

Passed by both Houses



New South Wales

Royal Blind Society (Corporate Conversion) Bill 2003

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Royal Blind Society (Corporate Conversion) Bill 2003

Act No , 2003

An Act to enable the Royal Blind Society of New South Wales to seek registration as a company limited by guarantee under the *Corporations Act 2001* of the Commonwealth; to amend the *Royal Blind Society of New South Wales Act 1901* to make further provision with respect to membership of the Society; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Royal Blind Society (Corporate Conversion) Bill 2003

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Royal Blind Society (Corporate Conversion) Act 2003*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

ASIC means the Australian Securities and Investments Commission.

by-laws means the by-laws and rules of the Society in force under section 18 of the *Royal Blind Society of New South Wales Act 1901*.

compliance certificate means a certificate issued by the Attorney General under section 8 certifying that the provisions of this Act have been complied with concerning the transfer of the Society's incorporation to the *Corporations Act 2001* of the Commonwealth.

Corporations legislation means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

instrument means an instrument (other than this Act or an instrument made under this Act) or any other document 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 judgment, order, process or other instrument issued by a court or tribunal.

Note. Section 21 (1) of the *Interpretation Act 1987* provides that a reference in an Act to **document** means any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

invalidity order—see section 6 (2).

members of the Society means persons who are members of the Society under the *Royal Blind Society of New South Wales Act 1901*.

registered Society means the Society after it is registered as a public company limited by guarantee under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth.

registration day means the day on which the Society is registered as a public company limited by guarantee under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth.

registration resolution—see section 5.

Society means the Royal Blind Society of New South Wales constituted by the *Royal Blind Society of New South Wales Act 1901*.

- (2) If this Act provides for an event or other thing to occur on the registration day, that event or thing is taken to occur at the beginning of the day that is the registration day.
- (3) Words and expressions used in this Act have the same meanings as in section 9 of the *Corporations Act 2001* of the Commonwealth, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (4) Notes included in this Act do not form part of this Act.

**4 Amendment of Royal Blind Society of New South Wales Act 1901
No 56 relating to membership**

The *Royal Blind Society of New South Wales Act 1901* is amended as set out in Schedule 1.

Part 2 Registration resolutions

5 What is a registration resolution?

- (1) For the purposes of this Act, a **registration resolution** is a resolution passed in accordance with this section by the members of the Society at a general meeting of the Society that:
 - (a) resolves that the Society be registered as a public company limited by guarantee under the *Corporations Act 2001* of the Commonwealth, and
 - (b) approves a constitution for the Society on its registration as a public company.
- (2) A constitution approved by a registration resolution may contain any matter that could be included in the constitution of a public company limited by guarantee under the *Corporations Act 2001* of the Commonwealth.
- (3) A resolution is passed in accordance with this section only if:
 - (a) the resolution is passed by at least 50 per cent of the votes cast by the members of the Society (whether present in person or by proxy) who are qualified to vote at the general meeting, and
 - (b) subject to paragraph (a)—the general meeting at which the resolution is put is called and held in accordance with the provisions of the *Royal Blind Society of New South Wales Act 1901* and the by-laws.
- (4) A registration resolution may be expressed to be subject to such conditions as may be specified in the resolution. If a registration resolution is subject to any such conditions, it does not have effect as a registration resolution for the purposes of any provision of this Act (other than this section) until the conditions are satisfied.
- (5) Nothing in this Act prevents a further proposal for a registration resolution being put to the members of the Society if:
 - (a) a previously proposed registration resolution was not passed or was declared to be invalid by order of the Supreme Court under section 6, or
 - (b) an application for registration under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth was not made by the Society within the prescribed period applicable to the resolution under section 7.

6 Irregularities concerning registration resolutions

(1) Resolutions to which this section applies

This section applies to any registration resolution or purported registration resolution.

(2) Procedural irregularity does not invalidate resolution without court order

A resolution to which this section applies is not invalidated because of any procedural irregularity unless, on an application made under this section, the Supreme Court by order declares the resolution to be invalid (an *invalidity order*).

(3) Who may apply for invalidity order

An application to the Supreme Court for an invalidity order under this section may be made only if no fewer than 3 persons who were eligible to vote at the meeting at which the resolution was passed make the application.

(4) Time for application for order

Such an application can only be made to the Supreme Court within the period of one month commencing on the date of the passing of the resolution.

(5) Parties to an application

The parties to any such application are as follows:

- (a) the applicants,
- (b) the Society,
- (c) the Attorney General.

(6) When Supreme Court may make invalidity order

The Supreme Court must not make an invalidity order unless it is of the opinion that:

- (a) the irregularity was not, or was not the result of, an accidental omission or non-receipt of a notice required under the provisions of the *Royal Blind Society of New South Wales Act 1901* or the by-laws, and
- (b) the irregularity has caused or may cause substantial injustice.

(7) **Supreme Court may enjoin Attorney General issuing compliance certificate**

The Supreme Court may, of its own motion or on the application of a party to an application for an invalidity order in relation to a resolution, make an order that enjoins the Attorney General from issuing a compliance certificate in relation to the resolution until the application for the invalidity order is determined by the Court.

(8) **Effect of invalidity order on compliance certificates**

If the Supreme Court makes an invalidity order in relation to a resolution, the Attorney General cannot issue a compliance certificate in relation to the resolution.

(9) **Rules of court may be made**

Rules of court (not inconsistent with this Act or the regulations) may be made under the *Supreme Court Act 1970* for the purposes of this section. This subsection does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

(10) **Meaning of procedural irregularity**

In this section, a reference to a procedural irregularity includes a reference to:

- (a) any defect, irregularity or deficiency of notice or time, and
- (b) any miscalculation of voting entitlements.

Part 3 Registration of Society as a public company

Division 1 Authorisation to transfer incorporation

7 Society may apply to be registered as a public company under Corporations Act 2001

- (1) The Society may apply to ASIC for the Society to be registered under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth as a public company limited by guarantee, but only if a compliance certificate is issued by the Attorney General.
- (2) An application under subsection (1) must be made:
 - (a) in accordance with the provisions of section 601BC of the *Corporations Act 2001* of the Commonwealth, and
 - (b) within the prescribed period applicable to the registration resolution.
- (3) For the purposes of section 601BC (8) (d) of the *Corporations Act 2001* of the Commonwealth, the Society is authorised by this Act to transfer its incorporation in accordance with this Act.
- (4) In this section:

prescribed period, in relation to a registration resolution, means:

 - (a) except as provided by paragraph (b)—the period of 12 months (or such other period as may be prescribed by the regulations, whether before or after the resolution is passed or before or after the 12-month period expires) commencing on the day on which the resolution is passed, or
 - (b) if an application for an invalidity order under section 6 is duly made but is refused or withdrawn after the end of the period referred to in paragraph (a) that is applicable to the resolution—the period of one month commencing on the date on which the application is finally determined or withdrawn (as the case may be).

Division 2 Compliance certificate

8 Attorney General may issue compliance certificate

- (1) The Attorney General may issue a compliance certificate to the Society that certifies that the provisions of this Act have been complied with concerning the transfer of its incorporation to the *Corporations Act 2001* of the Commonwealth if the Attorney General is satisfied that:

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Part 3 Registration of Society as a public company

- (a) a registration resolution has been passed, and
 - (b) the period specified in section 6 for the making of an application for an invalidity order in respect of the resolution has expired, and
 - (c) an invalidity order has not been made by the Supreme Court under section 6 in respect of the resolution.
- (2) The Attorney General is to provide ASIC with a copy of the compliance certificate issued under this section as soon as practicable after it is issued to the Society. However, a failure to provide such a copy does not affect the validity of the certificate.
 - (3) A compliance certificate issued under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.
 - (4) A compliance certificate issued under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of the Society to the *Corporations Act 2001* of the Commonwealth as a public company limited by guarantee.
 - (5) The Attorney General cannot issue a certificate under this section in relation to a registration resolution if the Attorney General is enjoined from doing so by the Supreme Court under section 6 (7).

Division 3 Provisions consequent on transfer of incorporation of the Society

9 Registered Society is continuation of Society

- (1) Section 601BM of the *Corporations Act 2001* of the Commonwealth makes provision for the legal consequences of the registration of a body corporate as a company under Part 5B.1 of that Act.

Note. Section 601BM of the *Corporations Act 2001* of the Commonwealth provides that the registration of a body as a company under Part 5B.1 of that Act does not:

- (a) create a new legal entity, or
- (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or
- (c) render defective any legal proceedings by or against the body or its members.

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- (2) A reference in any instrument (other than the *Royal Blind Society of New South Wales Act 1901*) to the Society is to be read on and after the registration day as including a reference to the registered Society.

10 Royal Blind Society of New South Wales Act 1901 and by-laws cease to have effect on registration day

- (1) The provisions of the *Royal Blind Society of New South Wales Act 1901* and the by-laws cease to have effect on the registration day.

Note. Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule. The section provides that a reference to the repeal of an Act or statutory rule in that section includes a reference to the abrogation, limitation or extension of the effect of the Act or rule.

- (2) The Governor may, by proclamation published in the Gazette, repeal the *Royal Blind Society of New South Wales Act 1901* and the by-laws on or after the registration day.

11 Registered Society is authorised to use existing name

- (1) The registered Society is authorised to use the name “Royal Blind Society of New South Wales” as its corporate name without the word “Limited” being included in that name.
- (2) Nothing in subsection (1) prevents the registered Society from changing its name in accordance with the provisions of the *Corporations Act 2001* of the Commonwealth to include the word “Limited” in its name.
- (3) Subsection (1) has effect for only so long as the registered Society retains the name “Royal Blind Society of New South Wales”.
- (4) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Part 2B.6 of that Act.

Note. Section 5G (6) of the *Corporations Act 2001* of the Commonwealth provides that the provisions of Part 2B.6 and Part 5B.3 of that Act (which relate to the use of names) do not:

- (a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory, or

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Part 3 Registration of Society as a public company

- (b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

12 Exclusion of Corporations legislation that applies to the registered Society as federal law

(1) Application of section

This section enables the regulations to exclude the operation of provisions of the Corporations legislation that would otherwise apply to the registered Society (or a matter relating to the registered Society) as a law of the Commonwealth.

(2) Declarations under section 5F of Corporations Act 2001

The regulations may declare any matter relating to the registered Society (other than a declared matter) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

- (a) the whole of the Corporations legislation, or
- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(3) Declarations under section 5G of Corporations Act 2001

The regulations may declare any provision of this Act relating to the registered Society (other than a declared provision) to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation).

Note. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

(4) **Definitions**

In this section:

declared matter means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

declared provision means a provision of this Act that is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

Part 4 Miscellaneous

13 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.

14 Effect of this Act on contracts, instruments and related matters

The operation of this Act (and, in particular, Schedule 3) is not to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities), or
- (c) an event of default under any contract or other instrument, or
- (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

15 Exemption from State tax

- (1) In this section:

exempt matter means any of the following:

- (a) the registration of the Society as a company under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth,
- (b) such other matters in connection with this Act as may be prescribed by the regulations.

State tax means application or registration fees, duty under the *Duties Act 1997* or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable in relation to:

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

16 Amendment of Subordinate Legislation Act 1989 No 146

The *Subordinate Legislation Act 1989* is amended as set out in Schedule 2.

17 Savings, transitional and other provisions

Schedule 3 has effect.

Schedule 1 Amendment of Royal Blind Society of New South Wales Act 1901

(Section 4)

[1] Section 2B

Omit the section. Insert instead:

2B Objects of Society

- (1) The objects of the Society are:
 - (a) to provide assistance to blind or vision-impaired persons to access, and fully participate in, all facets of life, and
 - (b) to remove barriers that prevent blind or vision-impaired persons from enjoying equal access, opportunities or participation within the community.
- (2) The Society may pursue these objects in the State or outside the State.
- (3) The Society may enter into commercial ventures or other arrangements in pursuance of these objects.
- (4) This section has effect despite anything in section 2.

[2] Section 5

Omit sections 5–5B. Insert instead:

5 Membership of the Society

- (1) The members of the Society are:
 - (a) any person who was a member of the council immediately before the commencement of the *Royal Blind Society (Corporate Conversion) Act 2003* and has not ceased to be a member of the Society, and
 - (b) any other person who is admitted to membership under this section and who has not ceased to be a member of the Society.
- (2) A person may be admitted to membership of the Society if:
 - (a) the person is over 18 years of age, and

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- (b) the person has paid the annual membership fee for the relevant calendar year of \$10 or such other amount as the council may determine, and
 - (c) the person has given the council a duly signed and completed application, and
 - (d) the person's application has been approved by the council at least 30 days before any meeting of the members of the Society.
 - (3) An application for the purposes of subsection (2) (c) must be in the form approved by the council from time to time.
 - (4) A person who is admitted to membership under subsection (2) is a member until 31 December next following the date on which the person is admitted to membership or the conclusion of the annual general meeting next following that date (whichever is the later).
 - (5) A person who is a member of the Society ceases to be a member if:
 - (a) the person dies, or
 - (b) the person resigns membership by written notice given to the council, or
 - (c) the person's membership expires by operation of subsection (4), or
 - (d) the person's membership is terminated by the council under this section, or
 - (e) if the person is a corporation—the corporation is dissolved or otherwise ceases to exist or a liquidator or provisional liquidator is appointed to it, or
 - (f) the person becomes a mentally incapacitated person.
 - (6) A resignation for the purposes of subsection (5) (b) may be expressed to have immediate effect or effect from a specified date occurring not more than 30 days after the notice is given.
 - (7) The council may terminate the membership of any member by written notice to the member with effect from the date specified in that notice.

[3] Section 9A Notice of meetings

Omit “Every annual general meeting and special general meeting of the council” from section 9A (1).

Insert instead “Except as provided by subsection (1A), every annual general meeting and special general meeting”.

[4] Section 9A (1A)

Insert after section 9A (1):

- (1A) A special general meeting to consider a registration resolution within the meaning of the *Royal Blind Society (Corporate Conversion) Act 2003* may be called without complying with the advertising requirements of subsection (1) if each member of the Society qualified to vote at the meeting gives the council written consent before the meeting to it being held without such advertising.

[5] Section 19A

Insert after section 19:

19A Giving of written notices and other documents

- (1) This section applies to the following:
- (a) notices given by the council to any person under section 5,
 - (b) documents given to the council under section 5 or 9A (1A).
- (2) A notice to which this section applies may be given to a person by the council:
- (a) if the person is an individual:
 - (i) by giving it to the person himself or herself, or
 - (ii) by leaving it at his or her place of residence with someone who apparently resides there and has apparently reached the age of 16 years, or
 - (iii) by leaving it at his or her place of employment or business with someone who is apparently employed there and has apparently reached the age of 16 years, or

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- (iv) by posting it in a letter addressed to him or her at the address last known to the council of his or her place of residence, employment or business, or
 - (b) if the person is a corporation:
 - (i) by giving it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally, or
 - (ii) by leaving it at the corporation's only or principal place of business with someone who is apparently employed there and has apparently reached the age of 16 years, or
 - (iii) by posting it in a letter addressed to the corporation at the address last known to the council of its only or principal place of business.
 - (3) A document to which this section applies may be given to the council by leaving it at, or by sending it by post to:
 - (a) the office of the Society, or
 - (b) if the Society has more than one office, any one of its offices.
 - (4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

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Schedule 2 Amendment of Subordinate Legislation Act 1989

Schedule 2 Amendment of Subordinate Legislation Act 1989

(Section 16)

Schedule 4 Excluded instruments

Insert after item 25:

- 26** Regulations under the *Royal Blind Society (Corporate Conversion) Act 2003*.

Schedule 3 Savings, transitional and other provisions

(Section 17)

Part 1 General

1 Regulations

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

Part 2 Provisions consequent on enactment of this Act

2 Certain existing members of Society cease to hold membership

- (1) Subject to subclause (2), any person who was a member of the Society immediately before the commencement of this Act ceases to be a member of the Society on that commencement.
- (2) Subclause (1) does not apply to a person referred to in section 5 (1) (a) of the *Royal Blind Society of New South Wales Act 1901* (as inserted by Schedule 1 [2] to this Act).
- (3) A person who ceases to be a member of the Society by operation of subclause (1) is not entitled to damages or any other compensation by reason of ceasing to be a member.

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Schedule 3 Savings, transitional and other provisions

- (4) Nothing in this clause prevents a person who has ceased to be a member of the Society by operation of subclause (1) from being admitted as a member under section 5 of the *Royal Blind Society of New South Wales Act 1901* (as inserted by Schedule 1 [2] to this Act).
- (5) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 14 (Effect of this Act on contracts, instruments and related matters).