



New South Wales

COVID-19 and Other Legislation Amendment (Regulatory Reforms) Act 2022 No 5

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New South Wales

COVID-19 and Other Legislation Amendment (Regulatory Reforms) Act 2022 No 5

Act No 5, 2022

An Act to amend a number of Acts to permanently implement regulatory reforms relating to particular measures previously implemented temporarily as a result of the COVID-19 pandemic; to amend the *Constitution Act 1902* and the *Constitution (COVID-19 Emergency Measures) Regulation 2020* to extend particular provisions; and to amend the *Interpretation Act 1987* to clarify the requirements for tabling documents in a House of Parliament. [Assented to 24 March 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *COVID-19 and Other Legislation Amendment (Regulatory Reforms) Act 2022*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the date of assent to this Act.
- (2) Schedules 1.6 and 1.8 commence on 1 April 2022.
- (3) Schedules 1.3[3]–[10], 1.11[5], 1.12[1], [2] and [4] and 1.17[3]–[10] commence on a day or days to be appointed by proclamation.

3 Report on effectiveness of amendments under COVID-19 and Other Legislation Amendment (Regulatory Reforms) Act 2022

- (1) The Treasurer must, within 18 months after the commencement of this Act, conduct a review of the amendments made by this Act, other than the amendments made by Schedule 1.4, 1.5, 1.10 and 1.15 of this Act.
- (2) The purpose of the review is to determine whether the amendments continue to—
 - (a) operate effectively and efficiently, and
 - (b) achieve the intended policy objectives underlying the amendments.
- (3) The Treasurer must, by 31 December 2023, give a report about the review to the Presiding Officer of each House of Parliament.
- (4) A copy of a report given to the Presiding Officer of a House of Parliament under subsection (3) must be laid before the House within 5 sitting days of the House after it is received by the Presiding Officer.
- (5) This section is repealed on 31 January 2024.

Schedule 1 Amendments

1.1 Associations Incorporation Act 2009 No 7

[1] Section 30 Committee meetings

Omit “If the association’s constitution so provides, a” from section 30(2).
Insert instead “A”.

[2] Section 37 General meetings

Omit “If the association’s constitution so provides, a” from section 37(3).
Insert instead “A”.

[3] Section 38 Voting generally

Omit section 38(2). Insert instead—

- (2) A postal or electronic ballot referred to in subsection (1)(b) must be conducted in accordance with the regulations.

[4] Section 39 Voting on special resolutions

Omit section 39(3). Insert instead—

- (3) A postal or electronic ballot referred to in subsection (1)(b) must be conducted in accordance with the regulations.

[5] Schedule 4 Savings, transitional and other provisions

Omit Schedule 4, Part 6.

1.2 Biodiversity Conservation Act 2016 No 63

Section 12.19 Power of authorised officers to require answers

Omit section 12.19(9).

1.3 Community Land Management Act 2021 No 7

[1] Section 226 Service of documents by certain persons

Insert at the end of section 226(2)(b)—

, or

- (c) by sending it by electronic transmission to an address nominated by the occupier as an address for the service of documents.

[2] Section 226(4)(ca)

Insert after section 226(4)(c)—

- (ca) by sending it by electronic transmission to an address nominated by the owner as an address for the service of documents, or

[3] Section 234 Persons who may keep seals of associations

Insert after section 234(2)—

- (2A) The seal of the association may be kept in electronic form.

[4] Section 234(3)

Insert “, or to keep an electronic copy of the seal,” after “association”.

[5] Section 234(5)

Insert after section 234(4)—

- (5) The regulations may make provision about keeping and storing the seal of an association in electronic form.

[6] Section 235 Affixing of seal of association

Insert after section 235(3)—

- (3A) The seal of the association may be affixed physically or electronically.
- (3B) If the seal is affixed electronically—
- (a) subsections (1)–(3) do not apply in relation to affixing the seal, and
- (b) the seal must be affixed in accordance with any requirements prescribed by the regulations under subsection (7).
- (3C) An instrument or document to which the seal has been electronically affixed has effect as if the seal had been physically affixed to the instrument or document.

[7] Section 235(7) and (8)

Insert after section 235(6)—

- (7) The regulations may make provision about the following—
- (a) any requirements for affixing the seal electronically,
- (b) alternatives to affixing the seal of the association, including—
- (i) requirements for witnessing or attesting to the alternatives, and
- (i) records relating to the alternatives,
- (c) records required to be kept relating to the electronic seal or any prescribed alternative to affixing the seal.
- (8) A reference in subsections (4)–(6) to affixing the seal of an association to an instrument or document is taken to include a reference to an alternative to affixing the seal in accordance with any regulations made under subclause (7).

[8] Section 238 Regulation-making power for COVID-19 pandemic

Omit the section.

[9] Schedule 1 Meeting procedures of associations

Omit clause 27. Insert instead—

27 Way of voting

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast—
- (a) in person, or
- (b) if another way is specified in the notice given for the meeting—in the other way.
- (2) If a way of voting has been specified in the notice under subclause (1)(b), the secretary of the association or, if a managing agent is exercising the functions of the secretary, the managing agent must take reasonable steps to ensure each person entitled to vote at the meeting can participate in and vote at the meeting.

- (3) The regulations may provide for the following—
 - (a) the ways of voting that may be specified under subclause (1)(b),
 - (b) the circumstances in which a particular way of voting may be specified under subclause (1)(b),
 - (c) without limiting paragraph (a), procedures for voting in a way specified under subclause (1)(b),
 - (d) restricting, prohibiting or requiring the use of specified ways of voting,
 - (e) what may or may not constitute reasonable steps taken by the secretary of the association for the purposes of subclause (2).

[10] Schedule 2 Meeting procedures of association committees

Omit clause 8. Insert instead—

8 Ways of voting

- (1) A vote at a meeting by a person entitled to vote may be cast—
 - (a) in person, or
 - (b) if another way is specified in the notice given for the meeting—in the other way.

Note— A person may be present at a meeting even if not actually at the meeting. See the Dictionary, definition of **person present**.

- (2) If a way of voting has been specified in the notice under subclause (1)(b), the secretary of the association or, if a managing agent is exercising the functions of the secretary, the managing agent must take reasonable steps to ensure each person entitled to vote at the meeting can participate in and vote at the meeting.
- (3) The regulations may provide for the following—
 - (a) the ways of voting that may be specified under subclause (1)(b),
 - (b) the circumstances in which a particular way of voting may be specified under subclause (1)(b),
 - (c) without limiting paragraph (a), procedures for voting in a way specified under subclause (1)(b),
 - (d) restricting, prohibiting or requiring the use of specified ways of voting,
 - (e) what may or may not constitute reasonable steps taken by the secretary of the association or managing agent for the purposes of subclause (2).

1.4 Constitution Act 1902 No 32

[1] Schedule 8

Omit Schedule 8, heading. Insert instead—

Schedule 8 Executive Council and other processes

[2] Schedule 8, clause 1, definition of *prescribed period*, paragraph (b)

Omit the paragraph. Insert instead—

- (b) ending on the later of the following—
 - (i) 26 March 2023,
 - (ii) the day, not later than 26 September 2023, prescribed by the regulations.

[3] Schedule 8, clause 5

Omit “27 March 2022”. Insert instead “27 September 2023”.

1.5 Constitution (COVID-19 Emergency Measures) Regulation 2020

[1] Clause 1 Name of Regulation

Omit the clause. Insert instead—

1 Name of Regulation

This Regulation is the *Constitution (Executive Council Processes) Regulation 2020*.

[2] Clause 3A

Omit the clause.

1.6 Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 No 122

[1] Section 63 Entitlement to pro rata payment instead of leave in limited circumstances

Omit “20 weeks” from Section 63(1)(b). Insert instead “10 weeks, or a shorter period prescribed by the regulations,”.

[2] Section 63(1)(c)

Omit “20-week period”.

Insert instead “10-week period or the shorter period prescribed under subsection (1)(b)”.

[3] Section 118 Special provision for pro rata payment during COVID-19 pandemic

Omit the section.

1.7 Crown Land Management Act 2016 No 58

Section 10.23 Power of authorised officers to require answers

Omit section 10.23(9).

1.8 Environmental Planning and Assessment Act 1979 No 203

[1] Sections 10.17 and 10.18

Omit the sections.

[2] Schedule 2 Provisions relating to planning bodies

Omit clause 3(3)(b). Insert instead—

(b) the time and date of the public hearing,

[3] Schedule 2, clause 3(3)(b1)

Insert after Schedule 2, clause 3(3)(b)—

(b1) the place at which the public hearing is to be held or, if the hearing is to be held by audio link, audio visual link or other electronic means, information about how a member of the public may hear or view the hearing,

[4] Schedule 2, clause 3(5)

Insert after clause 3(4)—

- (5) A requirement to conduct a public hearing is taken to be satisfied if—
 - (a) the hearing is held wholly or partly by audio link, audio visual link or other electronic means, and
 - (b) the hearing, or the part of the hearing, held by audio link, audio visual link or other electronic means is able to be heard or viewed by electronic means by a member of the public at the time the hearing, or part of the hearing, is held.

[5] Schedule 2, clause 25(4) and (5)

Omit clause 25(4). Insert instead—

- (4) A planning body may carry out any of the planning body's business at a meeting held wholly or partly by audio link, audio visual link or other electronic means, but only if a member who speaks on a matter before the meeting or the part of the meeting can be heard by the other members.
- (5) A meeting, or a part of a meeting, held in accordance with subclause (4) is taken to be conducted in public if—
 - (a) the meeting, or the part of the meeting, is recorded, and
 - (b) the record of the meeting or part is made publicly available as required under subclause (3).

1.9 Fisheries Management Act 1994 No 38

Section 256 Production of records relating to commercial fishing activities and fish receivers

Omit section 256(6).

1.10 Interpretation Act 1987 No 15

Section 18A

Insert after section 18—

18A Tabling of documents

- (1) In an Act or statutory rule, a reference to tabling a document in a House of Parliament includes taking any action allowed or required under the Standing Rules or Orders of the House to table the document when the House is not sitting.
- (2) This section applies in relation to the tabling of a document before or after the commencement of this section.

1.11 Long Service Leave Act 1955 No 38

[1] Section 4 Long service leave

Insert after section 4(3)—

- (3AA) Despite subsection (3)(b), an employer and worker may agree to the worker taking long service leave in 2 or more separate periods of not less than 1 day.

[2] Section 4(3A)

Omit “one month”. Insert instead “1 day”.

[3] Section 4(3B)

Insert after section 4(3A)—

- (3B) For the purposes of subsections (3AA) and (3A), in relation to a worker for whom no normal weekly number of hours is fixed under the terms of the worker’s employment, the reference to 1 day is taken to be a reference to the number of hours calculated as follows—

A/B

where—

A is the higher of—

- (a) the average weekly number of hours worked by the worker during the period of 12 months ending on the date immediately preceding the date on which the worker enters long service leave, or
- (b) the average weekly number of hours worked by the worker during the period of 5 years ending on the date immediately preceding the date on which the worker enters long service leave, and

B is the average number of days worked weekly by the worker during the period used for calculating A .

[4] Section 4(10A)

Insert after section 4(10)—

- (10A) However, an employer may, under subsection (10), give a worker less than 1 month’s notice if the worker agrees to the lesser period of notice.

[5] Section 8

Omit the section. Insert instead—

8 Records to be kept by employer

- (1) An employer must ensure a long service leave record is kept in relation to each worker employed by the employer.
- (2) The employer must keep the long service leave records in the way prescribed by the regulations.
- (3) The employer must ensure the long service leave record in relation to a worker is kept for a period of at least 6 years after the day on which the worker ceases to be employed by the employer.
- (4) The regulations may make provision about the transfer of a long service leave record relating to a worker, or copies of the record, to the successor of an employer.

[6] Sections 15A and 15B

Omit the sections.

1.12 Mental Health Act 2007 No 8

[1] Section 27A Examinations by medical practitioners or accredited persons for purposes of detention

Omit section 27A(1)(a) and (b). Insert instead—

- (a) by a medical practitioner using an audio visual link, or
- (b) by an accredited person authorised by the medical superintendent of the mental health facility to examine or observe the person or observe for that purpose—
 - (i) in person, or
 - (ii) using an audio visual link.

[2] Section 27A(3)

Omit the subsection. Insert instead—

- (3) A medical practitioner or accredited person must not carry out an examination or observation using an audio visual link under this section unless the medical practitioner or accredited person is satisfied that the examination or observation can be carried out in the circumstances with sufficient skill and care so as to form the required opinion about the person.

[3] Section 202

Omit the section.

[4] Section 203

Omit the section.

1.13 Mining Act 1992 No 29

Section 248L Power of inspectors to require answers

Omit section 248L(9).

1.14 Protection of the Environment Operations Act 1997 No 156

Section 203 Power of authorised officers to require answers

Omit section 203(10).

1.15 Retail Leases Act 1994 No 46

[1] Section 88 Savings of protections granted during COVID-19 pandemic

Insert after section 88(1)—

- (1A) The *Retail and Other Commercial Leases (COVID-19) Regulation 2022* continues to apply, despite the repeal of that regulation, to anything occurring in relation to a lease while the lease was an impacted lease within the meaning of that regulation.

[2] Section 89

Insert after section 88—

89 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature (*COVID-19 savings or transitional provisions*) consequent on—
 - (a) the enactment of a provision of this Act relating to anything occurring in relation to a lease in response to the COVID-19 pandemic (a *COVID-19 provision*), or
 - (b) the repeal of—

- (i) a COVID-19 provision, or
 - (ii) a provision of a regulation made under a COVID-19 provision.
- (2) A COVID-19 savings or transitional provision may, if the regulations provide, take effect from—
 - (a) the date of the repeal of the relevant COVID-19 provision, or
 - (b) a later date.
- (3) A COVID-19 savings or transitional provision has effect despite anything to the contrary in this Act.

1.16 Retirement Villages Act 1999 No 81

[1] Section 41 New operator to convene meeting of residents

Omit section 41(2). Insert instead—

- (2) The person must convene the meeting by sending to each resident and former occupant, at least 7 days before the date of the meeting, a written notice setting out—
 - (a) the time of the meeting, and
 - (b) the place at which the resident or former occupant may attend the meeting in person, which must be at the village if practicable or otherwise at a place near the village, and
 - (c) if the resident or former occupant may attend the meeting by electronic means—details of how the resident or former occupant can attend and participate in the meeting using the means, and
 - (d) the reason for the meeting.
- (3) If the person gives the residents and former occupants the option of attending the meeting by electronic means, the person must take reasonable steps to ensure each resident or former occupant can participate in, and vote at, the meeting using the means.

[2] Section 72A Annual management meeting to be held by operator

Omit section 72A(4)(a) and (b). Insert instead—

- (a) the time of the meeting, and
- (b) the place at which the residents may attend the meeting in person, and
- (c) if the residents may attend the meeting by electronic means—details of how the residents can attend and participate in the meeting using the means, and
- (d) the agenda for the meeting.

[3] Section 72A(7A)

Insert after section 72A(7)—

- (7A) If the residents are given the option of attending the meeting by electronic means, the chair of the meeting must take reasonable steps to ensure each resident or former occupant can participate in, and vote at, the meeting using the means.

[4] Schedule 1 Consent of residents

Insert at the end of clause 3(1)(b)—

, or

- (c) for a vote by residents of a village in which there is a Residents Committee—
 - (i) a ballot conducted by electronic means, approved by the Residents Committee, with residents participating in the ballot from a remote location, or
 - (ii) a ballot conducted by electronic means, approved by the Residents Committee, before the meeting at which, or before the date by which, the measure or action is to be determined, or
- (d) for a vote by residents of a village in which there is no Residents Committee—
 - (i) a ballot conducted by electronic means, approved by the person convening the meeting, with residents participating in the ballot from a remote location, or
 - (ii) a ballot conducted by electronic means, approved by the person convening the meeting, before the meeting at which, or before the date by which, the measure or action is to be determined.

[5] Schedule 1, Part 2, clause 3(1A)

Insert after Schedule 1, Part 2, clause 3(1)—

- (1A) If a ballot is to be conducted by electronic means, the chair of the meeting in relation to which the ballot is being held must take reasonable steps to ensure that each resident entitled to participate in the meeting and vote in the ballot can participate in the meeting and vote in the ballot using the means.

1.17 Strata Schemes Management Act 2015 No 50

[1] Section 263 Service of documents by owners corporation and others

Insert at the end of section 263(2)(b)—

, or

- (c) by sending it by electronic transmission to an address nominated by the occupier of the lot as an address for the service of documents.

[2] Section 263(4)(ca)

Insert after section 263(4)(c)—

- (ca) by sending it by electronic transmission to an address nominated by the owner of the lot as an address for the service of documents, or

[3] Section 271A Regulation-making power for COVID-19 pandemic

Omit section 271A.

[4] Section 272 Persons who may keep seals of owners corporations

Insert after section 272(2)—

- (2A) The seal of the owners corporation may be kept in electronic form.

[5] Section 272(3)

Insert “, or to keep an electronic copy of the seal,” after “corporation”.

[6] Section 272(5)

Insert after section 272(4)—

- (5) The regulations may provide for keeping and storing the seal in electronic form.

[7] Section 273 Affixing of seal of owners corporation

Insert after section 273(3)—

- (3A) The seal of the owners corporation may be affixed physically or electronically.
- (3B) If the seal is affixed electronically—
- (a) subsections (1)–(3) do not apply in relation to affixing the seal, and
 - (b) the seal must be affixed in accordance with any requirements prescribed by the regulations under subsection (7).
- (3C) An instrument or document to which the seal has been electronically affixed has effect as if the seal had been physically affixed to the instrument or document.

[8] Section 273(7) and (8)

Insert after section 273(6)—

- (7) The regulations may provide for the following—
- (a) any requirements for affixing the seal electronically,
 - (b) alternatives to affixing the seal of the owners corporation, including any requirements for witnessing or attesting to the alternatives and records relating to the alternatives,
 - (c) records required to be kept relating to the electronic seal or any prescribed alternatives to affixing the seal.
- (8) A reference in subsections (4)–(6) to affixing the seal of an owners corporation to an instrument or document is taken to include a reference to an alternative to affixing the seal in accordance with the regulations made under subsection (7).

[9] Schedule 1 Meeting procedures of owners corporation

Omit clause 28. Insert instead—

28 Ways of voting

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast—
- (a) in person, or
 - (b) if another way is specified in the notice given for the meeting—in the other way.
- (2) If a way of voting has been specified in the notice under subclause (1)(b), the secretary of the owners corporation or, if a strata managing agent is exercising the functions of the secretary, the strata managing agent must take reasonable steps to ensure each person entitled to vote at the meeting can participate in and vote at the meeting.
- (3) The regulations may provide for the following—
- (a) the ways of voting that may be specified under subclause (1)(b),
 - (b) the circumstances in which a particular way of voting may be specified under subclause (1)(b),
 - (c) without limiting paragraph (a), procedures for voting in a specified way,
 - (d) restricting, prohibiting or requiring the use of specified ways of voting,

- (e) what may or may not constitute reasonable steps taken by the secretary of the owners corporation or strata managing agent for the purposes of subclause (2).

[10] Schedule 2 Meeting procedures of strata committees

Omit clause 10. Insert instead—

10 Way of voting

- (1) A vote at a meeting by a person entitled to vote may be cast—
 - (a) in person, or
 - (b) if another means has been specified in the notice—by the other means.

Note— A person may be present at a meeting even if not actually at the meeting. See section 4(1), definition of **person present**.

- (2) If a means of voting has been specified in the notice under subclause (1)(b), the secretary of the owners corporation or, if a strata managing agent is exercising the functions of the secretary, the strata managing agent must take reasonable steps to ensure that each person entitled to vote at the meeting can participate in, and vote at, the meeting by that means.
- (3) The regulations may make provision about the following—
 - (a) the means of voting that may be specified under subclause (1)(b),
 - (b) the circumstances in which a particular means of voting may be specified under subclause (1)(b),
 - (c) without limiting paragraph (a), procedures for voting by a specified means,
 - (d) restricting, prohibiting or requiring the use of specified means of voting,
 - (e) what may or may not constitute reasonable steps taken by the secretary of the owners corporation or strata managing agent for the purposes of subclause (2).

1.18 Water Management Act 2000 No 92

Section 338B Power of authorised officers to require answers

Omit section 338B(9).

[Second reading speech made in—

Legislative Assembly on 15 February 2022

Legislative Council on 22 March 2022]