

ASSOCIATIONS INCORPORATION (AMENDMENT) ACT 1992
No. 4

NEW SOUTH WALES



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ASSOCIATIONS INCORPORATION (AMENDMENT) ACT 1992
No. 4

NEW SOUTH WALES



Act No. 4, 1992

An Act to amend the Associations Incorporation Act 1984 to make further provision in respect of the membership and affairs of, the cancellation of incorporation of, and the regulatory requirements imposed on, incorporated associations, and for other purposes. [Assented to 17 March 1992]

Associations Incorporation (Amendment) Act 1992 No. 4

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Associations Incorporation (Amendment) Act 1992.

Commencement

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

Amendment of Associations Incorporation Act 1984 No. 143

3. The Associations Incorporation Act 1984 is amended as set out in Schedule 1.

Explanatory notes

4. Matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Before the definition of “committee”, insert:

“Commissioner” means the Commissioner for Consumer Affairs;

(b) Omit the definition of “Managing Director”.

(c) From the definition of “member”, omit “who” wherever occurring, insert instead “, body or organisation that”.

(d) In the definition of “officer”, after “association” where lastly occurring, insert “nor any member of the association that is not an individual”.

Explanatory note

At present, because the definition of “member” in relation to an association refers to a person (i.e., an individual or a body corporate), it can be argued that unincorporated bodies or organisations are prevented from being members of associations for the purposes of the Act. The amendment in item (1) (c) makes it clear that such bodies or organisations can be members of associations.

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SCHEDULE 1—AMENDMENTS— *continued*

The amendment in item (1) (d) makes it clear that a member of an association that is not an individual is prevented from being an office of an association. An officer of an association includes a member of the committee of the association, the public officer and the secretary.

The amendments in item (1) (a) and (b) reflect the administrative changes concerning the abolition of Business and Consumer Affairs and the position of Managing Director of that department. The Commissioner for Consumer Affairs currently exercises the functions under the Principal Act that the Managing Director of Business and Consumer Affairs exercised before 1 July 1991.

(2) The whole Act:

Omit “Managing Director” and “Managing Director’s” wherever occurring, insert instead “Commissioner” and “Commissioner’s” respectively.

Explanatory note

The amendments in item (2) replace references in the Act to the Managing Director of Business and Consumer Affairs with references to the Commissioner for Consumer Affairs.

(3) Sections 6 (Application of Corporations Law), 7 (2) (f), 48 (1), 49 (1) (a), 50 (2), 51 (1) (h) and (3), 52 (Application of Corporations Law), 56 (Registration under the Corporations Law or the Co-operation Act 1923), 57 (1) (a):

Omit “Companies (New South Wales) Code” wherever occurring, insert instead “Corporations Law”.

(4) Sections 7 (2) (f), 52:

Omit “that Code” wherever occurring, insert instead “that Law”.

Explanatory note

The amendments in items (3) and (4) replace references in the Act to the Companies (New South Wales) Code with references to the Corporations Law. Since 1 January 1991, the Corporations Law supersedes the Companies (New South Wales) Code, however the latter continues to operate in relation to matters arising before 1 January 1991.

(5) Section 9 (Application for incorporation):

- (a) At the end of section 9 (a) (iii), insert “and”.
- (b) Omit section 9 (a) (iv), (d) and (e) (iii).
- (c) At the end of section 9 (e) (i), insert “and”.
- (d) From section 9 (e) (ii), omit “and”.

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note

The amendments in item (5) remove the requirement that an application for incorporation must state details about the members of the first committee of the proposed incorporated association and about trusts relating to the association.

(6) Section 12 (**Names**):

After section 12 (4), insert:

(5) Nothing in this section requires an incorporated association to use the word “Incorporated” or the abbreviation “Inc.” at the end of its name when the name appears on any document (other than a document referred to in subsection (4)) or on any other matter.

Explanatory note

The amendment in item (6) provides that the requirement that an incorporated association must have at the end of its name the word “Incorporated” or the abbreviation “Inc.” only applies when the name appears on documents such as business letters, statements of account, invoices, official notices etc.

(7) Section 20 (**Alteration of objects and rules**):

Omit section 20 (3), insert instead:

(3) Any such alteration has effect when the notice is lodged with the Commissioner and the requirements of subsection (2) are complied with in respect of the alteration.

Explanatory note

The amendment in item (7) makes it clear that the alteration of the statement of objects or the rules of an incorporated association has effect when the prescribed notice setting out the particulars of the alteration is lodged with the prescribed fee.

(8) Section 21 (**Committee of incorporated association**):

Omit section 21 (2).

(9) Section 21A:

After section 21, insert:

Register of committee members

21A. (1) An incorporated association must keep a register of the members of the committee of the association.

(2) The register must contain the following particulars:

- (a) the names and residential addresses of each person who is a member of the committee;
- (b) the date on which the person became a member;

SCHEDULE 1—AMENDMENTS—*continued*

(c) such other particulars as may be prescribed.

(3) The register must be kept at the residential address of the public officer of the incorporated association concerned or at such other place or in such other manner as may be prescribed.

(4) An incorporated association must record in the register any change in the membership of the committee of the association within 1 month after the change occurs.

(5) In the case of an incorporated association that has ceased to exist, the person who was the public officer of the association immediately before the association ceased to exist must keep the register for a period of 2 years after the association ceased to exist.

(6) The register of the members of the committee of an incorporated association may, at all reasonable hours, be inspected by any person without payment of any fee.

Maximum penalty (subsections (1)–(5)): 1 penalty unit.

Explanatory note

The amendment in item (8) removes the requirement that an incorporated association must notify the Commissioner of any change that occurs in the membership of the committee of the association.

The amendment in item (9) provides instead that an incorporated association is required to keep a register of committee members and to record in it any changes to the membership of the committee.

(10) Section 26 (Annual general meeting):

(a) From section 26 (2) (b), omit “2”, insert instead “6”.

(b) From section 26 (3), omit “upon application being made by an incorporated association”, insert instead “on application (accompanied by the prescribed fee) being made by the public officer of the incorporated association concerned”.

Explanatory note

The amendment in item (10) (a) enables an incorporated association to hold its first annual general meeting within the period of 6 months (instead of 2 months) after the expiration of the first financial ~~year~~ of the association,

The amendment in item (10) (b) provides that the public officer of an incorporated association (rather than the association itself) can apply for an extension of time to hold the annual general meeting of the association.

SCHEDULE 1—AMENDMENTS—*continued*

(11) Section 27 (**Lodgment of accounts**):

From section 27 (1) (b), omit “a person who attended the meeting, being a member of the committee of the incorporated association,”, insert instead “2 members of the committee of the incorporated association authorised by resolution of the committee”.

Explanatory note

The amendment in item (11) provides that the statement of an incorporated association to be lodged with the Commissioner after the annual general meeting of the association must be accompanied by a certificate signed by 2 members of the committee of the association instead of just one member who attended the meeting.

(12) Section 28:

Omit the section, insert instead:

Keeping of accounts and minutes of proceedings

28. (1) An incorporated association must ensure:

- (a) that proper accounting records are kept which correctly record and explain the transactions of the association and its financial position; and
- (b) that minutes of all proceedings at committee meetings and general meetings of the association are entered in books kept for that purpose.

Maximum penalty: 5 penalty units.

(2) The regulations may make provision for or in respect of the keeping and inspection of accounts and minutes under this section.

Explanatory note

The amendment in item (12) removes the requirement that an incorporated association must notify the Commissioner of the particulars of any trust of which the association is a trustee. Instead a new section is inserted requiring an incorporated association to keep proper accounts and to ensure that minutes of all proceedings are made.

(13) Section 42 (**Definition**):

Omit section 42 (b), insert instead:

- (b) approved by the Minister by order published in the Gazette.

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note

The amendment in item (13) removes the requirement for the prescribing of approved insurers by regulation.

(14) Section 48 (*Application to bring company or co-operative society under Act*):

(a) At the end of section 48 (3) (b) (ii), insert “and”.

(b) Omit section 48 (3) (b) (iii).

Explanatory note

The amendment in item (14) provides that the application for incorporation under the Act by a company limited by guarantee or by a co-operative society does not need to be accompanied by a notice specifying particulars of any trusts relating to the company or society.

(15) Section 53 (**Distribution of surplus property**):

Omit section 53 (2), insert instead:

(2) In a winding up of an incorporated association, the surplus property of the association is to be distributed in accordance with a special resolution of the association.

(2A) Any such distribution of surplus property:

(a) must be approved by the Commissioner; and

(b) is not to be made to any member or former member of the association (other than a member or former member which is an unincorporated association having, at the time of the distribution, rules preventing the distribution of property to its members); and

(c) is subject to any trust affecting that property or any part of it.

(2B) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

Explanatory note

At present, if in a winding up of an incorporated association there is any surplus property remaining after satisfaction of the debts and liabilities of the association, the surplus property vests in an association that has similar objects to those of the

SCHEDULE 1—AMENDMENTS—*continued*

association being wound up. The amendment in item (15) enables any surplus property to be distributed (with the approval of the Commissioner) in accordance with a special resolution of the association.

(16) Sections 55A and 55B:

After section 55, insert:

Voluntary cancellation of incorporation

55A. (1) An incorporated association may apply to the Commissioner, in a form approved by the Commissioner, to have the incorporation of the association cancelled by the Commissioner.

(2) Any such application must:

- (a) be approved by a special resolution of the incorporated association; and
- (b) be accompanied by a statement indicating the manner in which any surplus property of the association is to be distributed in accordance with section 55B; and
- (c) be accompanied by a statement (verified by statutory declaration by 2 members of the committee of the association) that the association is able to pay or meet the association's debts and liabilities (if any).

(3) The Commissioner may, by notice published in the Gazette, cancel the incorporation of the association if the Commissioner is satisfied:

- (a) that the application is in accordance with subsection (2); and
- (b) that the association is able to pay or meet its debts and liabilities; and
- (c) all the requirements of this Act in respect of the association have been met.

(4) Any such cancellation takes effect on the date of the publication of the relevant notice in the Gazette or such later date as may be specified in the notice.

(5) If the Commissioner is satisfied that the incorporation of an incorporated association was cancelled under this section:

- (a) as the result of any error by the Commissioner or in the application by the association; or

SCHEDULE 1—AMENDMENTS— *continued*

- (b) as a result of any fraud by a member of the association or in order to avoid any liability resulting from an event which arose during the time when the association was incorporated,

the Commissioner may reinstate the incorporation of the association and the association is taken to have continued in existence as if its incorporation had not been cancelled.

(6) Despite the cancellation of the incorporation of an association under this section, any liability of the public officer and of each officer and member of the incorporated association continues and may be enforced as if the incorporation of the association had not been cancelled.

(7) If, before the Commissioner cancels the incorporation of an association under this section, the incorporated association has commenced to be wound up under section 50 or 51:

- (a) the Commissioner may cancel the incorporation despite the commencement of the winding up; and
(b) the cancellation of the incorporation does not affect the winding up.

Distribution of surplus property on voluntary cancellation of incorporation

55B. (1) On the cancellation of the incorporation of an incorporated association under section 55A, the surplus property of the association (being property of the association remaining after satisfaction of the debts and liabilities of the association) is to be distributed in accordance with a special resolution of the association.

(2) Any such distribution of surplus property:

- (a) must be approved by the Commissioner; and
(b) is not to be made to any member or former member of the association (other than a member or former member which is an unincorporated association having, at the time of the distribution, rules preventing the distribution of property to its members); and
(c) is subject to any trust affecting that property or any part of it.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

(4) A person aggrieved by the operation of this section in relation to the surplus property of an incorporated association may apply to the Court which may make such orders as to the disposal of the surplus property as the Court thinks proper.

Explanatory note

The amendment in item (16) (proposed section 55A) provides that an incorporated association may apply to the Commissioner for the cancellation of the association's incorporation. The voluntary cancellation is subject to the requirement that the association is able to pay or meet its debts and liabilities.

Proposed section 55B provides that on the voluntary cancellation of an incorporated association, any surplus property is to be distributed in the same way as surplus property is distributed in a winding up of an incorporated association (i.e., in accordance with a special resolution and subject to the approval of the Commissioner).

(17) Section 71 (Proceedings for offences):

Omit "court of petty sessions constituted by a stipendiary magistrate", insert instead "Local Court constituted by a Magistrate".

(18) Section 72 (Appeals from decisions of Commissioner):

- (a) Omit "rules of the Court", insert instead "rules made under the Local Courts (Civil Claims) Act 1970".
- (b) Omit "to the Court", insert instead "to a Local Court".
- (c) Before "Court" where lastly occurring, insert "Local".

Explanatory note

The amendment in item (18) provides that appeals from decisions of the Commissioner under the Act (for example, refusing to incorporate an association) are to be made to a Local Court rather than to the Supreme Court. The amendment in item (17) updates a reference to Local Courts.

(19) Section 73 (Regulations):

- (a) At the end of section 73 (1) (a), insert "or".

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 73 (1) (b), insert:
 (b1) the payment of additional fees for the late payment of any prescribed fee; or

Explanatory note

The amendment in item (19) enables the regulations to provide for the payment of additional fees for late payment of prescribed fees (for example, in relation to the lodgment of documents with the Commissioner).

- (20) Section 74:

After section 73, insert:

Savings and transitional provisions

74. Schedule 3 has effect.

Explanatory note

The amendment in item (20) gives effect to Schedule 3 (to be inserted in the Act) which contains provisions of a savings and transitional nature.

- (21) Schedule 1 (**Matters to be provided for in rules of an incorporated association and in model rules**):

After item 5, insert:

Internal disputes

5A. The mechanism for the resolution of disputes between members (in their capacity as members) and between members and the incorporated association.

Explanatory note

Schedule 1 to the Act describes the matters to be provided for in the rules of an incorporated association and in the model rules. These include such matters as the qualifications for membership, the disciplining of members and the procedure and calling of meetings. The amendment in item (21) provides that the rules of an association are to provide a mechanism for resolving disputes between members and between members and the association.

- (22) Schedule 2 (**Provisions relating to property, liabilities etc. of incorporated associations**):

Omit clauses 1, 2, 3, 5, 7 and 8, insert instead:

Definitions

1. In this Schedule:

“assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any

SCHEDULE 1—AMENDMENTS—*continued*

description (including money), and includes securities, choses in action and documents;

“former association”, in relation to an incorporated association, means:

- (a) the association or other body which was incorporated under this Act to form the incorporated association; or
- (b) in the case of an amalgamated association incorporated under section 47—an incorporated association which was a party to the amalgamation,

and includes any or all the members of the former association as members;

“instrument” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“liabilities” means liabilities, debts and obligations (whether present or future and whether vested or contingent).

Transfer of assets and liabilities etc.

2. (1) On the incorporation of an association or other body under this Act, the following provisions have effect:

- (a) the assets of a former association of the incorporated association vest in the incorporated association without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of a former association of the incorporated association become the rights and liabilities of the incorporated association;
- (c) all proceedings relating to the assets, rights and liabilities of a former association of the incorporated association commenced before the incorporation by or against the former association and pending

SCHEDULE 1—AMENDMENTS—*continued*

immediately before the incorporation are taken to be proceedings pending by or against the incorporated association;

- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities of a former association of the incorporated association before the incorporation by, to or in respect of the former association is (to the extent to which that act, matter or thing has my force or effect) taken to have been done or omitted by, to or in respect of the incorporated association;
- (e) a reference in an instrument or in any document of any kind to a former association of the incorporated association is, subject to the regulations, to be read as, or as including, a reference to the incorporated association.

(2) Assets which vest in an incorporated association by virtue of this clause are not to be dealt with contrary to the provisions of any trust affecting the assets immediately before the incorporation of the association or other body under this Act, being provisions as to the purposes for which the assets may or are required to be applied.

(3) The operation of this clause is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.

Explanatory note

At present, Schedule 2 to the Act contains certain provisions relating to the vesting of property and the transfer of assets, rights and liabilities of an association on its

SCHEDULE 1—AMENDMENTS—*continued*

incorporation under the Act. The amendment in item (22) recasts those provisions in order to simplify them and to clarify their operation and effect. This will also bring the provisions relating to vesting of property and transfer of assets, rights and liabilities into line with other Acts containing similar provisions (for example, the State Bank (Corporatisation) Act 1989).

(23) Schedule 3:

After Schedule 2, insert:

**SCHEDULE 3—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 74)

**PART 1—SAVINGS AND TRANSITIONAL
REGULATIONS**

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the Associations Incorporation (Amendment) Act 1992.

(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 before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
ASSOCIATIONS INCORPORATION (AMENDMENT)
ACT 1992**

Definition

2. In this Part:

“**amending Act**” means the Associations Incorporation (Amendment) Act 1992.

SCHEDULE 1—AMENDMENTS—*continued***Matters arising under Companies Code**

3. Despite Schedule 1 (3) and (4) to the amending Act, the provisions of the Companies (New South Wales) Code, as applied by this Act in relation to matters affecting associations, continue to operate in relation to such matters that arose before, and are still current at, the commencement of those amendments.

Prescribed insurers

4. On the commencement of Schedule 1 (13) to the amending Act, any insurer prescribed for the purposes of section 42 (b) of this Act (as in force immediately before that commencement) is taken to be an insurer approved by the Minister under section 42 (b) as amended by that Schedule.

Appeals from decisions of Commissioner

5. The amendments to section 72 made by Schedule 1 (18) to the amending Act apply only to decisions of the Commissioner made after the commencement of those amendments.

Vesting of property and transfer of assets, liabilities etc. on incorporation

6. The amendments to Schedule 2 made by Schedule 1 (22) of the amending Act apply to the incorporation of an association or other body under this Act whether before or after the commencement of those amendments.

Explanatory note

The amendment in item (23) inserts provisions of a savings and transitional nature consequent on the enactment of the proposed Act. In particular, provision is made in respect of certain matters arising under the Companies (New South Wales) Code (despite replacing references to that Code in the Act with references to the Corporations Law) and for the amendments relating to appeals being made to a Local Court instead of to the Supreme Court to apply only to decisions made by the Commissioner after the commencement of those

*[Minister's second reading speech made in—
Legislative Assembly on 25 February 1992
Legislative Council on 4 March 1992]*