



New South Wales

Associations Incorporation Amendment (Review) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Associations Incorporation Act 2009* to give effect to the recommendations for amendment made in a statutory review of that Act (the *review*) tabled in Parliament on 17 November 2015.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Associations Incorporation Act 2009 No 7**

Rights and liabilities of association members

Schedule 1 [10] gives effect to recommendation 1 of the review by clarifying the rights and liabilities of members of an association.

Failure to reserve name

Schedule 1 [5] gives effect to recommendation 2 of the review by removing the failure to reserve the name of an association as grounds for the Commissioner for Fair Trading (the *Secretary*) to

refuse an application for registration of the association or an application for change of the association's name.

Change of association's name to registration number

Schedule 1 [7] gives effect to recommendation 3 of the review by enabling the Secretary to change an association's name to its registration number if the association fails to change its name as directed by the Secretary. **Schedule 1 [6]** makes a consequential amendment.

Model constitution

Schedule 1 [9] gives effect to recommendation 4 of the review by clarifying that an amendment to the provisions of the model constitution for an association changes the constitution of an association that has adopted those provisions without any special resolution to adopt the change or any application to the Secretary for registration of the change. **Schedule 1 [2] and [4]** make consequential amendments. **Schedule 1 [31]** ensures the substitution made by Schedule 1 [9] applies to the constitution of an association registered before the substitution commences.

Electronic voting

Schedule 1 [15] gives effect to recommendation 5 of the review by allowing electronic voting at meetings of an association if permitted by the association's constitution. **Schedule 1 [28]** makes a consequential amendment.

Address for service of documents

Schedule 1 [3], [8] and [14] give effect to recommendation 6 of the review by revising and standardising the address required for service of documents on an association.

Committee members—duty of due diligence and protection from liability

Schedule 1 [12] gives effect to recommendation 7 of the review by imposing a duty on the committee members of an association to carry out their functions for the benefit, so far as practicable, of the association and with due care and diligence, and by protecting committee members who act in good faith from personal (civil) liability.

Cancellation of association's registration in public interest

Schedule 1 [20] gives effect to recommendation 8 of the review by enabling the Secretary to cancel an association's registration if it is in the public interest to do so.

Statutory declarations as to outstanding liabilities when registration cancellation requested

Schedule 1 [18] gives effect to recommendation 9 of the review by requiring the statement that an association has no outstanding liabilities (which must accompany an application for cancellation of an association's registration) to be verified by statutory declaration by only 1 committee member of the association (instead of 2).

Winding up of association on certificate by Secretary

Schedule 1 [16] gives effect to recommendation 10 of the review by providing for the winding up of an association on a certificate issued by the Secretary (in a manner comparable to the *Co-operatives National Law (NSW)*). **Schedule 1 [17]** makes a consequential amendment.

Winding up to be dealt with in association's constitution

Schedule 1 [29] gives effect to recommendation 11 of the review by requiring an association's constitution to deal with winding up.

Maximum number of consecutive terms for office-bearers

Schedule 1 [27] gives effect to recommendation 12 of the review by requiring an association's constitution to deal with the maximum number of consecutive terms of office of any office-bearers on the association's committee.

Other amendments

Schedule 1 [1] extends the definition of *authorised officer* in the *Associations Incorporation Act 2009* so that an investigator under the *Fair Trading Act 1987* may exercise the functions of an authorised officer under the *Associations Incorporation Act 2009*.

Schedule 1 [1] also updates the name of a Department and the title of an office-holder.

Schedule 1 [32] makes consequential amendments.

Schedule 1 [11] and [13] insert clarifying headings and a clarifying note.

Schedule 1 [19] and [21]–[24] standardise the manner in which the Secretary may serve certain notices on an association and allow the Secretary to serve those notices by email or by post to an alternative postal address if the Secretary suspects the association's official address is no longer in use.

Schedule 1 [25] extends the regulation-making power under the *Associations Incorporation Act 2009* with respect to fees.

Schedule 1 [26] revises terminology.

Schedule 1 [30] allows savings and transitional regulations to be made consequent on the enactment of any Act that amends the *Associations Incorporation Act 2009*.



New South Wales

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New South Wales

Associations Incorporation Amendment (Review) Bill 2016

No. , 2016

A Bill for

An Act to amend the *Associations Incorporation Act 2009* to give effect to the recommendations for amendment made in a statutory review of that Act; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Associations Incorporation Amendment (Review) Act 2016*.

3

2 Commencement

4

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

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Schedule 1	Amendment of Associations Incorporation Act 2009 No 7	1
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[1] Section 4 Definitions		3
	Omit the definitions of <i>authorised officer</i> , <i>Department</i> and <i>Director-General</i> from section 4 (1).	4
		5
	Insert in alphabetical order:	6
	<i>authorised officer</i> means:	7
	(a) a person who is appointed as an authorised officer under section 102, or	8
	(b) an investigator within the meaning of the <i>Fair Trading Act 1987</i> .	9
	<i>Department</i> means the Department of Finance, Services and Innovation.	10
	<i>Secretary</i> means:	11
	(a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or	12
	(b) if there is no such position in the Department, the Secretary of the Department.	13
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[2] Section 6 Application for registration		16
	Omit section 6 (3) (d). Insert instead:	17
	(d) must annex a copy of the association’s proposed constitution (or a statement that the association’s proposed constitution adopts all the provisions of the model constitution without modification), and	18
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		20
[3] Section 6 (4)		21
	Omit the subsection. Insert instead:	22
	(4) An association’s proposed official address must be an address within New South Wales:	23
	(a) at which the person who is to be the association’s first public officer can generally be found, and	24
	(b) at which documents can be served on the association by post.	25
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		27
[4] Section 6 (6)		28
	Omit the subsection.	29
[5] Sections 7 (2) (b) and 12 (2) (c)		30
	Omit “has not been reserved or” wherever occurring.	31
[6] Section 11 Change of association’s name at direction of, or by, Secretary		32
	Omit section 11 (3) (c). Insert instead:	33
	(c) must state that, if the application is not made on or before that date, the association’s name may be changed to its registration number, or the association’s registration may be cancelled, by the Secretary.	34
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	Note. See subsection (4) for the Secretary’s power to change an association’s name to its registration number, and section 76 (1) (i) for the Secretary’s power to cancel an association’s registration, for failure to comply with a direction under this section.	37
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[7] Section 11 (4)–(6)	1
Insert after section 11 (3):	2
(4) The Secretary may change an association’s name to its registration number if satisfied that the association has failed to comply with a direction under this section for the change of its name.	3 4 5
(5) After changing an association’s name to its registration number under this section, the Secretary must cause notice of that fact to be given to the association.	6 7 8
(6) Any notice to be given to an association under subsection (5) must be sent:	9
(a) by post addressed to the association at the association’s official address, or	10 11
(b) if the Secretary suspects that the association’s official address is no longer in use:	12 13
(i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or	14 15 16
(ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.	17 18 19
[8] Section 13 Notification of change of official address	20
Omit section 13 (3). Insert instead:	21
(3) The new address must be an address within New South Wales:	22
(a) at which the public officer can generally be found, and	23
(b) at which documents can be served on the association by post.	24
[9] Section 25	25
Omit the section. Insert instead:	26
25 Provisions of model constitution apply if adopted or if matter not addressed	27
(1) If an association’s constitution adopts all the provisions of the model constitution without modification (either by reference or by reproducing the provisions), the provisions are taken to be the association’s constitution.	28 29 30
(2) If an association’s constitution fails to address a matter referred to in Schedule 1, the provisions of the model constitution with respect to the matter are taken to be part of the association’s constitution.	31 32 33
(3) The provisions that are taken to be, or that are taken to be part of, an association’s constitution under this section apply as in force for the time being.	34 35 36
(4) Accordingly, an amendment to those provisions changes the association’s constitution without:	37 38
(a) any special resolution by the association to change its constitution or any application to the Secretary under section 10, or	39 40
(b) any registration of the change by the Secretary under section 12, or	41
(c) any other action by or on behalf of the association or its members or by or on behalf of the Secretary.	42 43

(5)	To avoid doubt, this section does not limit the way in which an association's constitution may address a matter referred to in Schedule 1.	1 2
(6)	A provision of an association's constitution is of no effect to the extent to which it is contrary to this or any other Act or law.	3 4
[10]	Section 26 Nature of association	5
	Omit section 26 (2). Insert instead:	6
(2)	Subject to this Act, a member of an association (including a committee member and the public officer) is not, merely because of being such a member, liable in relation to:	7 8 9
(a)	any of the association's liabilities, or	10
(b)	the costs, charges and expenses of the winding up of the association.	11
[11]	Part 4, Division 1, heading	12
	Omit the heading. Insert instead:	13
	Division 1 Committee members—general	14
[12]	Sections 30A and 30B	15
	Insert after section 30:	16
30A	Duty of committee members	17
	It is the duty of each committee member to carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence.	18 19 20
30B	Personal liability of committee members	21
	A matter or thing done or omitted to be done by a committee member, or by a person acting under the direction of a committee member, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising the committee member's functions under this Act, subject the committee member or person so acting personally to any action, liability, claim or demand.	22 23 24 25 26 27
[13]	Part 4, Division 1A, heading and note	28
	Insert before section 31:	29
	Division 1A Committee members—offences	30
	Note. A committee member may commit offences under this Act apart from the offences in this Division.	31 32
	If an association incurs a debt while insolvent (or that causes it to become insolvent), a committee member who had reasonable grounds to suspect that the association was insolvent (or would, by incurring the debt, become insolvent) commits an offence under section 68 (1).	33 34 35
	If a committee member knowingly authorises or permits an association to contravene a provision of this Act or the regulations, the committee member is also taken to have contravened the provision: see section 91.	36 37 38

[14] Section 34 Public officer	1
Omit section 34 (6) (b). Insert instead:	2
(b) an address within New South Wales:	3
(i) at which the person can generally be found, and	4
(ii) at which documents can be served on the association by post, and	5
[15] Sections 38 and 39	6
Insert “or electronic” after “postal” wherever occurring.	7
[16] Section 61A	8
Insert before section 62:	9
61A Winding up on Secretary’s certificate (cf Co-operatives National Law (NSW), section 443)	10 11
(1) An association may be wound up on a certificate of the Secretary if:	12
(a) the association ceases operations, or	13
(b) the association ceases to have 5 or more members, or	14
(c) the association’s committee has not been able to form a quorum for 2 months, or	15 16
(d) the Secretary is satisfied that there is a significant public interest in winding up the association or that not winding up the association may place public funds at risk.	17 18 19
(2) A winding up on a certificate of the Secretary starts when the certificate is given.	20 21
(3) On the giving of a certificate, the Secretary may appoint a person to be the liquidator of the association.	22 23
(4) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the manner prescribed by the regulations (if any).	24 25
(5) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the Secretary.	26 27
(6) The Secretary may fix:	28
(a) the security to be given by a liquidator, and	29
(b) the fees payable to a liquidator.	30
[17] Section 64 Modifications to text of applied Corporations Act 2001 of the Commonwealth	31 32
Insert after section 64 (2) (e):	33
(f) for the purposes of the application of the provisions to a winding up on the certificate of the Secretary, the winding up is to be considered to be a voluntary winding up (but section 490 of the <i>Corporations Act 2001</i> of the Commonwealth does not apply).	34 35 36 37
[18] Section 72 Application for cancellation	38
Omit “2 committee members” from section 72 (2) (c).	39
Insert instead “a committee member”.	40

[19] Section 74 Decision on application for voluntary cancellation	1
Omit section 74 (4). Insert instead:	2
(4) Any notice to be given to an association under subsection (3) must be sent:	3
(a) by post addressed to the association at the association’s official address, or	4 5
(b) if the Secretary suspects that the association’s official address is no longer in use:	6 7
(i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or	8 9 10
(ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.	11 12 13
[20] Section 76 Registration may be cancelled	14
Insert at the end of section 76 (1) (j):	15
, or	16
(k) it is in the public interest to cancel the association’s registration.	17
[21] Section 76 (3) (a)	18
Omit “sent to the association by registered post”. Insert instead “given to the association”.	19
[22] Section 76 (4)	20
Omit “sent”. Insert instead “given”.	21
[23] Section 76 (5)	22
Omit the subsection. Insert instead:	23
(5) Any notice to be given to an association under this section must be sent:	24
(a) by post addressed to the association at the association’s official address, or	25 26
(b) if the Secretary suspects that the association’s official address is no longer in use:	27 28
(i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or	29 30 31
(ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.	32 33 34
[24] Section 80 Effect of transfer of registration declaration	35
Omit section 80 (4). Insert instead:	36
(4) Any notice to be given to an association under subsection (3) must be sent:	37
(a) by post addressed to the association at the association’s official address, or	38 39

(b)	if the Secretary suspects that the association’s official address is no longer in use:	1
(i)	by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or	2
(ii)	by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.	3
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[25]	Section 107 Regulations	9
	Omit section 107 (1) (b) and (c). Insert instead:	10
(b)	the manner and form in which an application to the Secretary for an extension of time under section 37 (2) (b) is to be made,	11
(c)	any fees to be paid in connection with the administration of this Act (including fees for lodgment of documents under this Act and additional fees for late lodgment of documents or late payment of fees),	12
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		14
		15
[26]	Schedule 1 Matters to be addressed in association’s constitution	16
	Omit “constitution” from clause 7. Insert instead “composition”.	17
[27]	Schedule 1, clause 7 (b1)	18
	Insert after clause 7 (b):	19
(b1)	the maximum number of consecutive terms of office of any office-bearers on the committee, and	20
		21
[28]	Schedule 1, clause 11 Postal and electronic ballots	22
	Insert “or electronic” after “postal”.	23
[29]	Schedule 1, clause 17	24
	Insert after clause 16:	25
17	Winding up	26
	The winding up of the association.	27
[30]	Schedule 4 Savings, transitional and other provisions	28
	Omit clause 1 (1). Insert instead:	29
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	30
		31
[31]	Schedule 4, Part 3	32
	Insert after Part 2:	33
	Part 3	34
	Provision consequent on enactment of	35
	Associations Incorporation Amendment (Review)	36
	Act 2016	36
	12	37
	Associations’ constitutions	37
	Section 25, as substituted by the <i>Associations Incorporation Amendment (Review) Act 2016</i> , extends to the constitution of an association registered before the commencement of that substitution.	38
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[32] The whole Act (except where otherwise amended by this Schedule)	1
Omit “Director-General” and “Director-General’s” wherever occurring.	2
Insert instead “Secretary” and “Secretary’s”, respectively.	3