



New South Wales

# Roman Catholic Church Communities' Lands Regulation 2012

under the

Roman Catholic Church Communities' Lands Act 1942

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Roman Catholic Church Communities' Lands Act 1942*.

GREG SMITH, MP  
Attorney General

## Explanatory note

The object of this Regulation is to remake, in a different format, the provisions of the *Roman Catholic Church Communities' Lands Regulation 2004*, which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The *Roman Catholic Church Communities' Lands Act 1942* creates trustees of certain community land and constitutes those trustees as bodies corporate. Sections 20 and 21 of that Act provide for a body corporate to be wound up voluntarily or by the Supreme Court. Section 22 establishes the procedure for winding up of bodies corporate by applying the text of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (which deals with external administration, including winding up) to the winding up of a body corporate in New South Wales. (Part 3 of the *Corporations (Ancillary Provisions) Act 2001* permits New South Wales laws to declare that part or all of the *Corporations Act 2001* applies as a law of New South Wales.) The provisions of Chapter 5 of the *Corporations Act 2001* apply as a State law with the modifications set out in section 16 of the *Corporations (Ancillary Provisions) Act 2001* and section 22 of the *Roman Catholic Church Communities' Lands Act 1942* and to any further modifications prescribed by the regulations.

The object of this Regulation is to further modify the application of the provisions of Chapter 5 of the *Corporations Act 2001* in relation to the winding up of a body corporate under the *Roman Catholic Church Communities' Lands Act 1942*. The intention is to modify the application of Chapter 5 so that only those provisions relating to winding up voluntarily or by a court will apply.

It is noted that section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* provides that, where a part or all of the *Corporations Act 2001* already applies to a particular matter as a law of the Commonwealth, a New South Wales law purporting to apply that part of the

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Commonwealth law as a law of New South Wales will not apply. It is possible that some bodies corporate incorporated under the *Roman Catholic Church Communities' Lands Act 1942* will be subject to Chapter 5 by force of Commonwealth law (although many are likely to be affected only to a minor extent, under Part 5.7 of Chapter 5). Accordingly, to the extent that a body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* is already subject to any part of Chapter 5 by force of Commonwealth law, neither the *Roman Catholic Church Communities' Lands Act 1942* nor this Regulation can apply to alter the *Corporations Act 2001*.

This Regulation is made under the *Roman Catholic Church Communities' Lands Act 1942*, including sections 22 (regarding the procedure for winding up) and 27 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature.

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Roman Catholic Church Communities' Lands Act 1942

### 1 Name of Regulation

This Regulation is the *Roman Catholic Church Communities' Lands Regulation 2012*.

### 2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Roman Catholic Church Communities' Lands Regulation 2004* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Modification of Chapter 5 of Corporations Act 2001 of the Commonwealth concerning winding up

- (1) For the purposes of section 22 (1) (e) of the *Roman Catholic Church Communities' Lands Act 1942*, the following modifications of Chapter 5 of the *Corporations Act 2001* of the Commonwealth are prescribed:
  - (a) Chapter 5 is to be read as if provisions that are solely about the following matters were disregarded and as if any references to those matters in provisions that also deal with other matters were disregarded:
    - (i) shares of the company or buy-back agreements,
    - (ii) dividends or debts owed to members,
    - (iii) floating charges or debentures,
    - (iv) contributories or promoters,
    - (v) winding up in insolvency, winding up by creditors or contributories or winding up on the application of a liquidator,
    - (vi) insolvent trading, insolvent transactions and declarations of solvency,
    - (vii) the distribution of surplus property,

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- (viii) arrangements or reconstructions, including compromises with creditors,
  - (ix) receivers, managers or other controllers, of property of corporations,
  - (x) the administration of a company's affairs, including administration with a view to executing a deed of company arrangement,
  - (xi) subsidiaries, related entities, related bodies corporate, pooled groups or pooling or holding companies,
  - (xii) serving documents on a company,
  - (xiii) directors' duties to prevent insolvent trading, directors' liability to compensate the company and the election of directors,
  - (xiv) co-operation between Australian and foreign courts in external administration matters,
  - (xv) offences,
  - (xvi) employee entitlements other than those under section 558,
  - (xvii) the application of, and liability under, the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth,
  - (xviii) electronic notification,
  - (xix) the powers and functions of ASIC, the making of applications by ASIC or the lodging of resolutions, court orders, notices, reports, returns, accounts, statements or applications of any kind with ASIC,
  - (xx) the holding of meetings in the manner provided by the *Corporations Act 2001* of the Commonwealth,
- (b) Chapter 5 is to be read as if sections 466 (3), 475 (2) (a), (b) and (d), 486A (9), 496 (2)–(9), 513B (a)–(d), 533, 588E (4)–(7), 588Z and Parts 5.1, 5.2, 5.3A, 5.4, 5.4A, 5.7, 5.8, 5.8A and 5.9 were disregarded,
  - (c) references in Chapter 5 to officers or directors are to be read as references to members and references to the secretary are to be read as references to the Provincial,
  - (d) references in Chapter 5 to rules are to be read as references to the *Supreme Court (Corporations) Rules 1999*,
  - (e) references in Chapter 5 to a solicitor are to be read as references to an Australian legal practitioner,
  - (f) references in Chapter 5 to “this Act” are to be read as references to Chapter 5 of the *Corporations Act 2001* of the Commonwealth (as modified by the *Corporations (Ancillary Provisions)*)

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*Act 2001, the Roman Catholic Church Communities' Lands Act 1942 and this clause),*

- (g) references in Chapter 5 to an application for winding up under section 459P, 462 or 464 are to be read as references to an application by a body corporate or Bishop under section 21 of the *Roman Catholic Church Communities' Lands Act 1942* for winding up by the Court,
- (h) section 467A is to be read as if the reference to an application under Part 5.4 or 5.4A were a reference to an application for a body corporate to be wound up by the Court,
- (i) section 472 (6) is to be read as if the reference to a creditor were disregarded,
- (j) section 479 is to be read as if the section provided that the liquidator must distribute all of the body corporate's surplus property in accordance with section 23 of the *Roman Catholic Church Communities' Lands Act 1942*,
- (k) section 481 (1) (a) is to be read as if the words "by ASIC" were omitted,
- (l) section 482 (1A) (a) is to be read as if the reference to the persons who may make an application were a reference to the persons empowered to apply to the Court to wind up a body corporate under section 21 (2) of the *Roman Catholic Church Communities' Lands Act 1942*,
- (m) section 482 (3) and (4) is to be read as if references to the convening of a meeting were disregarded,
- (n) section 489D is to be read as if the references to sections 598 and 1323 were disregarded,
- (o) section 493 is to be read as if it provided "The company must, from the passing of the resolution that it be voluntarily wound up, cease to carry on its business except so far as in the opinion of the liquidator is required for the beneficial disposal or winding up of that business, provided that there is no breach of section 20 (3) of the *Roman Catholic Church Communities' Lands Act 1942*.",
- (p) section 496 (1) is to be read as if all words in that subsection were omitted and the words "Where the liquidator is at any time of the opinion that the body corporate will not be able to pay or provide for the payment of its debts in full within the period not exceeding 12 months after the commencement of the winding up, he or she must apply for the company to be wound up as soon as practicable." were inserted instead,
- (q) section 501 is to be read as if the words after "equally" were omitted and the words "and any surplus must be distributed in

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accordance with section 23 of the *Roman Catholic Church Communities' Lands Act 1942*” were inserted instead,

- (r) sections 504 and 542 are to be read as if references to the deregistration of the company were references to the making of a proclamation in relation to the body corporate under section 26 of the *Roman Catholic Church Communities' Lands Act 1942*,
- (s) section 508 (1) is to be read as if the liquidator was required to convene a general meeting within 3 months after the end of the first year beginning on the day on which the company resolved that it be wound up voluntarily and the end of each succeeding year,
- (t) sections 513A and 513D are to be read as if references to sections 233, 459A, 459B or 461 were references to section 21 of the *Roman Catholic Church Communities' Lands Act 1942*,
- (u) section 513A is to be read as if the section provided that the winding up is taken to have begun or commenced on the day on which the order was made,
- (v) section 539 (1) is to be read as if the references to lodging accounts and statements were references to lodging the documents with the Court,
- (w) sections 539 (2), (4) and (6) and 542 (4) are to be read as if the references to ASIC were references to the Court,
- (x) section 544 (3) is to be read as if the reference to ASIC were disregarded,
- (y) section 544 is to be read as if the words “to ASIC to be dealt with under Part 9.7” were omitted and the words “in accordance with sections 23 and 24 of the *Roman Catholic Church Communities' Lands Act 1942*” were inserted instead,
- (z) the references in sections 568A–568C to lodging a written notice of disclaimer are to be read as if they were references to filing a written notice of disclaimer with the Court,
- (aa) Chapter 5 is to be read with such other modifications as are necessary for the purposes of applying the provisions of that Chapter to the winding up of a body corporate under the *Roman Catholic Church Communities' Lands Act 1942*, subject to the modifications to those applied provisions specified in:
  - (i) section 22 (1) of the *Roman Catholic Church Communities' Lands Act 1942*, and
  - (ii) section 16 of the *Corporations (Ancillary Provisions) Act 2001*.

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- (2) Notes included in this Regulation do not form part of this Regulation.
- Note.** Section 22 (1) of the *Roman Catholic Church Communities' Lands Act 1942* provides that the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth apply to the winding up of a body corporate. Those applied provisions apply subject to 3 kinds of modifications:
- (a) the modifications specified in section 22 (1) of the *Roman Catholic Church Communities' Lands Act 1942*, namely:
    - (i) the applied provisions have effect subject to the provisions of sections 20 and 21 of that Act, and
    - (ii) 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 a body corporate, and
    - (iii) a past or present member of a body corporate is not liable to pay the body corporate'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, and
    - (iv) the distribution of surplus property after a body corporate is wound up is to be dealt with in accordance with section 23 of that Act despite anything to the contrary in the applied provisions, and
  - (b) the modifications specified in section 16 of the *Corporations (Ancillary Provisions) Act 2001*, namely:
    - (i) a reference to ASIC is taken to be a reference to the Attorney General, and
    - (ii) a reference to the Gazette is taken to be a reference to the NSW Government Gazette, and
    - (iii) a reference to the Minister is taken to be a reference to the Attorney General, and
    - (iv) a reference to this jurisdiction is taken to be a reference to New South Wales, and
  - (c) the modifications prescribed by this clause.