



New South Wales

# COVID-19 and Other Legislation Amendment (Regulatory Reforms) Bill 2022

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are to—

- (a) implement on a permanent basis particular regulatory measures that were implemented on a temporary basis in response to the COVID-19 pandemic, including measures—
  - (i) enabling strata owners corporations, strata committees, community land associations, association committees and incorporated associations to meet and vote electronically under the *Associations Incorporation Act 2009*, the *Community Land Management Act 2021* and the *Strata Schemes Management Act 2015*, and
  - (ii) enabling community land associations and owners corporations to validly execute documents under the *Community Land Management Act 2021* and the *Strata Schemes Management Act 2015* by affixing the corporation's or association's common seal electronically or by using a prescribed alternative to affixing the seal, and
  - (iii) reducing the waiting period to access long service leave for contract cleaners from 20 weeks to 10 weeks under the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, and
  - (iv) providing greater flexibility for employees and businesses to access long service leave under the *Long Service Leave Act 1955*, and
  - (v) allowing interviews and questioning to be conducted remotely by audio link or audio visual link under the *Biodiversity Conservation Act 2016*, *Crown Land Management Act 2016*, the *Fisheries Management Act 1994*, the *Mining Act 1992*, the *Protection of the Environment Operations Act 1997* and the *Water Management Act 2000*, and

- (vi) allowing mental health examinations or observations of a person detained in a mental health facility under the *Mental Health Act 2007* to be conducted by audio visual link, and
- (vii) allowing planning panels and the Independent Planning Commission to hold public hearings and meetings online or in person under the *Environmental Planning and Assessment Act 1979*, and
- (viii) enabling retirement village operators to obtain consent of residents in different ways, including electronically, under the *Retirement Villages Act 1999*, and
- (b) preserve the rights of eligible tenants accrued during the prescribed period under the *Retail and Other Commercial Leases (COVID-19) Regulation 2022* and allow savings and transitional regulations to be made in relation to any future commercial leasing protections implemented in response to the COVID-19 pandemic, and
- (c) extend, until 26 March 2023, the *Constitution Act 1902*, Schedule 8, which was enacted in response to the COVID-19 pandemic and enables the regulations to prescribe the ways and forms in which Bills may presented to, and assented to by, the Governor and Executive Council meetings are to be held and to allow for the further extension of that Schedule by regulation for a period of not more than 6 months, and
- (d) amend the *Interpretation Act 1987* to clarify that a reference in an Act or statutory rule to the tabling of a document in a House of Parliament includes a reference to taking any action allowed or required under the Standing Rules or Orders of the House for the tabling documents in the House when the House is not sitting.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1 Amendments

**Schedule 1.1[1] and [2]** amend the *Associations Incorporation Act 2009*, sections 30 and 37 to enable an association to hold committee meetings and general meetings using audio visual or other technology.

**Schedule 1.1[3] and [4]** amend the *Associations Incorporation Act 2009*, sections 38 and 39 to enable an association to conduct postal or electronic ballots in relation to ordinary or special resolutions.

**Schedule 1.1[5]** repeals provisions enabling meetings to be held using audio visual or other technology and postal or electronic ballots in relation to ordinary and special resolutions that were enacted as temporary measures in response to the COVID-19 pandemic.

**Schedule 1.2** amends the *Biodiversity Conservation Act 2016*, section 12.19 to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable authorised officers to authorise persons required to answer questions to do so by audio visual link. The amendment will have the effect of continuing the provisions on a permanent basis.

**Schedule 1.3[1] and [2]** amend the *Community Land Management Act 2021*, section 226 to allow service of a document on an occupier or owner of a lot to be by electronic transmission to an address nominated by the occupier or owner for the service of documents of that kind.

**Schedule 1.3[3]–[5]** amend the *Community Land Management Act 2021*, section 234 to provide for the seal of an association to be kept and stored electronically in accordance with any requirements prescribed by the regulations. The amendments also enable the regulations to prescribe requirements for keeping and storing the seal in electronic form.

**Schedule 1.3[6] and [7]** amend the *Community Land Management Act 2021*, section 235 to provide that the seal of an association may also be affixed electronically. The amendments include a regulation-making power to prescribe any of the following—

- (a) requirements for keeping and storing an association's seal in electronic form,
- (b) alternatives to executing documents or instruments by affixing an association's seal to the instrument or document,
- (c) records that must be kept by an association relating to the electronic affixing of the association's seal or the execution of instruments or document by alternative means.

**Schedule 1.3[8]** omits the *Community Land Management Act 2021*, section 238, which is a regulation-making power enacted as a temporary measure in response to the COVID-19 pandemic.

**Schedule 1.3[9] and [10]** amend the *Community Land Management Act 2021*, Schedule 1, clause 27 and Schedule 2, clause 8 to enable associations and association committees to conduct voting by means other than in person. The amendments also enable the regulations to prescribe restrictions on the other means by which voting may be conducted, the procedures to be followed when voting by other means, and what may or may not constitute the reasonable steps that must be taken to ensure that each person entitled to vote at the meeting can participate in and vote at the meeting.

**Schedule 1.4[1]** extends, until 26 March 2023, the *Constitution Act 1902*, Schedule 8, which was enacted in response to the COVID-19 pandemic and enables the regulations to prescribe the ways and forms in which Bills may be presented to, and assented to by, the Governor and Executive Council meetings are to be held and to allow for the further extension of that Schedule by regulation for a period of not more than 6 months.

**Schedule 1.4[2]** makes a consequential amendment to extend the date on which the *Constitution Act 1902*, Schedule 8 is repealed.

**Schedule 1.5** amends the *Constitution (COVID-19 Emergency Measures) Regulation 2020* as a consequence of the amendments in Schedule 1.4.

**Schedule 1.6[1] and [2]** amend the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, section 63 to reduce the period, from 20 weeks to 10 weeks (or the shorter period prescribed by regulation), that a registered worker who has accumulated 5 years of recognised service must wait after having left the industry in order to receive a pro rata payment instead of long service leave.

**Schedule 1.6[3]** amends the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* to omit a provision that was enacted as a temporary measure in response to the COVID-19 pandemic.

**Schedule 1.7** amends the *Crown Land Management Act 2016*, section 10.23, to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable authorised officers to authorise persons required to answer questions to do so by audio visual link. The amendment will have the effect of continuing the provisions on a permanent basis.

**Schedule 1.8[1]** omits provisions that were enacted as temporary measures in response to the COVID-19 pandemic.

**Schedule 1.8[2]–[4]** amend provisions of the *Environmental Planning and Assessment Act 1979*, Schedule 2 relating to the conduct of public hearings by the Independent Planning Commission to enable the Commission to hold public hearings wholly or partly by way of audio link, audio visual link or other electronic means, provided the meeting or part of the meeting held in that way is able to be heard or viewed by electronic means by the public at the time it is held.

**Schedule 1.8[5]** amends the *Environmental Planning and Assessment Act 1979*, Schedule 2, Part 5, clause 25 to enable planning bodies to hold public hearings wholly or partly by way of audio

link, audio visual link or other electronic means, provided the meeting or part of the meeting held in that way is recorded and the record is made publicly available.

**Schedule 1.9** amends the *Fisheries Management Act 1994*, section 256 to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable fisheries officers to authorise persons required to answer questions to do so by audio visual link. The amendment will have the effect of continuing the provisions on a permanent basis.

**Schedule 1.10** inserts a new provision into the *Interpretation Act 1987* to clarify that a reference in an Act or statutory rule to the tabling of a document in a House of Parliament includes a reference to taking any action allowed or required under the Standing Rules or Orders of the House for the tabling documents in the House when the House is not sitting.

**Schedule 1.11[1] and [2]** amend the *Long Service Leave Act 1955*, section 4 to enable an employer and a worker to agree to the worker taking long service leave, either in advance or accrued, for periods of not less than 1 day, which was implemented on a temporary basis in response to the COVID-19 pandemic.

**Schedule 1.11[3]** amends the *Long Service Leave Act 1955*, section 4 to provide the means of calculating the number of hours that constitute 1 day for workers who do not have fixed numbers of working hours under the terms of their employment.

**Schedule 1.11[4]** amends the *Long Service Leave Act 1955*, section 4 to enable an employer to give a worker less than 1 month's notice of the date from which it is proposed that the worker's long service leave be given and taken if the worker agrees to the shorter period of notice.

**Schedule 1.11[5]** replaces the *Long Service Leave Act 1955*, section 8 to clarify the records that an employer must keep in relation to long service leave for workers employed by the employer, including by providing that the records must be kept—

- (a) for a period of at least 6 years after the day on which the worker ceases to be employed by the employer, and
- (b) in the way prescribed by the regulations.

**Schedule 1.11[6]** repeals sections 15A and 15B, which temporarily provided for the arrangements being made permanent by the amendments being made by Schedule 1.11[1] and [2].

**Schedule 1.12[1]** amends the *Mental Health Act 2007*, section 27A to—

- (a) enable medical practitioners to conduct medical examinations or observations of persons by audio visual link when it is not reasonably practicable for an authorised medical officer of a mental health facility or other medical practitioner to personally examine or observe the person, and
- (b) enable particular accredited persons to conduct medical examinations or observations of persons in person or by audio visual link when it is not reasonably practicable for an authorised medical officer of a mental health facility or other medical practitioner to personally examine or observe the person.

**Schedule 1.12[2]** amends the *Mental Health Act 2007*, section 27A, consequent on the amendment in Schedule 12[1], to extend a safeguard requiring medical practitioners to only carry out an examination or observation of a person by audio visual link if the medical practitioner is satisfied that the examination or observation can be carried out in those circumstances with sufficient skill and care so as to form the required opinion about the person to accredited persons who are authorised to do so.

**Schedule 1.12[3]** omits an expired provision that was enacted as a temporary measure in response to the COVID-19 pandemic, which temporarily enabled an assessable person, or any other person, to appear before the Mental Health Review Tribunal by telephone for the purposes of a mental health inquiry, and enabled the Tribunal to adjourn matters or extend the period of a community treatment order if the Tribunal considered it necessary to do so because of the COVID-19 pandemic.

**Schedule 1.12[4]** omits a provision that was enacted as a temporary measure in response to the COVID-19 pandemic, which temporarily provided for the arrangements being made permanent by the amendments being made by Schedule 1.12[1].

**Schedule 1.13** amends the *Mining Act 1992*, section 248L to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable inspectors to authorise persons required to answer questions to do so by audio visual link. The amendment will have the effect of continuing the provisions on a permanent basis.

**Schedule 1.14** amends the *Protection of the Environment Operations Act 1997*, section 203 to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable authorised officers to authorise persons required to answer questions to do so by audio visual link. The amendment will continue the provisions on a permanent basis.

**Schedule 1.15[1]** inserts a savings provision into the *Retail Leases Act 1994* to preserve protections granted under temporary regulations to certain lessees under commercial leases who were impacted by the COVID-19 pandemic.

**Schedule 1.15[2]** inserts a new regulation-making power into the *Retail Leases Act 1994* to enable the regulations to provide for matters of a savings or transitional nature relating to measures in relation to commercial leases implemented in response to the COVID-19 pandemic.

**Schedule 1.16[1]** amends the *Retirement Villages Act 1999*, section 41 to enable a new operator of an existing retirement village to hold a meeting of the residents of the village using electronic means in addition to holding the meeting in person. The amendments also require the operator to take reasonable steps to ensure each resident can participate in, and vote at, the meeting using the means.

**Schedule 1.16[2] and [3]** amend the *Retirement Villages Act 1999*, section 72A to enable the operator of a retirement village to hold annual management meetings using electronic means in addition to holding the meetings in person. The amendments also require the operator to take reasonable steps to ensure each resident or former occupant can participate in, and vote at, the meeting using the means.

**Schedule 1.16[4] and [5]** amend the *Retirement Villages Act 1999*, Schedule 1 to expand existing provisions relating to voting procedures to enable residents of retirement villages to vote in ballots conducted by electronic means approved by the Residents Committee, in addition to voting in person. The amendments also require the person convening the meeting in relation to which the ballot is held to take reasonable steps to ensure each resident can participate in, and vote at, the meeting using the means.

**Schedule 1.17[1] and [2]** amend the *Strata Schemes Management Act 2015*, section 263 to allow service of a document on an occupier or owner of a lot to be by electronic transmission to an address specified by the owner or occupier for the service of documents of that kind.

**Schedule 1.17[3]** omits the *Strata Schemes Management Act 2015*, section 271A, which provided a temporary power enabling the regulations to provide for the arrangements being made permanent by the other amendments in Schedule 1.17.

**Schedule 1.17[4]–[6]** amend the *Strata Schemes Management Act 2015* to provide for the seal of an owners corporation to be kept and affixed electronically in accordance with any requirements prescribed by the regulations. The amendments also enable the regulations to prescribe requirements for keeping and storing the seal in electronic form.

**Schedule 1.17[7] and [8]** amend the *Strata Schemes Management Act 2015*, section 273 to provide a regulation-making power to prescribe any of the following—

- (a) requirements for keeping and storing an owners corporation's seal in electronic form,
- (b) alternatives to executing documents or instruments by affixing an owners corporation's seal to the instrument or document,

- (c) records that must be kept by an owners corporation relating to the electronic affixing of the owners corporation's seal or the execution of instruments or document by alternative means.

**Schedule 1.17[9] and [10]** replace the *Strata Schemes Management Act 2015*, Schedule 1, clause 28 and Schedule 2, clause 10 to expand existing provisions relating to meeting procedures of owners corporations and strata committees to enable owners corporations and strata committees to conduct voting by means other than voting in person. The amendments also enable the regulations prescribe restrictions on the other means by which voting may be conducted, the procedures to be followed when voting by other means, and what may or may not constitute the reasonable steps that must be taken to ensure that each person entitled to vote at the meeting can participate in and vote at the meeting.

**Schedule 1.18** amends the *Water Management Act 2000*, section 338B to omit the automatic repeal of provisions enacted in response to the COVID-19 pandemic that enable authorised officers to authorise persons required to answer questions to do so by audio visual link. The amendment will have the effect of continuing the provisions on a permanent basis.