



New South Wales

Associations Incorporation Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to repeal and re-enact the *Associations Incorporation Act 1984*. The proposed Act, like the current Act, provides for the incorporation of certain kinds of associations and regulates the conduct of their affairs. The proposed Act, unlike the current Act:

- (a) distinguishes between large (Tier 1) and small (Tier 2) associations for the purposes of financial reporting, so enabling tighter reporting and auditing requirements to be imposed on the former, and
 - (b) requires an association's public officer, and at least 3 of its committee members, to be resident in Australia, and
 - (c) requires an association's committee members to disclose their pecuniary interests in any matters to be discussed at a committee meeting, and
 - (d) creates a number of offences with respect to fraudulent behaviour and misuse of confidential information by an association's committee members, and
 - (e) enables an association to be ordered to change its name if the name under which it is registered is unacceptable for any of a number of specified reasons, and
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- (f) enables an association to allow postal voting by its members, and
- (g) enables an association's registration to be reinstated if its registration is mistakenly cancelled.

The proposed Act:

- (a) restricts to particulars of internal management and administration the matters for which an association's constitution must provide, and
- (b) removes the requirement for an association's documents to be executed under seal, and
- (c) enables offences under the proposed Act to be dealt with by way of penalty notice, and
- (d) enables fees under the proposed Act to be waived, remitted or postponed in appropriate circumstances, and
- (e) clarifies the obligations of an association's outgoing committee members and public officer to hand over documents in their possession that relate to the association's affairs, and
- (f) clarifies the procedures to be followed for the purpose of reserving a name for use by an association, and
- (g) clarifies the circumstances in which an administrator may be appointed to manage an association's affairs.

Outline of provisions

Part 1 Preliminary

The proposed Part contains provisions with respect to the name of the Act (clause 1), its commencement (clause 2), its objects (clause 3), the defined terms that it uses (clause 4) and an extensive definition of "pecuniary gain" (clause 5).

Part 2 Registration of associations

Division 1 Registration

The proposed Division contains provisions with respect to applications for registration (clause 6), the determination of such applications (clause 7), the incorporation of associations that do not already have corporate status (clause 8) and the continuity of incorporation of those that do (clause 9).

Division 2 Changing association's name, objects, constitution or official address

The proposed Division contains provisions with respect to applications for changes in an association's particulars (clause 10), the power to direct an association to apply to change its name (clause 11), the determination of such applications (clause 12),

the obligation of an association to notify changes in its official address (clause 13) and the effect of registration of a change in an association's particulars (clause 14).

Division 3 Reservation of names

The proposed Division contains provisions with respect to applications for reservation of names for use by associations (clause 15), the determination of such applications (clause 16), the period (3 months) for which reservation lasts (clause 17) and the proscription of unacceptable names (clause 18).

Part 3 Basic features of associations

Division 1 Association powers

The proposed Division contains provisions with respect to the legal capacity and powers of an association (clause 19), the ability of an association's constitution to limit those powers (clause 20), the ability of an association to act through an agent (clause 21) and the execution of an association's documents (clause 22). These provisions generally follow sections 124–127 of the *Corporations Act 2001* of the Commonwealth.

Division 2 Assumptions people dealing with associations are entitled to make

The proposed Division contains provisions with respect to the circumstances in which certain assumptions may be made in any dealings with an association (clause 23) and the nature of the assumptions that may be made (clause 24). These provisions generally follow sections 128 and 129 of the *Corporations Act 2001* of the Commonwealth.

Division 3 General

The proposed Division contains provisions with respect to a model constitution (to be prescribed by the regulations) that may be adopted by an association (clause 25), the nature of an association's relationship vis-a-vis its members (clause 26) and the effect of contracts entered into in the name of an association prior to its registration (clause 27).

Part 4 Management of associations

Division 1 Committee members

The proposed Division contains provisions with respect to the establishment of a committee for an association (clause 28), the register of committee members to be kept by an association (clause 29), when and how committee meetings may be held (clause 30), the disclosure of private interests by committee members (clause 31), the creation of an offence of making dishonest use of information acquired as a

committee member (clause 32) and the creation of an offence of making dishonest use of one's position as a committee member (clause 33).

Division 2 Public officer and authorised signatories

The proposed Division contains provisions with respect to the appointment of a public officer for an association (clause 34), vacation of office by an association's public officer (clause 35) and the appointment of authorised signatories to execute an association's documents (clause 36).

Division 3 General

The proposed Division contains provisions with respect to when and how an association's general meetings may be held (clause 37), voting generally (clause 38), voting on special resolutions that require at least a 75% majority vote (clause 39), the creation of an offence of conducting an association's affairs for pecuniary gain (clause 40) and the creation of an offence of failing to put an association's name on its correspondence (clause 41).

Part 5 Financial reporting

Division 1 Tier 1 associations

The proposed Division contains provisions with respect to the identification of associations with significant income or assets as "Tier 1 associations" (clause 42), the preparation and auditing of financial statements for Tier 1 associations (clause 43), the submission of such statements and reports at an association's annual general meeting (clause 44) and the lodgment of a financial summary, accompanied by such statements and reports, with the Office of Fair Trading (clause 45).

Division 2 Tier 2 associations

The proposed Division contains provisions with respect to the identification of associations that are not Tier 1 associations as "Tier 2 associations" (clause 46), the preparation of financial statements for Tier 2 associations (clause 47), the submission of such statements at an association's annual general meeting (clause 48) and the lodgment of a financial summary with the Office of Fair Trading (clause 49).

Division 3 General

The proposed Division contains provisions with respect to the keeping of proper records in relation to an association's financial transactions (clause 50), the power to order the auditing of an association's financial records (clause 51), the qualifications to be held by an association's auditor (clause 52) and the exemption of associations from the requirements of the proposed Part (clause 53).

Part 6 External administration and winding up

Division 1 External administration on grounds of insolvency

The proposed Division contains provisions with respect to the adoption of the relevant provisions of the *Corporations Act 2001* of the Commonwealth with respect to the administration of an association that has become insolvent (clause 54).

Division 2 External administration on grounds other than insolvency

The proposed Division contains provisions with respect to the appointment of an administrator for an association otherwise than on the grounds of insolvency (clause 55), the transfer to an administrator so appointed of the management of an association's affairs (clause 56), the revocation of an administrator's appointment (clause 57), the recoupment from an association's funds of the expenses of administration (clause 58), the liabilities to which an administrator is subject (clause 59), the stay of legal proceedings against an association while the association is under administration (clause 60) and the furnishing of reports by an administrator as to his or her administration of an association's affairs (clause 61).

Division 3 Winding up

The proposed Division contains provisions with respect to the voluntary winding up of an association (clause 62), the involuntary winding up of an association pursuant to an order of the Supreme Court (clause 63), the adoption, with specified modifications, of the relevant provisions of the *Corporations Act 2001* of the Commonwealth with respect to the winding up of an association (clause 64), the distribution of surplus property after payment of an association's debts and liabilities (clause 65) and appeals to the Supreme Court against a liquidator's acts, omissions and decisions (clause 66).

Division 4 Offences relating to incurring of debts or fraudulent conduct

The proposed Division contains provisions with respect to the circumstances in which this Division applies to an association (clause 67), the creation of an offence of incurring a debt to an association while the association is, or is imminently to become, insolvent (clause 68), the creation of an offence of being knowingly concerned in any fraudulent act done by an association while the association is, or is imminently to become, insolvent (clause 69), the powers of the Supreme Court with respect to a person who is convicted of such an offence (clause 70) and the preservation of certain rights to indemnity, subrogation or contribution (clause 71).

Part 7 Cancellation and transfer of registration

Division 1 Voluntary cancellation

The proposed Division contains provisions with respect to applications for cancellation of an association's registration (clause 72), the power to direct an association to apply for cancellation of its registration (clause 73), the determination of such applications (clause 74) and the distribution of assets of an association whose registration has been cancelled under the proposed Division (clause 75).

Division 2 Involuntary cancellation

The proposed Division contains provisions with respect to the cancellation of an association's registration, on specified grounds, by the Director-General (clause 76) and the distribution of assets of an association whose registration has been cancelled under the proposed Division (clause 77).

Division 3 Transfer of registration

The proposed Division contains provisions with respect to applications for a "transfer of registration declaration" to facilitate the registration of an association as a corporate entity (such as a company or co-operative) under some other law (clause 78), the determination of such applications (clause 79) and the authority conferred by a transfer of registration declaration (clause 80).

Division 4 General

The proposed Division contains provisions with respect to the loss of corporate status by an association whose registration is cancelled (clause 81), notification of the cancellation of an association's registration (clause 82), preservation of the liabilities of an association's committee members and public officers following cancellation of the association's registration (clause 83) and the reinstatement of registration where an association's registration has been mistakenly cancelled (clause 84).

Part 8 Enforcement provisions

Division 1 Power to require information and documents

The proposed Division contains provisions with respect to the power to require production of information and documents in relation to an association's affairs (clause 85), the power to enter premises at which an association carries on its activities (clause 86), the issue of search warrants authorising entry to residential and other premises (clause 87), the manner in which powers of entry are to be exercised (clause 88) and the payment of compensation for damage caused by the exercise of a power of entry (clause 89).

Division 2 Offences

The proposed Division contains provisions with respect to the creation of an offence of unlawfully using the word “Incorporated” or “Inc” in the name of an organisation that is not a registered association (clause 90), the liability of an association’s committee members for offences committed by the association (clause 91), the creation of an offence of obstructing or hindering an authorised officer in the exercise of his or her functions (clause 92), the issuing of penalty notices for offences under the proposed Act (clause 93) and the venue in which, and the time within which, proceedings for an offence under the proposed Act may be commenced (clause 94).

Part 9 Application of Corporations legislation

The proposed Part contains provisions with respect to the exclusion, pursuant to section 5F of the *Corporations Act 2001* of the Commonwealth, of certain matters concerning an association from the application of Corporations legislation within the meaning of that Act (clause 95), the declaration of other matters concerning an association as matters to which the Corporations legislation applies (clause 96) and the modification of the provisions of the Corporations legislation so applied (clause 97).

Part 10 Miscellaneous

The proposed Part contains provisions with respect to the Register of Incorporated Associations (clause 98), the refusal to register documents (clause 99), the issuing of evidentiary certificates (clause 100), the service of documents (clause 101), the appointment of authorised officers (clause 102), the exclusion of personal liabilities (clause 103), the review of certain decisions by the Administrative Decisions Tribunal (clause 104), the power to waive, remit or postpone certain fees (clause 105), delegations (clause 106), the power to make regulations (clause 107), the repeal of the *Associations Incorporation Act 1984* and the regulation under that Act (clause 108) and the quinquennial review of the proposed Act (clause 109).

Schedule 1 Matters to be addressed in association’s constitution

The proposed Schedule lists the various matters that must be addressed in an association’s constitution.

Schedule 2 Provisions relating to association’s assets, rights and liabilities

The proposed Schedule contains provisions with respect to the transfer to an association that becomes incorporated under the proposed Act of the assets, rights and liabilities of the body or bodies from which it has been constituted.

Schedule 3 Amendment of other Acts

The proposed Schedule amends various Acts as a consequence of the enactment of the proposed Act.

Schedule 4 Savings, transitional and other provisions

The proposed Schedule contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act.