



New South Wales

# Community Land Management Amendment (COVID-19) Regulation (No 2) 2022

under the

Community Land Management Act 2021

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Community Land Management Act 2021*.

VICTOR DOMINELLO, MP  
Minister for Fair Trading

## Explanatory note

The objects of this Regulation are to—

- (a) set out procedures relating to voting on a matter by electronic means for a meeting of an association or association committee and, in certain circumstances, for pre-meeting voting by electronic means, and
- (b) provide for the ways of voting, other than in person, that may be specified in a notice given for a meeting of an association or an association committee, and
- (c) provide for what may constitute reasonable steps to be taken by the secretary of an association or a managing agent to ensure each person entitled to vote at a meeting can participate in and vote at the meeting if the voting is not to be carried out in person, and
- (d) prescribe requirements for affixing the seal of an association electronically to an instrument or document.

## **Community Land Management Amendment (COVID-19) Regulation (No 2) 2022**

under the

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### **1 Name of Regulation**

This Regulation is the *Community Land Management Amendment (COVID-19) Regulation (No 2) 2022*.

### **2 Commencement**

This Regulation commences on 30 September 2022.

## Schedule 1 Amendment of Community Land Management Regulation 2021

### [1] Section 3 Definitions

Omit “for Part 3—see section 14(6)” from the definition of *pre-meeting electronic voting*.  
Insert instead “for Part 3, Division 2—see section 9A”.

### [2] Part 3, Division 1, heading

Insert before section 8—

#### Division 1 Tenant representatives

### [3] Part 3, Division 2

Insert after section 9—

#### Division 2 Elections and voting

##### 9A Definition

In this Division—

*pre-meeting electronic voting* means voting on a matter by electronic means before the meeting at which the matter will be determined.

### [4] Section 11 Ballot for association committees

Insert at the end of section 11(2)—

**Note—** See the *Electronic Transactions Act 2000*, section 9, in relation to requirements for the electronic signature of a person.

### [5] Section 11(3A)

Insert after section 11(3)—

(3A) For the Act, section 233(2)(i), the ballot paper—

- (a) may be provided or delivered by electronic means specified in the notice given under section 14(a) in relation to the meeting, and
- (b) if the ballot paper is provided or delivered by electronic means—must be returned to the chairperson in a way specified in the notice given under section 14(a) in relation to the meeting.

**Note—** See the Act, Schedules 1 and 2, and this Regulation, section 14, in relation to notices for meetings.

### [6] Section 11(6)

Omit the subsection. Insert instead—

- (6) For subsection (5), a person is taken to vote by a show of hands on a matter at a meeting if—
  - (a) the notice for the meeting specified voting by electronic means while participating in the meeting as a way of voting at the meeting, and

**Note—** See the Act, Schedule 1, clause 27(3) and this Regulation, section 14(a).

  - (b) the person uses the electronic means to indicate the voter’s choice on the matter while participating in the meeting.

**[7] Section 12 Nominations for officers of association committees**

Insert after subsection (2)—

- (2A) A nomination must be made by written notice or orally at the meeting in accordance with this section, or the nomination is ineffective.

**[8] Section 12(3)**

Omit “The nomination is to be made by written notice given to the person convening the meeting that states”.

Insert instead “A nomination made by written notice must be given to the person convening the meeting, stating”.

**[9] Section 12(5A)**

Insert after section 12(5)—

- (5A) For an oral nomination—
- (a) the nomination must be made at the meeting, and
  - (b) the person nominated must—
    - (i) be present at the meeting, and
    - (ii) consent to the nomination.

**[10] Section 12(6)**

Omit “persons at the meeting” from section 12(6).

Insert instead “the persons present at the meeting and entitled to vote”.

**[11] Section 12(7)**

Omit the subsection. Insert instead—

- (7) For subsection (6), a person is taken to vote by a show of hands on a matter at a meeting if—
- (a) the notice for the meeting specified voting by electronic means while participating in the meeting as a way of voting at the meeting, and  
**Note—** See the Act, Schedule 2, clause 8(3) and this Regulation, section 14(a).
  - (b) the person uses the electronic means to indicate the voter’s choice on the matter while participating in the meeting.

**[12] Sections 14–14B**

Omit section 14. Insert instead—

**14 Ways of voting**

For the Act, Schedule 1, clause 27(3) and Schedule 2, clause 8(3), a notice for a meeting of an association or association committee may specify one or more of the following ways of voting—

- (a) voting by electronic means while participating in the meeting,
- (b) if the association has, by resolution, adopted pre-meeting electronic voting as a way of voting—pre-meeting electronic voting for a meeting of the association,
- (c) if the association committee has, by resolution, adopted pre-meeting electronic voting as a way of voting—pre-meeting electronic voting for a meeting of the association committee.

#### **14A Pre-meeting electronic voting**

For the Act, Schedule 1, clause 27(3) and Schedule 2, clause 8(3), the following applies in relation to voting by pre-meeting electronic voting—

- (a) an election must not be determined by pre-meeting electronic voting,
- (b) for a matter that may be determined partly by pre-meeting electronic voting, the notice of the meeting must include a statement that—
  - (i) the relevant motion may be amended by a further motion given at the meeting after the pre-meeting electronic voting takes place, and
  - (ii) consequently, the pre-meeting vote may have no effect,
- (c) a motion that is to be determined wholly by pre-meeting electronic voting must not be amended at the meeting for which the pre-meeting electronic voting was conducted,
- (d) a motion that is to be determined partly by pre-meeting electronic voting may be amended at the meeting for which the pre-meeting electronic voting was conducted but only if the amendment does not change the subject matter of the motion,
- (e) if a motion that is to be determined partly by pre-meeting electronic voting is amended at the meeting for which the pre-meeting electronic voting has been conducted, the minutes of the meeting distributed to members must be accompanied by—
  - (i) notice of the change, and
  - (ii) a statement setting out the power to make a qualified request for a further meeting under the Act, section 17.

#### **14B Reasonable steps**

For the Act, Schedule 1, clause 27(3)(e) and Schedule 2, clause 8(3)(e), the following may constitute reasonable steps—

- (a) providing clear and accessible instructions about how to participate in and vote at a meeting,
- (b) providing multiple ways for a person entitled to vote at a meeting to participate in and vote at the meeting, including ways that do not require the person to access the internet or incur unreasonable expenses,
- (c) using technology that is reasonably accessible to a person entitled to vote at a meeting, including technology that does not require unreasonable costs to be paid by the person.

#### **[13] Section 16, heading**

Insert “**in pre-meeting electronic voting**” after “**votes**”.

#### **[14] Sections 17A and 17B**

Insert after section 17—

#### **17A Electronic affixing of seal of association**

- (1) For the Act, section 235(7), if an association has only 1 member, the association’s seal must not be affixed electronically to an instrument except in the presence of—
  - (a) the member, or
  - (b) if there is a managing agent of the association—the managing agent.

- (2) If an association has only 2 members, the association's seal must not be affixed electronically to an instrument except in the presence of—
  - (a) both members, or
  - (b) if there is a managing agent of the association—the managing agent.
- (3) If an association has more than 2 members, the association's seal must not be affixed electronically to an instrument except in the presence of—
  - (a) if, for the purposes of this subsection, the association has nominated 2 members of the association or association committee—the nominated members, or
  - (b) if the association has not made a nomination referred to in paragraph (a)—
    - (i) the association's secretary, and
    - (ii) another member of the association committee, or
  - (c) if there is a managing agent of the association—the managing agent.
- (4) In this section—  
**instrument** includes a document.

#### **17B Requirements for managing agent for seal affixed electronically**

- (1) For the Act, section 235(7), if the association's seal is affixed electronically in the presence of a managing agent under section 17A, the managing agent must attest to the fact and date of the affixing of the seal—
  - (a) by the managing agent's signature, or
  - (b) if the managing agent is a corporation—by the signature of—
    - (i) the president, chairperson or other principal officer of the corporation, or
    - (ii) a staff member of the corporation who is authorised by the president, chairperson or other principal officer to attest to the fact and date of the affixing of the seal.
- (2) The requirement for a signature under subsection (1) is taken to have been met in relation to an electronic communication if—
  - (a) a method is used to identify the person and to indicate the person's intention in respect of the information communicated, and
  - (b) the method used was either—
    - (i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement, or
    - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence, and
  - (c) the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a).
- (3) In this section—  
**consent** includes consent that can reasonably be inferred from the conduct of the person concerned, but does not include consent given subject to conditions unless the conditions are complied with.  
**electronic communication** means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both, or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

*information* means information in the form of data, text, images or sound.

**[15] Section 42A**

Insert after section 42—

**42A Pre-meeting electronic voting—transitional arrangement**

- (1) This section applies if—
  - (a) before 30 September 2022, the secretary of an association or association committee complied with the requirements under section 15(3) in relation to a ballot for determination of a matter by the association or association committee that will be conducted by pre-meeting electronic voting, and
  - (b) the meeting at which the matter is to be determined has not been held before that date.
- (2) Despite section 14(b) and (c), the requirement that the association or association committee adopt, by resolution, pre-meeting electronic voting as a way of voting does not apply to the meeting at which the matter is to be determined.