



New South Wales

Associations Incorporation Amendment (Review) Act 2016 No 1

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Associations Incorporation Amendment (Review) Act 2016 No 1

Act No 1, 2016

An Act to amend the *Associations Incorporation Act 2009* to give effect to the recommendations for amendment made in a statutory review of that Act; and for other purposes. [Assented to 2 March 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Associations Incorporation Amendment (Review) Act 2016*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Associations Incorporation Act 2009 No 7**

[1] **Section 4 Definitions**

Omit the definitions of *authorised officer*, *Department* and *Director-General* from section 4 (1).

Insert in alphabetical order:

authorised officer means:

- (a) a person who is appointed as an authorised officer under section 102, or
- (b) an investigator within the meaning of the *Fair Trading Act 1987*.

Department means the Department of Finance, Services and Innovation.

Secretary means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no such position in the Department, the Secretary of the Department.

[2] **Section 6 Application for registration**

Omit section 6 (3) (d). Insert instead:

- (d) must annex a copy of the association's proposed constitution (or a statement that the association's proposed constitution adopts all the provisions of the model constitution without modification), and

[3] **Section 6 (4)**

Omit the subsection. Insert instead:

- (4) An association's proposed official address must be an address within New South Wales:
 - (a) at which the person who is to be the association's first public officer can generally be found, and
 - (b) at which documents can be served on the association by post.

[4] **Section 6 (6)**

Omit the subsection.

[5] **Sections 7 (2) (b) and 12 (2) (c)**

Omit "has not been reserved or" wherever occurring.

[6] **Section 11 Change of association's name at direction of, or by, Secretary**

Omit section 11 (3) (c). Insert instead:

- (c) must state that, if the application is not made on or before that date, the association's name may be changed to its registration number, or the association's registration may be cancelled, by the Secretary.

Note. See subsection (4) for the Secretary's power to change an association's name to its registration number, and section 76 (1) (i) for the Secretary's power to cancel an association's registration, for failure to comply with a direction under this section.

[7] Section 11 (4)–(6)

Insert after section 11 (3):

- (4) The Secretary may change an association's name to its registration number if satisfied that the association has failed to comply with a direction under this section for the change of its name.
- (5) After changing an association's name to its registration number under this section, the Secretary must cause notice of that fact to be given to the association.
- (6) Any notice to be given to an association under subsection (5) must be sent:
 - (a) by post addressed to the association at the association's official address, or
 - (b) if the Secretary suspects that the association's official address is no longer in use:
 - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
 - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

[8] Section 13 Notification of change of official address

Omit section 13 (3). Insert instead:

- (3) The new address must be an address within New South Wales:
 - (a) at which the public officer can generally be found, and
 - (b) at which documents can be served on the association by post.

[9] Section 25

Omit the section. Insert instead:

25 Provisions of model constitution apply if adopted or if matter not addressed

- (1) If an association's constitution adopts all the provisions of the model constitution without modification (either by reference or by reproducing the provisions), the provisions are taken to be the association's constitution.
- (2) If an association's constitution fails to address a matter referred to in Schedule 1, the provisions of the model constitution with respect to the matter are taken to be part of the association's constitution.
- (3) The provisions that are taken to be, or that are taken to be part of, an association's constitution under this section apply as in force for the time being.
- (4) Accordingly, an amendment to those provisions changes the association's constitution without:
 - (a) any special resolution by the association to change its constitution or any application to the Secretary under section 10, or
 - (b) any registration of the change by the Secretary under section 12, or
 - (c) any other action by or on behalf of the association or its members or by or on behalf of the Secretary.

- (5) To avoid doubt, this section does not limit the way in which an association's constitution may address a matter referred to in Schedule 1.
- (6) A provision of an association's constitution is of no effect to the extent to which it is contrary to this or any other Act or law.

[10] Section 26 Nature of association

Omit section 26 (2). Insert instead:

- (2) Subject to this Act, a member of an association (including a committee member and the public officer) is not, merely because of being such a member, liable in relation to:
 - (a) any of the association's liabilities, or
 - (b) the costs, charges and expenses of the winding up of the association.

[11] Part 4, Division 1, heading

Omit the heading. Insert instead:

Division 1 Committee members—general

[12] Sections 30A and 30B

Insert after section 30:

30A Duty of committee members

It is the duty of each committee member to carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence.

30B Personal liability of committee members

A matter or thing done or omitted to be done by a committee member, or by a person acting under the direction of a committee member, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising the committee member's functions under this Act, subject the committee member or person so acting personally to any action, liability, claim or demand.

[13] Part 4, Division 1A, heading and note

Insert before section 31:

Division 1A Committee members—offences

Note. A committee member may commit offences under this Act apart from the offences in this Division.

If an association incurs a debt while insolvent (or that causes it to become insolvent), a committee member who had reasonable grounds to suspect that the association was insolvent (or would, by incurring the debt, become insolvent) commits an offence under section 68 (1).

If a committee member knowingly authorises or permits an association to contravene a provision of this Act or the regulations, the committee member is also taken to have contravened the provision: see section 91.

[14] Section 34 Public officer

Omit section 34 (6) (b). Insert instead:

- (b) an address within New South Wales:
 - (i) at which the person can generally be found, and
 - (ii) at which documents can be served on the association by post, and

[15] Sections 38 and 39

Insert “or electronic” after “postal” wherever occurring.

[16] Section 61A

Insert before section 62:

61A Winding up on Secretary’s certificate (cf Co-operatives National Law (NSW), section 443)

- (1) An association may be wound up on a certificate of the Secretary if:
 - (a) the association ceases operations, or
 - (b) the association ceases to have 5 or more members, or
 - (c) the association’s committee has not been able to form a quorum for 2 months, or
 - (d) the Secretary is satisfied that there is a significant public interest in winding up the association or that not winding up the association may place public funds at risk.
- (2) Before giving a certificate, the Secretary:
 - (a) must give notice of the proposed certificate to be given to the association stating the ground or grounds referred to in subsection (1) that the Secretary believes exist, and
 - (b) must give the association and its members at least 28 days within which to make submissions to the Secretary with respect to the proposed certificate, and
 - (c) must give due consideration to any submissions that are made within that period.
- (3) A notice to be given to an association under subsection (2) must be sent:
 - (a) by post addressed to the association at the association’s official address, or
 - (b) if the Secretary suspects that the association’s official address is no longer in use:
 - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
 - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.
- (4) A winding up on a certificate of the Secretary starts when the certificate is given.
- (5) On the giving of a certificate, the Secretary may appoint a person to be the liquidator of the association.

- (6) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the manner prescribed by the regulations (if any).
- (7) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the Secretary.
- (8) The Secretary may fix:
 - (a) the security to be given by a liquidator, and
 - (b) the fees payable to a liquidator.

[17] Section 64 Modifications to text of applied Corporations Act 2001 of the Commonwealth

Insert after section 64 (2) (e):

- (f) for the purposes of the application of the provisions to a winding up on the certificate of the Secretary, the winding up is to be considered to be a voluntary winding up (but section 490 of the *Corporations Act 2001* of the Commonwealth does not apply).

[18] Section 72 Application for cancellation

Omit “2 committee members” from section 72 (2) (c).

Insert instead “a committee member”.

[19] Section 74 Decision on application for voluntary cancellation

Omit section 74 (4). Insert instead:

- (4) Any notice to be given to an association under subsection (3) must be sent:
 - (a) by post addressed to the association at the association’s official address, or
 - (b) if the Secretary suspects that the association’s official address is no longer in use:
 - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
 - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

[20] Section 76 Registration may be cancelled

Insert at the end of section 76 (1) (j):

, or

- (k) it is in the public interest to cancel the association’s registration.

[21] Section 76 (3) (a)

Omit “sent to the association by registered post”. Insert instead “given to the association”.

[22] Section 76 (4)

Omit “sent”. Insert instead “given”.

[23] Section 76 (5)

Omit the subsection. Insert instead:

- (5) Any notice to be given to an association under this section must be sent:
 - (a) by post addressed to the association at the association's official address, or
 - (b) if the Secretary suspects that the association's official address is no longer in use:
 - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
 - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

[24] Section 80 Effect of transfer of registration declaration

Omit section 80 (4). Insert instead:

- (4) Any notice to be given to an association under subsection (3) must be sent:
 - (a) by post addressed to the association at the association's official address, or
 - (b) if the Secretary suspects that the association's official address is no longer in use:
 - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
 - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

[25] Section 104 Review of decisions of Secretary

Insert at the end of section 104 (1) (c):

- , or
- (d) any decision of the Secretary to give a certificate under section 61A.

[26] Section 104 (2)

Insert "or the giving of a certificate under section 61A" after "registration".

[27] Section 107 Regulations

Omit section 107 (1) (b) and (c). Insert instead:

- (b) the manner and form in which an application to the Secretary for an extension of time under section 37 (2) (b) is to be made,
- (c) any fees to be paid in connection with the administration of this Act (including fees for lodgment of documents under this Act and additional fees for late lodgment of documents or late payment of fees),

[28] Schedule 1 Matters to be addressed in association's constitution

Omit "constitution" from clause 7. Insert instead "composition".

[29] Schedule 1, clause 7 (b1)

Insert after clause 7 (b):

- (b1) the maximum number of consecutive terms of office of any office-bearers on the committee, and

[30] Schedule 1, clause 11 Postal and electronic ballots

Insert “or electronic” after “postal”.

[31] Schedule 1, clause 17

Insert after clause 16:

17 Winding up

The winding up of the association.

[32] Schedule 4 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[33] Schedule 4, Part 3

Insert after Part 2:

**Part 3 Provision consequent on enactment of
Associations Incorporation Amendment (Review)
Act 2016**

12 Associations’ constitutions

Section 25, as substituted by the *Associations Incorporation Amendment (Review) Act 2016*, extends to the constitution of an association registered before the commencement of that substitution.

[34] The whole Act (except where otherwise amended by this Schedule)

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s”, respectively.

[Second reading speech made in—

Legislative Assembly on 16 February 2016

Legislative Council on 23 February 2016]