

Introduced by the Hon Dr Arthur Chesterfield-Evans, MLC



New South Wales

# Sydney University Settlement Incorporation Amendment Bill 2005

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2005

*Clerk of the Parliaments*



New South Wales

## **Sydney University Settlement Incorporation Amendment Bill 2005**

Act No     , 2005

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An Act to amend the *Sydney University Settlement Incorporation Act 1959* to make further provision with respect to the Constitution of the Sydney University Settlement and the disposal of property of the Settlement; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Sydney University Settlement Incorporation Amendment Act 2005*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Sydney University Settlement Incorporation Act 1959 No 16**

The *Sydney University Settlement Incorporation Act 1959* is amended as set out in Schedule 1.

**4 Repeal of amendments**

- (1) Sections 2A, 2B, 3A and 11–18 of, and Schedule 1 to, the *Sydney University Settlement Incorporation Act 1959* are repealed:
  - (a) one year after the date of assent to this Act, or
  - (b) on a day specified by the Governor by proclamation, whichever is later.
- (2) The Governor may make more than one proclamation under this section.

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## Schedule 1 Amendments

(Section 3)

### [1] Sections 2A and 2B

Insert after section 2:

#### 2A Aims and objectives of Settlement

- (1) The aims and objectives of the Sydney University Settlement are as follows:
  - (a) to operate within, and to implement, the nineteenth century “settlement tradition” which includes direct service, education and social reform and is based on the philosophy of people from different backgrounds or cultures working together in reciprocal relationships to improve social conditions and learning from each other in the process,
  - (b) to be a non-profit, charitable and benevolent organisation, the purpose of which is to relieve poverty, sickness, suffering, distress, misfortune, destitution or helplessness by:
    - (i) building the links between communities and increasing the capacity of communities to gain more control over their situations and lives, and
    - (ii) providing direct material assistance to disadvantaged people and groups, and
    - (iii) running educational programs, activities, classes and groups to increase the skills and capabilities of disadvantaged people, and
    - (iv) educating the wider community about social problems and solutions to those problems, and
    - (v) building networks of, and strengthening links between, different social, ethnic and cultural groups to develop more cohesive and supportive communities, and
    - (vi) providing information, referrals, advice, counselling and support programs to disadvantaged people, and
    - (vii) providing low-cost facilities to disadvantaged people in order to improve access to services and quality of life, and
    - (viii) promoting and advocating policy, legal and social changes that will benefit disadvantaged people, and

- (ix) improving the capacity of groups, organisations and the wider community to support and assist disadvantaged people, and
  - (x) researching the needs of disadvantaged communities and gaps in services for disadvantaged people, and
  - (xi) acting as a catalyst to bring together individuals, families, groups and cultures to identify their own needs and to get those people to work together to solve their own problems, and
  - (xii) carrying out any other activities that result in community benefit,
  - (c) to carry out its aims and objectives without discrimination or prejudice against people based on gender, race, ethnicity, sexuality, disability or religious or political beliefs,
  - (d) to direct its efforts and resources to groups within the local community that are disadvantaged and marginalised,
  - (e) to use strategies that promote community development and empowerment.
- (2) Sydney University Settlement recognises the prior occupation by Aboriginal peoples who were displaced and dispossessed and is committed to the objective of respecting the heritage, rights and place of indigenous peoples in Australia.

**2B Constitution to be read subject to aims and objectives**

The constitution is to be read subject to the aims and objectives set out in section 2A and subject to the other provisions of this Act.

**[2] Section 3A**

Insert after section 3:

**3A Use and disposal of property**

- (1) The Settlement's property is to be used exclusively to carry out the Settlement's aims and objectives as set out in section 2A despite any condition or trust affecting the property.
- (2) No portion of the Settlement's property is to be paid to a member (including a member of the executive committee) except as genuine remuneration for services rendered or expenses incurred on behalf of the Settlement.

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- (3) No interest in the Settlement's real property is to be disposed of unless the disposal has the approval of at least two-thirds of members attending, and entitled to vote at, a special general meeting that has been called to approve that disposal.
- (4) At any special general meeting called to approve a disposal of an interest in the Settlement's real property, a member cannot participate in, and is not entitled to vote at, the meeting, if that member, or a close relative or close associate of that member, may gain a financial or other benefit from the disposal (including, but not limited to, a benefit from a possible increase or change in the value of land in the vicinity of the real property that is the subject of the special general meeting).
- (5) The Registrar-General is not to register under the *Real Property Act 1900* a transfer of land held by or on behalf of the Settlement (or the corporation) to another person, or any other dealing in relation to any such land that is otherwise registrable under that Act or the *Conveyancing Act 1919*, unless a certificate under the common seal of the corporation is lodged with the Registrar-General certifying that the requirements of subsection (3) have been satisfied.
- (6) In this section:
- close associate** of a member means:
- (a) a partner of the member, or
  - (b) an employee or agent of the member, or
  - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the member, a person referred to in paragraph (a) or (b) or a close relative of the member has a beneficial interest.
- close relative** of a member means:
- (a) a spouse of the member, or
  - (b) a person who is in a de facto relationship with the member within the meaning of the *Property (Relationships) Act 1984*, or
  - (c) a child, grandchild, sibling, parent or grandparent of the member.
- dispose** includes sell, transfer, lease, mortgage or otherwise encumber or agree to do any of these.
- member** means a person who is a member of the Settlement in accordance with the constitution.
- property** of the Settlement includes property of the corporation and any proceeds of the disposal of any such property.

*Settlement's real property* includes any building on that property.

*special general meeting* means a special general meeting of all of the members called in accordance with the constitution.

**[3] Section 11 and Schedule 1**

Insert after section 10:

**11 Voluntary winding up**

- (1) The corporation may be voluntarily wound up under this section if:
  - (a) a notice of the proposed voluntary winding up is published in a newspaper circulating in the Sydney area, and
  - (b) at least one month after that notice is published at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of voluntary winding up, and
  - (c) the Minister has issued a certificate:
    - (i) approving the voluntary winding up of the corporation, and
    - (ii) certifying that the requirements of this subsection have been satisfied.
- (2) Except with the leave of the Supreme Court, the members of the corporation cannot resolve that it be wound up voluntarily if proceedings for the corporation to be wound up by the Court under section 12 have been commenced and have not been finally determined.
- (3) The corporation is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the corporation continue until it is wound up under this section.
- (4) If the Minister has certified that all of the requirements of subsection (1) have been satisfied, the corporation must be wound up.
- (5) The Minister must ensure that notice of the winding up of the corporation under the *Corporations Act 2001* of the Commonwealth is published in a newspaper circulating in the Sydney area.
- (6) Subsection (3) ceases to apply if the Minister decides not to approve a voluntary winding up.

## **12 Winding up by the Court**

- (1) The Supreme Court may order the winding up of the corporation if:
  - (a) at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of winding up by the Court, or
  - (b) the Minister has issued a certificate certifying that he or she is of the opinion that the corporation is unable to properly carry out its functions, or
  - (c) the corporation is unable to meet its liabilities, or
  - (d) the Court is otherwise of the opinion that it is just and equitable that the Corporation be wound up.
- (2) An application to the Court for the winding up of the Corporation may be made by:
  - (a) the Corporation (but only if a resolution is passed by at least 75 per cent of the members in favour of making the application), or
  - (b) the Minister.

## **13 Procedure for winding up**

- (1) The winding up of the corporation is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (the ***applied provisions***), subject to the following modifications:
  - (a) the applied provisions have effect subject to the provisions of sections 11 and 12 of this Act,
  - (b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to the corporation,
  - (c) a past or present member of the executive committee or the Settlement is not liable to pay the corporations's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,
  - (d) the distribution of surplus property after the corporation is wound up is to be dealt with in accordance with section 14 despite anything to the contrary in the applied provisions,

- (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
  - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

**14 Distribution of surplus property**

- (1) Despite the provisions of any other Act or law, if there is property of the corporation after the corporation is wound up, the liquidator must transfer the property to another person or body that is approved in writing by the Minister.
- (2) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.
- (3) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

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**15 Vesting of assets after winding up of corporation**

- (1) To the extent to which any assets:
- (a) are given to the corporation, or to a person for the benefit of the corporation, or
  - (b) are payable to, or recoverable by, the corporation or any person on behalf of the corporation,
- by or under an instrument that takes effect on or after the date on which the corporation is wound up, a reference in the instrument to the corporation is to be treated as a reference to the Minister.
- (2) Assets referred to in subsection (1) are to be transferred by the Minister to another person or body and section 14 (2) and (3) apply to the transfer as if it were a transfer of property under section 14.
- (3) In this section:
- instrument* means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.

**16 Application to Court**

The Minister, or any other interested person who has leave of the Supreme Court, may apply to the Court:

- (a) to determine any question arising in the winding up of the corporation under this Act, or in the application by section 13 of provisions of the *Corporations Act 2001* of the Commonwealth to the winding up, or
- (b) to exercise all or any of the powers that the Court might exercise if the corporation were being wound up by the Court.

**17 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**18 Savings and transitional provisions**

Schedule 1 has effect.

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## Schedule 1 Savings and transitional provisions

(Section 18)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Sydney University Settlement Incorporation Amendment Act 2005*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### 2 Disposal of property

- (1) Section 3A (5) applies to any registrable dealing that is not registered before the date of assent to the *Sydney University Settlement Incorporation Amendment Act 2005*.
- (2) Despite subclause (1), section 3A (5) does not apply to a registrable dealing for the transfer of land, if the contract for the sale of the land was entered into before the date of assent.