



New South Wales

# Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007

## 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 1984* (*the Principal Act*) so as to facilitate the cancellation of the incorporation of incorporated associations that have become defunct.

## 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 the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after the proposed Act commences. Once the proposed Act commences the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Associations Incorporation Act 1984**

**Schedule 1 [1]** replaces section 54 of the Principal Act with proposed sections 54 and 54A. References in those sections to the Director-General are, by administrative changes order, required to be construed as references to the Commissioner for Fair Trading, Department of Commerce.

**Proposed section 54** provides that the Director-General may cancel the incorporation of an incorporated association if satisfied as to certain matters. These matters include the matters as to which the Director-General must currently be satisfied under the existing section 54, and also includes 4 further grounds. The additional grounds are as follows:

- (a) that the association has failed to lodge financial statements for the last 3 years,
- (b) that the association has failed to comply with a direction to change its name,
- (c) that the association no longer has at least 5 members,
- (d) that the association no longer has a public officer who is resident in the State.

Before cancelling an association's incorporation, the Director-General must notify the association of his or her intention to do so, must give the association and its members at least 28 days in which to respond to the notice and must give due consideration to any responses that are made.

**Proposed section 54A** preserves any existing liability of all former officers of an association whose incorporation has been cancelled under proposed section 54, and permits the Director-General to reinstate the association's incorporation if satisfied that the incorporation should not have been cancelled under that section. Under the existing section 54, liability is preserved only in relation to persons who were officers at the time of cancellation.

The procedures set out in proposed sections 54 and 54A do not otherwise differ in any material respect from the procedures set out in the existing section 54.

**Schedule 1 [2]** amends section 55A of the Principal Act so as to ensure that, when an association's incorporation is cancelled on its own application, the liability of all former officers, and not just those persons who were officers at the time of cancellation, is preserved.

**Schedule 1 [3]** amends clause 1 (1) of Schedule 3 to the Principal Act (Savings and transitional provisions) so as to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [4]** inserts proposed Part 3 into Schedule 3 to the Principal Act. The new Part contains a provision that disapplies the amendments made by the proposed Act from any cancellation procedures arising from a notice issued before the commencement of the proposed Act under existing section 14 (1A) (a change of name direction) or existing section 54 (1) (the current show cause provision).

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## **Schedule 2      Amendment of other Acts**

**Schedule 2.1 and 2.2** amend section 204B of the *Police Act 1990* and section 12 of the *Sheriff Act 2005*, respectively, to make amendments consequential on the amendment made by **Schedule 1 [1]**.





New South Wales

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New South Wales

# Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Associations Incorporation Act 1984* with respect to the cancellation of the incorporation of associations that are incorporated under that Act.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Associations Incorporation Amendment (Cancellation of Incorporation) Act 2007</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Associations Incorporation Act 1984 No 143</b>	7
The <i>Associations Incorporation Act 1984</i> is amended as set out in Schedule 1.	8 9
<b>4 Amendment of other Acts</b>	10
The Acts specified in Schedule 2 are amended as set out in that Schedule.	11 12
<b>5 Repeal of Act</b>	13
(1) This Act is repealed on the day following the day on which this Act commences.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17



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**Schedule 1      Amendment of Associations  
Incorporation Act 1984**

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(Section 3)

**[1] Sections 54 and 54A**

Omit section 54. Insert instead:

**54 Cancellation of incorporation**

- (1) The Director-General may cancel the incorporation of an incorporated association by publishing a notice to that effect in the Gazette if the Director-General is satisfied that:
- (a) the association is not in operation, or
  - (b) the association is or has been engaged in trading or securing pecuniary gain for its members, or
  - (c) the association is or has been, as trustee, engaged in trading or securing pecuniary gain for members of the association, or
  - (d) the association was incorporated under this Act by reason of fraud or mistake, or
  - (e) none of the annual general meetings required under section 26 to have been convened by the association during the preceding period of 3 years have been convened, or
  - (f) none of the statements required under section 27 to have been lodged in respect of the association during the preceding period of 3 years have been lodged, or
  - (g) the association has failed to apply for approval to change its name in accordance with a direction referred to in section 14 (1A), or
  - (h) the association does not have at least 5 members, or
  - (i) the association does not have a public officer who is resident in the State.
- (2) An association's incorporation is not to be cancelled under this section if:
- (a) the association is in the course of being wound up under section 50 or 51, or
  - (b) on the application of any person having an interest in the matter, a Local Court has ordered the Director-General not to cancel the association's incorporation.

(3)	Before cancelling an association’s incorporation under this section, the Director-General:	1
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(a)	must cause notice of the proposed cancellation to be given to the association stating the ground or grounds referred to in subsection (1) that the Director-General believes exist, and	3
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(b)	must give the association and its members a period of at least 28 days within which to make submissions to the Director-General with respect to the proposed cancellation, and	7
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(c)	must give due consideration to any submissions that are made within that period.	11
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(4)	After cancelling an association’s incorporation under this section, the Director-General must cause notice of that fact to be given to the association.	13
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(5)	A notice referred to in subsection (3) or (4) is to be given by sending it by registered post addressed to the association:	16
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(a)	at the address recorded on the register kept under section 59 as the address of the association’s public officer, or	18
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(b)	if the register records no such address because of vacancy of office or other reason—at the address recorded on the register as the association’s principal place of administration.	20
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<b>54A</b>	<b>Consequences of cancellation of incorporation</b>	24
(1)	Despite the cancellation of the incorporation of an incorporated association under section 54, any liability of any former public officer or other officer or member of the incorporated association continues and may be enforced as if the incorporation of the association had not been cancelled.	25
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(2)	If the Director-General is satisfied that the incorporation of an incorporated association should not have been cancelled under section 54, the Director-General 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.	30
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<b>[2]</b>	<b>Section 55A Voluntary cancellation of incorporation</b>	35
	Omit “the public officer and of each officer and member” from section 55A (6).	36
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	Insert instead “any former public officer or other officer or member”.	38

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<b>[3] Schedule 3 Savings and transitional provisions</b>	1
Omit clause 1 (1). Insert instead:	2
(1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:	3
this Act	4
<i>Associations Incorporation (Amendment) Act 1992</i>	5
<i>Associations Incorporation Amendment (Cancellation of Incorporation) Act 2007</i>	6
<b>[4] Schedule 3, Part 3</b>	7
Insert after Part 2:	8
<b>Part 3 Provisions consequent on the Associations Incorporation Amendment (Cancellation of Incorporation) Act 2007</b>	9
<b>7 Definition</b>	10
In this Part:	11
<i>amending Act</i> means the <i>Associations Incorporation Amendment (Cancellation of Incorporation) Act 2007</i> .	12
<b>8 Cancellations already commenced</b>	13
Section 54, as in force immediately before the date of assent to the amending Act, continues to apply in relation to any cancellation of an association's incorporation that arises from a notice under that section, or from a notice under section 14 (1A), that was issued before that date.	14
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<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Police Act 1990 No 47</b>	3
	<b>Section 204B Consents for the purposes of section 204A</b>	4
	Omit “(2A)” from section 204B (6) (b) (ii).	5
<b>2.2</b>	<b>Sheriff Act 2005 No 6</b>	6
	<b>Section 12 Consents for the purposes of section 11</b>	7
	Omit “(2A)” from section 12 (6) (b) (ii).	8