

## Online Voting References - New South Wales

The *Strata Schemes Management Act 2015* (SSMA 2015) and the *Strata Schemes Management Regulations 2016* (SSMR 2016) provide methods for participation in meetings, including:

- Attending meetings from a remote location by electronic means, e.g. online video conferencing.
- Making decisions prior to a meeting by pre-meeting electronic voting, either by electronic voting papers or voting website.
- Hybrid scenarios, where a decision is made at a meeting, but with optional pre-meeting electronic voting.
- Other methods of voting, i.e. other than voting in person, determined by resolution of the owners corporation under Section 28(1) of Schedule 1 of the SSMA 2015.

The Owners Corporation or Strata Committee must adopt pre-meeting electronic voting (**regulation 14(1)(b) of the SSMR 2016** )

An owners corporation or strata committee must resolve to adopt voting by means of email or other electronic means before the meeting at which the matter (not being an election) is determined by the corporation or committee (pre-meeting electronic voting).

The date of the meeting adopting pre-meeting electronic voting should be inserted in the relevant field. This will enable the use of the pre-meeting electronic voting system.

### Requirements for Pre-Meeting Electronic Voting

There are a range of options for pre-meeting electronic voting, including use of a voting website, use of electronic voting papers and voting by email. However, the legislation does impose some rules and requirements. In particular:

1. Pre-Meeting Electronic Voting is only available for motions. For an election, a physical meeting will be required, although participants can participate in that meeting by

electronic means, if so resolved.

The pre-meeting electronic voting capability in Rockend does not allow the election of the strata committee to be by way of pre-meeting electronic voting.

2. The owners corporation or strata committee needs to decide whether the matter will be decided wholly or partly by pre-meeting electronic voting, as different rules apply to each. In particular:
  - a. If the matter will be decided wholly by pre-meeting electronic voting, the motion may not be amended at the relevant meeting (see [regulation 14\(4\) of the SSMR 2016](#) ).
  - b. If the matter will be decided partly by pre-meeting electronic voting:
    - i. the motion may not be amended at the relevant meeting, if the effect of the amendment is to “change the subject matter of the original motion” (see [regulation 14\(5\) of the SSMR 2016](#) ).
    - ii. the relevant motion may be amended by a further motion given at the meeting and the notice of meeting must include a statement warning that this can occur and that the pre-meeting vote may be of no effect (see [regulation 14\(3\) of the SSMR 2016](#) ).
  - c. If the motion is amended, the minutes of the meeting to be distributed to owners must be accompanied by notice of the amendment and advice as to the potential to requisition a further meeting by qualified request under Section 19 of the Act.

This suggests that:

- The original motion cannot be amended so as to change its subject matter, e.g. where the motion involves engagement of a contractor, changing the contractor.
- The motion can be amended if the subject matter is unchanged, e.g. in the engagement of contractor example, changing the proposed remuneration. The amended motion would then be passed or not based on votes at the meeting, i.e. not counting pre-votes. This is the reason for the warning to be given in the notice of meeting, a person may for convenience take the option of pre-voting, but should be aware that those that actually attend can alter the motion, if they have the numbers to do so.

## Information to be provided to person entitled to vote (regulation 15(2) and 15(3) of the SSMR 2016 )

The following information is to be provided by the secretary to persons entitled to vote, at least 7 days before the meeting:

1. Access to an electronic voting paper, or to a voting website or electronic application containing an electronic ballot paper.

Access to the electronic voting paper is provided to each of the owners shown on the strata roll and is accessed by their secure login.

2. Instructions for completing the electronic voting paper.

Voting instructions are provided to the owners once they login.

3. The questions to be determined and the means of indicating the voter's choice of the question to be determined.

The electronic voting paper allows for each person voting to indicate either Yes, No or Abstain for each motion.

4. The closing of the ballot.

The closing time and date for the ballot is displayed at the top right corner of the electronic voting paper.

5. Access to an electronic form of declaration requiring the voter to state his or her name, capacity in which the person is entitled to vote, in the case of a matter that requires a special resolution, the voters unit entitlement and if the vote is a proxy vote, the name and capacity of the person who gave the proxy.

Once each of the motions is voted upon, the declaration provided contains all of the above required information.

## Voting by pre-meeting electronic voting (regulation 15(4) and 15(6) of the SSMA 2015 )

Each person entitled to vote must vote in accordance with the instructions provided and the electronic voting paper and the form of declaration must be sent to the secretary of the owners corporation no later than the close of the ballot.

The electronic voting paper and the form of declaration is 'sent' to the secretary once as it is completed.

## Closure of the ballot (regulation 15(7) and 15(8) of the SSMR 2016 )

For a meeting of the owners corporation, the time that a ballot closes for pre-meeting electronic voting is 24 hours before the commencement of the meeting. The strata manager is to insert this date into the system.

For a strata committee meeting, the time the ballot closes for pre-meeting electronic voting is immediately before the commencement of the meeting.

The secretary of the owners corporation must ensure that all electronic voting papers are stored securely until the counting of the votes begins.

The pre-meeting electronic voting system stores the electronic voting papers securely.

## Informal Votes (regulation 16 of the SSMR 2016 )

An electronic vote is informal if the electronic voting paper is not completed in accordance with the information provided by the secretary.

Where pre-meeting electronic voting is to be by means of a voting website or other electronic application, the website or application must have the functionality to provide a warning message that a proposed vote will be informal, if that is the case.

The pre-meeting electronic voting system does not allow informal votes to be made. The owners can only insert Yes, No or Abstain for each of the motions.

## Declaration of Vote (regulation 17 of the SSMR 2016 )

As soon as practicable after the close of a ballot conducted by pre-meeting electronic voting, the secretary of the owners corporation must review all information and reports about the electronic ballot and reject any informal votes which do not comply.

The secretary is to ascertain the result of the electronic ballot and inform the persons present at the relevant meeting.

The pre-meeting electronic voting system provides a simple report to be printed immediately prior to the meeting which provides a summary of the pre-meeting electronic votes.

## Records (regulation 41 of SSMR 2016 and section 180 of the SSMA 2015 )

The owners corporation must retain records relating to electronic voting on motions for resolutions by an owners corporation.

The records must be retained for 7 years, unless they relate to a secret ballot and do not relate to a matter concerning part 10 of the *Strata Schemes Development Act 2015*, in which case they need only be retained for 13 months.

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