



New South Wales

# Roman Catholic Church Communities' Lands Regulation 2022

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*.

MARK SPEAKMAN, MP  
Attorney General

## Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the *Roman Catholic Church Communities' Lands Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation sets out modifications of the *Corporations Act 2001* of the Commonwealth that apply to the winding up of a body corporate under the *Roman Catholic Church Communities' Lands Act 1942*.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Roman Catholic Church Communities' Lands Regulation 2022

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Roman Catholic Church Communities' Lands Regulation 2022*.

#### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note**— This Regulation repeals and replaces the *Roman Catholic Church Communities' Lands Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

**Chapter 5** means Chapter 5 of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth.

**NSW Act** means the *Roman Catholic Church Communities' Lands Act 1942*.

**Note**— The NSW Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

## Part 2 Modification of Corporations Act for winding up procedures

### 4 Overview of Part

This Part prescribes the modifications of Chapter 5 for the purposes of the NSW Act, section 22(1)(e).

**Note**— Chapter 5 applies to the winding up of a body corporate, subject to the modifications—

- (a) specified in the NSW Act, section 22(1), and
- (b) specified in the *Corporations (Ancillary Provisions) Act 2001*, section 16, and
- (c) prescribed by this Regulation.

### 5 Chapter 5 provisions to be disregarded

- (1) A provision in Chapter 5 that is solely about a prescribed matter is to be disregarded.
- (2) A reference to a prescribed matter in a provision in Chapter 5 that also deals with other matters is to be disregarded.
- (3) The following are **prescribed matters**—
  - (a) shares of the company or buy-back agreements,
  - (b) dividends or debts owed to members,
  - (c) floating charges or debentures,
  - (d) contributories or promoters,
  - (e) winding up in insolvency, winding up by creditors or contributories or winding up on the application of a liquidator,
  - (f) insolvent trading, insolvent transactions and declarations of solvency,
  - (g) the distribution of surplus property,
  - (h) arrangements or reconstructions, including compromises with creditors,
  - (i) receivers, managers or other controllers, of property of corporations,
  - (j) the administration of a company's affairs, including administration with a view to executing a deed of company arrangement,
  - (k) subsidiaries, related entities, related bodies corporate, pooled groups or pooling or holding companies,
  - (l) serving documents on a company,
  - (m) directors' duties to prevent insolvent trading, directors' liability to compensate the company and the election of directors,
  - (n) co-operation between Australian and foreign courts in external administration matters,
  - (o) offences,
  - (p) employee entitlements other than those under the Corporations Act, section 558,
  - (q) the application of, and liability under, the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth,
  - (r) electronic notification,
  - (s) 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,
  - (t) the holding of meetings in the manner provided by the Corporations Act.

## 6 Chapter 5 provisions to be omitted

Chapter 5 is modified by omitting the following provisions—

- (a) Parts 5.1, 5.2, 5.3A, 5.4, 5.4A, 5.7, 5.8, 5.8A and 5.9,
- (b) sections 466(3), 475(2)(a), (b) and (d), 486A(9), 496(4)–(9), 513B(a)–(d), 533, 534, 588E(4)–(7) and 588Z.

## 7 Construction of Chapter 5 references

- (1) A reference in Chapter 5 to an officer or a director is to be read as a reference to a member.
- (2) A reference in Chapter 5 to the secretary is to be read as a reference to the Provincial.
- (3) A reference in Chapter 5 to rules is to be read as a reference to the *Supreme Court (Corporations) Rules 1999*.
- (4) A reference in Chapter 5 to a solicitor is to be read as a reference to an Australian legal practitioner.
- (5) A reference in Chapter 5 to “this Act” is to be read as a reference to Chapter 5 as modified by the following—
  - (a) the *Corporations (Ancillary Provisions) Act 2001*,
  - (b) the NSW Act,
  - (c) this Regulation.
- (6) A reference in Chapter 5 to an application for winding up under section 459P, 462 or 464 is to be read as an application by a body corporate or the Bishop under the NSW Act, section 21 for winding up by the Court.

## 8 Modification of Part 5.4B—winding up in insolvency or by Court

- (1) A reference in the Corporations Act, section 467A to an application under Part 5.4 or 5.4A is to be read as a reference to an application for a body corporate to be wound up by the Court.
- (2) The Corporations Act, section 481(1)(a) is modified by omitting “by ASIC”.
- (3) A reference in the Corporations Act, section 482(1A) to a person who may make an application is to be read as a reference to a person who may apply to the Court to wind up a body corporate under the NSW Act, section 21(2).
- (4) The Corporations Act, section 482 is to be read as if references to the convening of a meeting were omitted from section 482(3) and (4).
- (5) The Corporations Act, section 489D is modified by omitting “, 598 or 1323,” wherever occurring in section 489D(1) and (2).

## 9 Modification of Part 5.5—voluntary winding up

- (1) The Corporations Act is modified by omitting section 493 and inserting instead—

### 493 Effect of voluntary winding up

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 there is no breach of the *Roman Catholic Church Communities' Lands Act 1942*, section 20(3).

- (2) The Corporations Act, section 496 is modified by omitting section 496(1) and inserting instead—

- (1) 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, the liquidator must apply for the body corporate to be wound up as soon as practicable.
- (3) The Corporations Act, section 501 is modified by—
  - (a) omitting “and, subject to that application, must, unless the company’s constitution otherwise provides, be distributed among the members according to their rights and interests in the company”, and
  - (b) inserting instead “and any surplus must be distributed in accordance with the *Roman Catholic Church Communities’ Lands Act 1942*, section 23”.

#### **10 Modification of Part 5.6—winding up generally**

- (1) The Corporations Act, 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.
- (2) A reference in the Corporations Act, sections 513A and 513D to section 233, 459A, 459B or 461 is to be read as a reference to the NSW Act, section 21.
- (3) The Corporations Act, sections 544(1) and (2)(c) are modified by—
  - (a) omitting “to ASIC to be dealt with under Part 9.7” wherever occurring, and
  - (b) inserting instead “in accordance with the *Roman Catholic Church Communities’ Lands Act 1942*, sections 23 and 24”.
- (4) The Corporations Act, section 544(1A) is modified by—
  - (a) omitting “pay it to ASIC as soon as practicable for it to be dealt with under Part 9.7”, and
  - (b) inserting instead “as soon as practicable, pay it in accordance with the *Roman Catholic Church Communities’ Lands Act 1942*, sections 23 and 24”.
- (5) The Corporations Act, section 544(3) is modified by omitting “to ASIC”.
- (6) A reference in the Corporations Act, sections 568A–568C to lodging a notice of disclaimer is to be read as a reference to filing a notice of disclaimer with the Court.

#### **11 Other necessary modifications**

Chapter 5 is modified to the extent necessary for the purposes of applying the Chapter to the winding up of a body corporate under the NSW Act, subject to the modifications to Chapter 5 specified in—

- (a) the NSW Act, section 22(1), and
- (b) the *Corporations (Ancillary Provisions) Act 2001*, section 16.

## **Part 3 Miscellaneous**

### **12 Repeal and savings**

- (1) The *Roman Catholic Church Communities' Lands Regulation 2017* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Roman Catholic Church Communities' Lands Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.