

Community Land Management Regulation 2018

[2018-498]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Community Land Management Amendment \(COVID-19\) Regulation \(No 2\) 2020 \(659\)](#), Sch 1[1] and [3]
(not commenced — to commence on 13.11.2020)
- **See also**
[Community Land Management Bill 2020](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Community Land Management Regulation 2018



New South Wales

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Community Land Management Regulation 2018



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Community Land Management Regulation 2018*.

2 Commencement

This Regulation commences on 1 September 2018 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Community Land Management Regulation 2007*, which is repealed on 1 September 2018 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation—

the Act means the *Community Land Management Act 1989*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Records of an association

4 Periods for retention of records: Schedule 1, clause 9

For the purposes of clause 9 of Schedule 1 to the Act, the prescribed period for each class of record set out in Schedule 1 to this Regulation that must be retained by the association is the prescribed period set out in that Schedule opposite that class of record.

5 Accounting records: Schedule 1, clause 10

(1) For the purposes of clause 10 of Schedule 1 to the Act, the prescribed accounting records to be kept by an association are as follows—

- (a) a receipt book,
 - (b) a passbook, a deposit book, or statement of deposits and withdrawals that are in chronological order, for the account of the association,
 - (c) a cash record,
 - (d) a levy register.
- (2) The accounting records of an association (other than a receipt book) may be recorded or stored by mechanical, electronic or other means.
- (3) Separate accounting records must be kept for the administrative fund, the sinking fund and any other fund in which money is held by the association.
- (4) An association is guilty of an offence if it does not keep such records in accordance with the requirements of this Part.

Maximum penalty (subclause (4)): 5 penalty units.

6 Receipt book

- (1) A receipt must be issued for each amount of money received by the treasurer for the credit of a fund.
- (2) The following particulars must be included on each receipt—
- (a) the date of the receipt,
 - (b) the amount of money received,
 - (c) the form (cash, cheque, postal order or other) in which the money was received,
 - (d) the name and address of the person on whose behalf the amount was received,
 - (e) if the payment was for a contribution to the administrative or sinking fund—
 - (i) a statement that the payment was made in respect of that contribution, and
 - (ii) the lot number in respect of which the contribution was made, and
 - (iii) if the contribution was a regular periodic contribution—details of the period in respect of which it was made, and
 - (iv) details of any discount given for early payment,
 - (f) if the payment was not a payment referred to in paragraph (e)—particulars of the transaction in respect of which the payment was received.
- (3) If a payment is received in respect of more than one transaction, the manner in which the payment is apportioned between the transactions must be entered on the receipt.

(4) The association must—

- (a) in the case of a receipt issued from a receipt book—keep the duplicate receipt in the receipt book created by a carbon impression, or
- (b) in the case of any other type of receipt—cause a record to be kept of all the details of the receipt.

7 Cash record

- (1) As soon as practicable after a transaction is effected, the following must be entered—
 - (a) in the receipts section of the cash record—particulars of all money received,
 - (b) in the payments section of the cash record—particulars of all money disbursed.
- (2) At the end of each month, the cash record must be balanced and the balance carried forward to the commencement of the next month and to a ledger account provided for that purpose.
- (3) At the end of each month—
 - (a) the entries in the cash record must be compared with the bank records, and
 - (b) amounts credited to the bank account and appearing in the bank records for which no receipt had been written and amounts debited to the bank account and appearing in the bank records for which no cheque had been drawn must be entered in the cash record.
- (4) Any necessary reconciliation (showing the balance in the bank account as indicated in the bank records, and adding any money received but not banked and deducting any cheques drawn but not presented for payment) must be entered in the cash record at the end of the entries for the month.

8 Levy register

- (1) The levy register for a fund must include a separate section—
 - (a) in the case of a register kept by a community association—for each development lot and former development lot (if any) in the community scheme, or
 - (b) in the case of a register kept by a precinct association—for each development lot and former development lot (if any) in the precinct scheme, or
 - (c) in the case of a register kept by a neighbourhood association—for each neighbourhood lot in the neighbourhood scheme.
- (2) Each of the sections referred to in subclause (1) must specify, by appropriate entries, the following matters in relation to each contribution levied by the association and must indicate whether those entries are debits or credits and the balances for those

entries—

- (a) the date on which the contribution is due and payable,
- (b) the type of contribution and the period in respect of which it is to be made,
- (c) the amount of the contribution levied shown as a debit,
- (d) the amount of each payment shown as a credit,
- (e) the date on which each payment is made,
- (f) whether a payment was made in cash or by cheque or in some other specified manner,
- (g) whether an amount paid comprised full payment or part payment,
- (h) the balance of the account.

9 Inspection of records of managing agent: Schedule 4, clause 1

For the purposes of clause 1(1)(j) of Schedule 4 to the Act, the additional record to be kept in relation to a scheme in respect of which the association's duties have been delegated to a managing agent is the trust account ledger for the association referred to in clause 21 of the *Property, Stock and Business Agents Regulation 2014*.

Part 3 Mediation

10 Directions of Secretary

The Secretary may give directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.

11 Attendance and representation

- (1) A mediation session must be attended by each party or by a legal representative, or other representative, having authority to settle the matter.
- (2) Other persons may attend a mediation session with the leave of the mediator.

12 Termination

- (1) A mediator may terminate a mediation.
- (2) A party may terminate a mediation at any time by giving notice of the termination to the Secretary, the mediator and each other party.

Part 4 Election of executive committee

13 Application of Part

This Part applies to the procedure for nomination and election of an executive committee for an association with a membership of 4 or more.

14 Election of executive committee

- (1) At a meeting of an association at which its executive committee is to be elected, the chairperson—
 - (a) is to announce the names of the candidates already nominated in writing for election to the executive committee, and
 - (b) is to call for any oral nominations of candidates eligible for election to the executive committee.
- (2) A written or oral nomination made for the purposes of such an election is ineffective if it is made by a person other than the nominee unless it is supported by the consent of the nominee given—
 - (a) if the nominee is not present at the meeting—in writing, or
 - (b) if the nominee is present at the meeting—orally.
- (3) After the chairperson declares that nominations have closed, the association is to decide, in accordance with section 28 of the Act, the size of the executive committee.
- (4) If the number of candidates—
 - (a) is the same as, or fewer than, the number decided on as the size of the executive committee—those candidates are to be declared by the chairperson to be, and are to be taken to have been, elected as the executive committee, or
 - (b) is greater than the number so decided on—a ballot is to be held.

15 Ballot for executive committee

- (1) If a ballot for membership of the executive committee of an association is required, the chairperson—
 - (a) is to announce to the meeting the name of each candidate and the nominator of the candidate, and
 - (b) is to provide each person present and entitled to vote at the meeting with a blank ballot-paper for each vote the person is entitled to cast.
- (2) For a vote to be valid, a ballot-paper must be completed by the voter writing on it—

- (a) the names of each of the candidates for whom the voter desires to vote, the number of names written being no more than the number determined by the association as the size of the executive committee, and
- (b) the capacity in which the voter is exercising a right to vote, whether—
 - (i) as proprietor, first mortgagee or covenant chargee of a lot (identifying the lot), or
 - (ii) as a company nominee, or
 - (iii) by proxy (identifying the name and capacity of the person who gave the proxy).
- (3) The chairperson is to successively declare elected each candidate who has a greater number of votes than another candidate who has not been elected until all the places for membership of the executive committee have been filled.
- (4) If a place remains to be filled but there are 2 or more eligible candidates with an equal number of votes, the candidate to fill the place is to be decided by a show of hands of those present and entitled to vote.

Part 5 Insurance

16 Property insurance: section 39

For the purposes of section 39 of the Act, the amount for which insurance is to be effected against damage to association property or a building on association property is the sum of the following amounts—

- (a) the estimated cost (as at the date of the contract of insurance) of rebuilding the building, or replacing it with a similar building, so that every part of the rebuilt building or replacement building is in a condition no worse than that in which it was when new,
- (b) the estimated cost (as at the date of the contract of insurance) of removing debris in the event of the building being destroyed by an occurrence specified in the policy,
- (c) the estimated fee (as at the date of the contract of insurance) payable to architects and other professional persons employed in the course of the rebuilding or replacing referred to in paragraph (a),
- (d) the estimated amount by which expenditure referred to in paragraphs (a), (b) and (c) may increase during the period of 18 months following the date of the contract of insurance.

17 Other insurance: section 40

For the purposes of section 40(3)(b) of the Act—

- (a) the prescribed amount of cover for insurance referred to in section 40(2)(b) of the Act is \$10,000,000, and
- (b) the prescribed amount of cover for other insurance referred to in, or prescribed under, section 40(2) of the Act is the amount determined by resolution of the association.

Part 6 Miscellaneous

18 Fees

The fees payable under the Act are set out in Schedule 2.

19 Waiver and remission of fees

The Secretary may waive payment of the fee under the Act for an application for mediation, or may remit any such fee paid to the Secretary, if the Secretary considers it appropriate to do so in the circumstances.

20 Savings

Any act, matter or thing that had effect under the [Community Land Management Regulation 2007](#) immediately before the repeal of that Regulation is taken to have effect under this Regulation.

Part 7 Response to COVID-19 pandemic

Division 1 General

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,

Note—

For 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.

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.

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.

Schedule 1 Periods for retention of records

(Clause 4)

| Class of record | Prescribed period |
|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Record of the proceedings of a meeting (clause 9(a) of Schedule 1 to the Act) | 5 years from the date of the meeting |
| Accounting record (clause 9(b) of Schedule 1 to the Act) | 5 years from the date of the latest entry in the record |
| Summary and other particulars required to be recorded in relation to a notice or order served on it (clause 9(c) of Schedule 1 to the Act) | 5 years from the date of the notice or order |
| Financial statement (clause 9(d) of Schedule 1 to the Act) | 5 years from the date up to which the relevant financial statement is made |
| Correspondence received or sent (clause 9(e) of Schedule 1 to the Act) | 5 years from the date of the correspondence |
| Copy of notice of meeting (clause 9(f) of Schedule 1 to the Act) | 5 years from the date of the meeting to which the notice relates |
| Proxy (clause 9(g) of Schedule 1 to the Act) | 5 years from the expiration of the proxy |
| Voting paper for resolutions (clause 9(h) of Schedule 1 to the Act) | 5 years from the date of the meeting at which the voting took place |

| | |
|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Voting paper for election of executive committee and officers (clause 9(i) of Schedule 1 to the Act) | 5 years from the date of the meeting at which the voting took place |
| Record served on an association by its managing agent (clause 9(j) of Schedule 1 to the Act) | 5 years from the date of the record |
| Notice specifying an address for service (clause 9(k) of Schedule 1 to the Act) | 5 years from the date of the notice |

Schedule 2 Fees

(Clause 18)

| Item | Type of fee | Fee |
|---------------------------------------|-------------------------------------------------------------------------------|------|
| Fees payable to an association | | |
| 1 | Inspection of association records under section 26 of the Act— | |
| | (a) for up to 1 hour | \$31 |
| | (b) for each additional half-hour or part of a half-hour | \$16 |
| 2 | Issue by an association of a certificate under section 26 of the Act | \$94 |
| Fee for mediation | | |
| 3 | Lodging an application for mediation of a matter under section 66 of the Act— | |
| | (a) if the applicant is a full-time student or pensioner | \$5 |
| | (b) in any other case | \$81 |