



New South Wales

Community Land Management Amendment (COVID-19) Regulation (No 2) 2020

under the

Community Land Management Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Community Land Management Act 1989*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to provide for the following matters under the *Community Land Management Act 1989 (the Act)* for the purposes of responding to the public health emergency caused by the COVID-19 pandemic—

- (a) altered arrangements for convening, and voting at, meetings of an association or its executive committee,
- (b) allowing instruments, instead of being affixed with the seal of an association in the presence of certain persons, to be signed (and the signatures to be witnessed) by those persons,
- (c) the extension, to 6 months, of the time periods within which—
 - (i) the first annual general meeting of an association must be convened and held, and
 - (ii) an estimate must be made to reimburse an amount paid or transferred from an administrative fund or a sinking fund.

This Regulation also postpones the date of repeal of section 122A of the Act, which confers the special regulation-making power to provide for the above matters.

This Regulation is made under the *Community Land Management Act 1989*, including sections 122 (the general regulation-making power) and 122A.

Community Land Management Amendment (COVID-19) Regulation (No 2) 2020

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Community Land Management Act 1989

1 Name of Regulation

This Regulation is the *Community Land Management Amendment (COVID-19) Regulation (No 2) 2020*.

2 Commencement

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided for in subclause (2).
- (2) Schedule 1[1] and [3] commence on 13 November 2020.

Schedule 1 Amendment of Community Land Management Regulation 2018

[1] Clauses 21–25

Omit the clauses. Insert instead—

21 Definitions

In this Part—

association meeting has the same meaning as in section 122A of the Act.

close of the ballot has the same meaning as in clause 27(8).

pre-meeting electronic voting has the same meaning as in clause 26(1)(b).

22 Altered arrangements for convening association meetings—section 122A(1)(a) of Act

Notice of, or any other document in relation to, an association meeting may be given to a person by email to an email address specified by the person for the service of documents.

23 Altered arrangements for voting at association meetings—section 122A(1)(b) of Act

- (1) The means of voting specified in clause 26 may be used to determine a matter at an association meeting.
- (2) Division 2 applies to the use, under this clause, of those means of voting.
- (3) If those means of voting are to be used, the secretary of the association, or, if a managing agent may exercise the functions of the secretary under Division 2, the managing agent, must take reasonable steps necessary to ensure that each member of the association or each member of the executive committee, as the case may be, can participate in and vote at the association meeting.
- (4) To avoid doubt, this clause—
 - (a) applies despite any requirement in the Act for a vote at an association meeting to be exercised in person, but
 - (b) does not permit pre-meeting electronic voting to be used for an election.
- (5) A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum for the motion or election.

Note. For quorum requirements for association meetings, see section 38(1) of, and clauses 7, 21 and 35 of Schedule 5 and clauses 10, 30 and 50 of Schedule 6 to, the Act.

24 Alternative to affixing seal of association—section 122A(1)(c) of Act

- (1) An instrument may, as an alternative to being affixed with the seal of an association in the presence of the persons referred to in section 8 of the Act, be signed by those persons (each of whom is, in that capacity, a *signatory*) in the presence of those persons (each of whom is, in that capacity, a *witness*).
- (2) The instrument must indicate the following—
 - (a) the date on which it is signed and the signatures are witnessed,
 - (b) the name of each signatory and witness,
 - (c) the relationship of each signatory and witness to the association,

Example. The secretary of the association, the managing agent of the association or a relevant officer of the managing agent, a member of the executive committee of the association, or a member of the association.

- (d) if a signatory or witness is the managing agent of the association, or a relevant officer of a managing agent that is a corporation—the number of the managing agent’s licence under the *Property and Stock Agents Act 2002*.
- (3) A reference in section 8(6) and (7) of the Act to affixing the seal of an association to an instrument is taken to include a reference to signing, and witnessing the signature of, the instrument in accordance with this clause.
- (4) For the purposes of this clause—
- (a) the presence of a signatory or witness is taken to be satisfied if the signatory or witness is present by audio visual link, and
- (b) a signature is not required to be witnessed if it is the signature of—
- (i) a managing agent, or a relevant officer of a managing agent that is a corporation, or
- (ii) if the association has only 1 member—the member.
- (5) In this clause—
- audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.
- relevant officer** of a managing agent that is a corporation means—
- (a) the president, chairperson or other principal officer of the corporation, or
- (b) any member of staff of the corporation authorised by the president, chairperson or other principal officer to affix the seal of the association to an instrument, or to attest the fact and date of the affixing of the seal.

25 Extension of time periods—section 122A(1)(d) of Act

- (1) A meeting of an association under section 9 of the Act must be convened and held within 6 months after expiration of the initial period for the association.
- (2) An association must, within 6 months after transferring money between its funds, or making a payment from one fund that should have been made from the other, in the manner referred to in clause 13(7) of Schedule 1 to the Act, make an estimate under clause 13(1) or (2), as the case may be, of Schedule 1 to the Act in respect of the depleted fund.

[2] Clause 25A

Insert after clause 25—

25A Postponed repeal of regulation-making power—section 122A(5)(b) of Act

Section 122A of the Act is repealed at the beginning of 13 May 2021.

[3] Part 7, Division 2

Omit the Division. Insert instead—

Division 2 Other means of voting

26 Other means of voting—association and executive committee

- (1) An association or its executive committee may use any of the following means of voting on a matter to be determined by the association or executive committee—
 - (a) voting by means of teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location,
 - (b) voting by means of email or other electronic means before the meeting at which the matter, not being an election, is to be determined by the association or executive committee (*pre-meeting electronic voting*).
- (2) Without limiting subclause (1)(b), the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- (3) If a matter may be determined partly by pre-meeting electronic voting, the notice of the meeting must include a statement that the relevant motion may be amended by a further motion given at the meeting after the pre-meeting electronic voting takes place and that consequently the pre-meeting vote may have no effect.
- (4) A motion that is to be determined wholly by pre-meeting electronic voting may not be amended at the meeting for which the pre-meeting electronic voting is conducted.
- (5) A motion that is to be determined partly by pre-meeting electronic voting must not be amended at the meeting for which the pre-meeting electronic voting is conducted if the effect of the amendment is to change the subject matter of the original motion.
- (6) If a motion that is to be determined wholly or partly by pre-meeting electronic voting is amended at the meeting for which the pre-meeting electronic voting is conducted, the minutes of the meeting distributed to members must be accompanied by notice of the change and a statement setting out the power to require a further meeting under clause 3, 23 or 43, as the case may be, of Schedule 6 to the Act.

27 Pre-meeting electronic voting

- (1) This clause applies to a ballot for determination of a matter by an association or its executive committee that is to be conducted by pre-meeting electronic voting.
- (2) The secretary of the association must ensure that the form for the electronic ballot paper contains—
 - (a) instructions for completing the ballot paper, and
 - (b) the question to be determined, and
 - (c) the means of indicating the voter's choice on the question to be determined.
- (3) The secretary of the association must, at least 7 days before the meeting at which the matter is to be determined, give each person entitled to vote—
 - (a) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause, and

- (b) access to information about—
 - (i) how the ballot paper must be completed, and
 - (ii) the closing date of the ballot, and
 - (iii) if voting is by email—the address where the ballot paper is to be returned, and
 - (iv) if voting is by other electronic means—the means of accessing the electronic voting system and how the completed electronic ballot paper is to be sent to the secretary, and
- (c) access to an electronic form of declaration requiring the voter to state—
 - (i) his or her name, and
 - (ii) the capacity in which the person is entitled to vote, and
 - (iii) in the case of a matter that requires a special resolution—the value of the voter’s vote, and
 - (iv) if the vote is a proxy vote—the name and capacity of the person who gave the proxy.
- (4) Each person entitled to vote must vote in accordance with the instructions contained in the information.
- (5) If the ballot is a secret ballot, the secretary must ensure that—
 - (a) the identity of the voter cannot be ascertained from the form of the electronic ballot paper, and
 - (b) the declaration by the voter is dealt with so that it is not capable of being used to identify the voter.
- (6) An electronic ballot paper and the form of declaration must be sent to the secretary of the association no later than the close of the ballot.
- (7) The secretary of the association must ensure that all electronic ballot papers are stored securely until the counting of the votes begins.
- (8) In this clause, the *close of the ballot* means—
 - (a) for a matter to be determined by the association—the time that is 24 hours before the commencement of the meeting at which the matter is to be determined, or
 - (b) for a matter to be determined by an executive committee—immediately before the commencement of the meeting at which the matter is to be determined.

28 Informal votes

- (1) A ballot paper of a voter who votes by means of pre-meeting electronic voting is informal if the voter has failed to record a vote in accordance with the information provided by the secretary.
- (2) If voting is carried out by pre-meeting electronic voting using a voting website or other electronic application, the website or application is to provide a warning message to a person casting an informal vote that the proposed vote is informal.

29 Ascertaining result of pre-meeting electronic voting

- (1) As soon as practicable after the close of a ballot conducted by pre-meeting electronic voting, the secretary of the association must—
 - (a) review all information and reports about the electronic ballot, and

- (b) reject as informal any votes that do not comply with the requirements of this Regulation, and
 - (c) ascertain the result of the electronic ballot.
- (2) The secretary must, at the meeting to consider the matter for which the pre-meeting electronic voting was held, inform the persons present of the result of the ballot.