



New South Wales

Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2022

under the

Strata Schemes Management Act 2015

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Strata Schemes Management Act 2015*.

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 owners corporation or strata 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 owners corporation or strata committee, and
- (c) provide for what may constitute reasonable steps to be taken by the secretary of an owners corporation or strata 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 owners corporation electronically to an instrument or document.

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1 Name of Regulation

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

2 Commencement

This Regulation commences on 30 September 2022.

Schedule 1 Amendment of Strata Schemes Management Regulation 2016

[1] Clause 3 Definitions

Omit “—see clause 14(1)” from the definition of *pre-meeting electronic voting*.

Insert instead “, for Part 2—see clause 3A”.

[2] Clause 3A

Insert before clause 4—

3A Definition

In this Part—

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

[3] Clause 10 Ballot for strata committee

Insert at the end of clause 10(3)—

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

[4] Clause 10(4A)

Insert after clause 10(4)—

(4A) For the Act, section 271(2)(n), the ballot paper—

- (a) may be provided or delivered by electronic means specified in the notice given under clause 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 clause 14(a) in relation to the meeting.

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

[5] Clause 10(6)

Omit “those present and entitled to vote”.

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

[6] Clause 10(7)

Omit clause 10(7). Insert instead—

(7) For subclause (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 1, clause 28(3) and this Regulation, clause 14(a).

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

[7] Clause 11 Nominations for officers of strata committee

Insert after subclause (2)—

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

[8] Clause 11(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] Clause 11(5A)

Insert after clause 11(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] Clause 11(6)

Omit “persons at the meeting”.

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

[11] Clause 11(7)

Omit the subclause. Insert instead—

- (7) For subclause (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 10(3) and this Regulation, clause 14(a).
 - (b) the person uses the electronic means to indicate the voter’s choice on the matter while participating in the meeting

[12] Clauses 14–14B

Omit clause 14. Insert instead—

14 Ways of voting

For the Act, Schedule 1, clause 28(3) and Schedule 2, clause 10(3), a notice for a meeting of an owners corporation or a strata 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 strata committee has, by resolution, adopted pre-meeting electronic voting as a way of voting—pre-meeting electronic voting for a meeting of the strata committee,
- (c) if the owners corporation has, by resolution, adopted pre-meeting electronic voting as a way of voting—pre-meeting electronic voting for a meeting of the owners corporation.

14A Pre-meeting electronic voting

For the Act, Schedule 1, clause 28(3) and Schedule 2, clause 10(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 owners 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 19.

14B Reasonable steps

For the Act, Schedule 1, clause 28(3)(e) and Schedule 2, clause 10(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] Clause 15, heading

Omit “**Pre-meeting**”. Insert instead “**Electronic ballot paper for pre-meeting**”.

[14] Clause 16, heading

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

[15] Clauses 17A and 17B

Insert after clause 17—

17A Electronic affixing of seal of owners corporation

- (1) For the Act, section 273(7), if an owners corporation has only 1 owner, the seal of the owners corporation must not be affixed electronically to an instrument except in the presence of—

- (a) the owner, or
 - (b) if there is a strata managing agent of the owners corporation—the strata managing agent.
- (2) If an owners corporation has only 2 owners, the seal of the owners corporation must not be affixed electronically to an instrument except in the presence of—
- (a) both owners, or
 - (b) if there is a strata managing agent of the owners corporation—the strata managing agent.
- (3) If an owners corporation has more than 2 owners, the seal of the owners corporation must not be affixed electronically to an instrument except in the presence of—
- (a) if, for the purposes of this subclause, the owners corporation has determined 2 persons who are owners of lots or members of the strata committee—the persons, or
 - (b) if the owners corporation has not made a determination referred to in paragraph (a)—
 - (i) the secretary of the owners corporation, and
 - (ii) another member of the strata committee, or
 - (c) if there is a strata managing agent of the owners corporation—the strata managing agent.
- (4) In this clause—
instrument includes a document.

17B Requirements for strata managing agent for seal affixed electronically

- (1) For the Act, section 273(7), if the seal of the owners corporation is affixed electronically in the presence of a strata managing agent under clause 17A, the strata managing agent must attest to the fact and date of the affixing of the seal—
- (a) by the strata managing agent’s signature, or
 - (b) if the strata 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 subclause (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 clause—
- 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.

[16] Clause 68B

Insert after clause 68A—

68B Pre-meeting electronic voting—transitional arrangement

- (1) This clause applies if—
- (a) before 30 September 2022, the secretary of an owners corporation complied with the requirements under clause 15(3) in relation to a ballot for the determination of a matter by the owners corporation or strata 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 clause 14(b) and (c), the requirement that the owners corporation or strata committee must 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.