committee; and
- (b) Subject to any revocation under section 120 of the Act, the powers of a Committee and each executive member of the Committee.

(s122, Body Corporate and Community Management (Standard Module) Regulation 2008, p.59-64)

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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.

