

Online Voting References - Queensland

The transition from a written to electronic system of voting represents innovation for bodies corporate and has great efficiency potential.

The BCCMA and supporting Regulation Modules envisage electronic voting as a normal and accepted alternative to written votes. This is contingent, however, on following the additional procedural steps required for electronic voting, including giving clear instructions on how to cast an electronic vote and protecting voter anonymity of the secret ballot process.

There are, however, a number of pre-requisites to the introduction of such a system and considerations in its design that must first be considered, including:

1. The appropriate software to meet the operational needs of electronic voting;
2. The appropriate software to effect the security and privacy protections required by law;
3. The appropriate software and procedures to document and store the records required by law;
4. The provision of special training or support available to users who may have special needs or assistance, such as elderly and disabled users;
5. The provision of training to key persons administering the system in each scheme, including the returning officer, secretary and chairperson; and
6. The availability and cost of ongoing IT support and maintenance.

Outlined in detail below are the key considerations for implementing and maintaining an electronic voting system for body corporate meetings in Queensland.

1. Core Requirements of Electronic Voting

1.1 Before an electronic voting system may be authorised, the body corporate must first have an operational system for receiving electronic votes that has basic privacy and security features. In particular, it must meet the following two core requirements:

- a. in the case of secret votes - maintain the secrecy of the vote by not disclosing the voter's

identity (for example, as voting by email would); and

- b. in the case of open and secret votes – be capable of distinguishing between voters and non-voters so that a person who is not eligible to vote is not able to cast a vote at the general meeting.

1.2 Software programs, such as those developed by Rockend, exist to implement and manage electronic voting systems for Body Corporate meetings. The particular administrative and voting needs of the Body Corporate should be considered when selecting the software program.

2. Adopting an Electronic Voting System

2.1 Once a body corporate has an electronic voting system, it may then permit the introduction of electronic voting by ordinary resolution decided by voters at a general meeting. This system must be in place before the ordinary resolution is passed. Stakeholders ought to know what the system is before they approve of electronic voting.

2.2 If all voting is desired to be able to be done by electronic voting, an authorising motion should specify that it applies to both open and secret ballots. The wording of the motion may be as follows:

- a. Electronic Voting for Open Motions

That voters at general meetings may cast votes for motions to be decided by open ballot by casting an electronic vote.

- b. Electronic Voting for Secret Ballots

That voters at general meetings may cast votes for motions to be decided by secret ballot by casting an electronic vote.

3. Specific Procedural Requirements for Electronic Voting

3.1 For the purposes of establishing quorum, an electronic voting paper constitutes a voter's presence at a general meeting.

3.2 An electronic voting paper must fulfil the traditional requirements of voting papers. It must allow a voter to cast a vote on each motion and state:

- a. Each motion that will be considered at the meeting;
- b. The person submitting each motion;

- c. The alternatives to each motion;
- d. The type of resolution to which the motion would give effect;
- e. If it is a 'secret voting paper;' and
- f. If it is accompanied by an explanatory note.

3.3 In addition to these requirements, an electronic voting paper must provide instructions on how a voter may cast an electronic vote on each motion.

3.4 An electronic vote constitutes the exercise of a vote on a motion, including a motion to amend a motion at general meetings in the same sense in which a written vote is counted as a vote. The process for casting an electronic vote differs slightly for whether the motion under consideration is to be decided by open or secret ballot.

3.5 An electronic vote on an open motion is cast by the voter completing and signing the electronic form of the voting paper and sending it to the secretary. The returning officer may also be required here if their appointment requires that they also perform their functions for open motions at general meeting.

3.6 An electronic vote on a secret ballot is likewise cast by the voter completing the electronic form of the voting paper, signing it, and sending it to the secretary. The instructions accompanying the electronic voting paper must be observed.

3.7 In addition, the Electronic Transactions (Queensland) Act 2001 (Qld) imposes two requirements in relation to requirements for signatures on electronic communication. First, the electronic voting system must include a reliable and proven method used to verify the person's identity. This could be satisfied by conducting a demonstration electronic vote with the software before releasing it for use. Second, the system must also obtain the person's consent to the acceptance of the signature requirement as fulfilled by the placing of the electronic vote.

3.8 A returning officer must be present at an electronic vote by secret ballot. They must inspect and count the votes before providing the chairperson with the results of the votes to complete the record of the minutes, including: the number of votes cast for and against each motion, the number of abstentions from voting on each motion; and, the number of votes rejected from the count, including the reason for rejection (although an electronic voting system would provide little to no grounds for rejection, depending upon the nature of the software).

3.9 The returning officer may therefore require some training, depending on the complexity of the software and their level of IT expertise, in how to produce this data. Rockend can induct returning officers into its electronic voting software so they can confidently scrutinise the voting process.

3.10 The same rules allowing the withdrawal of written votes before a motion is declared except by proxy voters apply to electronic votes.

4. Recording and storing electronic votes

4.1 A body corporate manager has an obligation to demonstrate the keeping of all records required by the Body Corporate and Community Management Act 1997 (Qld) for 2 years, except for notice of a meeting which is 6 years.

4.2 Therefore, it must ensure that the introduction of electronic voting will not affect its ability to make a full and accurate record of voting. This means that the software enabling electronic voting must be capable not only of facilitating electronic voting, but collating and storing the required details to form a record.

4.3 Electronic voting software will be taken to meet the recording of the body corporate or body corporate manager the same as written records if:

- a. It was reasonably expected at the time that the information will be readily accessible and usable for subsequent reference; and
- b. Any specific requirements for recording on a particular kind of data storage device were met.

4.4 Likewise, such software will be taken to meet the archiving or document storage requirements of the body corporate or body corporate manager in the same was as written records if:

- a. The circumstances at the time show that the method of generating the electronic form of the document were a reliable way of maintaining the integrity of the information contained in the document; and
- b. The same requirements under (a) and (b) in 4.3 above were met.

4.5 The integrity of information in a document is maintained for the requirement 4.3(a) if the information in the document remains complete and unaltered, except for an endorsement or immaterial change in the normal course of communication, storage or display. For example, displaying a body corporate manager's header on the record of the minutes would not affect the integrity of the information in a document.

5. Committee Elections

5.1 The Regulation Modules only envisage and specifically permit electronic voting on motions.

5.2 This does not present significant difficulty for schemes regulated by the Accommodation Module, as the body corporate may decide by ordinary resolution the way ballots are to be

conducted. There are generally no issues if bodies corporate decide to conduct ballots electronically so long as they comply with all other legislative requirements for those ballots.

5.3 There will be some difficulty for schemes regulated by the Standard Module as sections 21 and 22 prescribe how open and secret ballots for committee elections are to be held. Neither of these provisions provide for electronic voting.

5.4 This is an oddity in the legislation. It only provides for electronic voting on motions, and a ballot for a committee election is not a vote on a motion. If a body corporate regulated by the Standard Module is made aware of this oddity and nonetheless wishes to implement electronic voting for committee elections, you should ensure an ordinary resolution is passed to consent to this to mitigate the risk of any challenge to the validity of the outcome.

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