

Sydney University Settlement Incorporation Act 1959 No 16

[1959-16]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Sydney University Settlement Incorporation Amendment Act 2005 No 30](#), sec 4 (secs 2A, 2B, 3A and 11-18 of, and Sch 1 to, this Act are repealed one year after the date of assent to that Act or on a day specified by proclamation, whichever is later)

Authorisation

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Sydney University Settlement Incorporation Act 1959 No 16



New South Wales

An Act to incorporate the executive committee of the Sydney University Settlement; to confer and impose on the corporation so created certain powers, authorities, duties and functions; to vest in such corporation the property of the Sydney University Settlement; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Sydney University Settlement Incorporation Act 1959*.

2 Definitions

(1) In this Act unless the context or subject matter otherwise indicates or requires:

Constitution means the constitution for the time being of the Settlement.

Corporation means the body incorporated by this Act.

Executive committee means the executive committee for the time being appointed under the constitution.

Settlement means the association known as the Sydney University Settlement.

(2) The constitution (so far as it relates to the constitution of the executive committee of the Settlement as existing immediately before the commencement of this Act) shall, subject to this Act, be the constitution of the corporation at such commencement.

2A Aims and objectives of Settlement

(1) The aims and objectives of the Sydney University Settlement are as follows:

(a) to operate within, and to implement, the nineteenth century “settlement tradition” which includes direct service, education and social reform and is based on the philosophy of people from different backgrounds or cultures working together in reciprocal relationships to improve social conditions and learning from each other in the process,

(b) to be a non-profit, charitable and benevolent organisation, the purpose of which is

to relieve poverty, sickness, suffering, distress, misfortune, destitution or helplessness by:

- (i) building the links between communities and increasing the capacity of communities to gain more control over their situations and lives, and
 - (ii) providing direct material assistance to disadvantaged people and groups, and
 - (iii) running educational programs, activities, classes and groups to increase the skills and capabilities of disadvantaged people, and
 - (iv) educating the wider community about social problems and solutions to those problems, and
 - (v) building networks of, and strengthening links between, different social, ethnic and cultural groups to develop more cohesive and supportive communities, and
 - (vi) providing information, referrals, advice, counselling and support programs to disadvantaged people, and
 - (vii) providing low-cost facilities to disadvantaged people in order to improve access to services and quality of life, and
 - (viii) promoting and advocating policy, legal and social changes that will benefit disadvantaged people, and
 - (ix) improving the capacity of groups, organisations and the wider community to support and assist disadvantaged people, and
 - (x) researching the needs of disadvantaged communities and gaps in services for disadvantaged people, and
 - (xi) acting as a catalyst to bring together individuals, families, groups and cultures to identify their own needs and to get those people to work together to solve their own problems, and
 - (xii) carrying out any other activities that result in community benefit,
- (c) to carry out its aims and objectives without discrimination or prejudice against people based on gender, race, ethnicity, sexuality, disability or religious or political beliefs,
 - (d) to direct its efforts and resources to groups within the local community that are disadvantaged and marginalised,
 - (e) to use strategies that promote community development and empowerment.

(2) Sydney University Settlement recognises the prior occupation by Aboriginal peoples

who were displaced and dispossessed and is committed to the objective of respecting the heritage, rights and place of indigenous peoples in Australia.

2B Constitution to be read subject to aims and objectives

The constitution is to be read subject to the aims and objectives set out in section 2A and subject to the other provisions of this Act.

3 Incorporation

The members for the time being of the executive committee shall be a body corporate under the name of “The Sydney University Settlement” and by that name shall have perpetual succession and a common seal and may sue and be sued, and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

3A Use and disposal of property

- (1) The Settlement’s property is to be used exclusively to carry out the Settlement’s aims and objectives as set out in section 2A despite any condition or trust affecting the property.
- (2) No portion of the Settlement’s property is to be paid to a member (including a member of the executive committee) except as genuine remuneration for services rendered or expenses incurred on behalf of the Settlement.
- (3) No interest in the Settlement’s real property is to be disposed of unless the disposal has the approval of at least two-thirds of members attending, and entitled to vote at, a special general meeting that has been called to approve that disposal.
- (4) At any special general meeting called to approve a disposal of an interest in the Settlement’s real property, a member cannot participate in, and is not entitled to vote at, the meeting, if that member, or a close relative or close associate of that member, may gain a financial or other benefit from the disposal (including, but not limited to, a benefit from a possible increase or change in the value of land in the vicinity of the real property that is the subject of the special general meeting).
- (5) The Registrar-General is not to register under the *Real Property Act 1900* a transfer of land held by or on behalf of the Settlement (or the corporation) to another person, or any other dealing in relation to any such land that is otherwise registrable under that Act or the *Conveyancing Act 1919*, unless a certificate under the common seal of the corporation is lodged with the Registrar-General certifying that the requirements of subsection (3) have been satisfied.
- (6) In this section:

close associate of a member means:

- (a) a partner of the member, or
- (b) an employee or agent of the member, or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the member, a person referred to in paragraph (a) or (b) or a close relative of the member has a beneficial interest.

close relative of a member means:

- (a) a spouse of the member, or
- (b) a person who is in a de facto relationship with the member within the meaning of the *Property (Relationships) Act 1984*, or
- (c) a child, grandchild, sibling, parent or grandparent of the member.

dispose includes sell, transfer, lease, mortgage or otherwise encumber or agree to do any of these.

member means a person who is a member of the Settlement in accordance with the constitution.

property of the Settlement includes property of the corporation and any proceeds of the disposal of any such property.

Settlement's real property includes any building on that property.

special general meeting means a special general meeting of all of the members called in accordance with the constitution.

4 Vesting of property

- (1) All property in New South Wales:
 - (a) which immediately before the commencement of this Act was vested in or held by any person in trust for or on behalf of or for the benefit of the Settlement shall by virtue of this Act be divested from such person and shall vest in the corporation as from such commencement, and
 - (b) which shall at any time after such commencement be given, devised or bequeathed to any person in trust for or on behalf of or for the benefit of the Settlement shall be deemed to be property given, devised or bequeathed, as the case may be, to the corporation.
- (2) A certificate under the common seal of the corporation that the land described in the certificate is situated within New South Wales and is property vested in or held by any person in trust for or on behalf of or for the benefit of the Settlement shall:

(a) for the purpose of any application by the corporation to be registered as the proprietor, pursuant to a vesting by this Act, of any land under the provisions of the *Real Property Act 1900*, as amended by subsequent Acts, of which the body corporate is not the registered proprietor, be conclusive evidence, and

(b) in any action, suit or other proceeding, whether civil or criminal, be prima facie evidence,

of the facts so certified.

(3) All property vested in the corporation by the operation of:

(a) paragraph (a) of subsection one of this section shall be held by it subject to the conditions or trusts on which it was held immediately before such vesting, and

(b) paragraph (b) of subsection one of this section shall be held by it, where the gift, devise or bequest was made subject to any express conditions or trusts, subject to those conditions or trusts, and where the gift, devise or bequest was not so made, subject to a trust for the objects of the Settlement specified in its constitution:

Provided that where by or under the constitution power has been conferred on the executive committee to sell, grant, convey, demise or otherwise dispose of, either absolutely or by way of mortgage or otherwise, any of the property of the Settlement that power may be exercised by the corporation notwithstanding any condition or trust affecting the property in the hands of the corporation.

(4) All rights accruing or accrued to any person in New South Wales on behalf of the Settlement in respect of any property vested in the corporation by the operation of subsection one of this section are hereby vested in the corporation and may be enforced by the corporation.

All liabilities of the Settlement or of any person in New South Wales on behalf of the Settlement in respect of any property vested in the corporation by the operation of subsection one of this section may be enforced against the corporation.

5 Protection of purchasers etc

(1) No purchaser, mortgagee, lessee or other person dealing with the corporation, and neither the Registrar-General nor the Crown Solicitor nor any other person registering or certifying title shall, upon any sale, exchange, mortgage, lease or other dealing purporting to be made under a power conferred by this Act, be concerned to see or enquire into the necessity for or the propriety or the mode of exercising the power, or be affected by notice that the exercise of the power is unauthorised, irregular or improper, and a receipt for any money payable to the corporation, signed by its treasurer, shall be a sufficient discharge in favour of and shall exonerate the person paying such money from all responsibility for the application of such money.

(2) Where:

- (a) an instrument purports to be executed by the corporation and to pass or create an estate or interest in land described in the instrument as being land held in trust for the Settlement,
- (b) that land is not under the provisions of the *Real Property Act 1900*, as amended by subsequent Acts, and
- (c) the instrument is registered under the provisions of the *Registration of Deeds Act 1897*, as amended by subsequent Acts,

such instrument shall:

- (i) in favour of every person claiming any estate or interest under or through the instrument, be conclusive evidence against the corporation that the land described in the instrument as being land held in trust for the Settlement was at the time of the execution of the instrument held in trust for the Settlement, and that the corporation had at the time of the execution thereof an estate or interest in the land so described sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and
 - (ii) in favour of every person claiming any estate or interest under or through the instrument and having taken for value, without notice that the land in which the instrument purports to create an estate or interest was not land held in trust for the Settlement or that the corporation had not an estate or interest sufficient to make the instrument effective to pass or create the estate or interest which the instrument purports to pass or create and in favour of every person claiming under or through any person having so taken, as against every person claiming under or through an instrument executed before the commencement of this Act, or under or through an instrument executed by the corporation, and not in either of such cases registered under the *Registration of Deeds Act 1897*, as amended by subsequent Acts, before the registration under that Act, as so amended, of the instrument by this subsection made evidence, be conclusive evidence that the land described in the instrument so made evidence as being land held in trust for the Settlement was at the time of execution of the instrument land held in trust for the Settlement, that at the time of such execution the corporation had an estate or interest in the land so described sufficient to make that instrument effective to pass or create the estate or interest which that instrument purported to pass or create and that power had been conferred by or under the constitution on the corporation to execute that instrument.
- (3) Any person deprived of any estate or interest in land by any such instrument as is mentioned in subsection two of this section may bring and prosecute an action for damages against the corporation and any judgment recovered by the plaintiff in any such action shall be enforceable by execution against the real or personal property for

the time being vested in the corporation whether trust property or not and any real or personal property taken by a purchaser on a sale in any such execution shall be free of all trusts affecting the same while vested in the execution debtor, except a trust created by the Crown, and the proceeds of every such sale shall in the hands of the Sheriff and of the execution creditor be free of all trusts to which it would be subject in the hands of the execution debtor.

6 Seal and execution of documents

- (1) It shall be lawful for the executive committee at any time to design and to change or alter the common seal of the corporation. Such seal shall be in the custody of the secretary of the Settlement and shall not be affixed to any document except pursuant to a resolution of the executive committee.

The execution of any document to which the common seal is affixed shall not be complete without the signature of two members of the executive committee:

Provided that it shall not be necessary to require such seal to be affixed as evidence of the appointment by the said corporation of an attorney, solicitor, or proctor in or for the prosecution or defence of any action, suit, or other proceeding.

(2)

- (a) Every instrument bearing what purports to be the common seal of the corporation and purporting to be executed in accordance with the provisions of subsection one of this section shall, in favour of a person claiming for value and in good faith under or through that instrument, be conclusively presumed to have been duly executed by the corporation.
- (b) Section 51A of the *Conveyancing Act 1919*, as amended by subsequent Acts, does not apply to or in respect of any instrument executed by the corporation.

7 Service upon corporation

Notice to or service upon the secretary of the Settlement shall be deemed to be a notice to or service upon the corporation.

8 Constitution to be registered

As soon as practicable after the commencement of this Act a copy of the constitution in force immediately before the commencement of this Act, certified under the common seal of the corporation, shall be registered in the office of the Registrar-General in the manner prescribed by regulations made under the *Conveyancing Act 1919*, as amended by subsequent Acts.

Any instrument effecting a change in the constitution shall be certified and registered in like manner.

The production of a copy of any instrument so registered, certified by the Registrar-General or a Deputy Registrar-General, shall be received in all courts as conclusive evidence of the contents of the instrument; and in favour of any person dealing bona fide and for value with the corporation shall, together with this Act, be conclusive evidence of the objects and powers for the time being of the corporation unless such person shall have notice to the contrary.

9 Office

As soon as practicable after the commencement of this Act a notification of the address of the office of the corporation in or to the effect of the form and in the manner prescribed by regulations made under the *Conveyancing Act 1919*, as amended by subsequent Acts, shall be registered in the office of the Registrar-General and a like notification of every change of address shall be registered in like manner.

10 Duty of secretary

It shall be the duty of the secretary of the Settlement to take all necessary steps to comply with the provisions of sections eight and nine of this Act.

11 Voluntary winding up

- (1) The corporation may be voluntarily wound up under this section if:
 - (a) a notice of the proposed voluntary winding up is published in a newspaper circulating in the Sydney area, and
 - (b) at least one month after that notice is published at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of voluntary winding up, and
 - (c) the Minister has issued a certificate:
 - (i) approving the voluntary winding up of the corporation, and
 - (ii) certifying that the requirements of this subsection have been satisfied.
- (2) Except with the leave of the Supreme Court, the members of the corporation cannot resolve that it be wound up voluntarily if proceedings for the corporation to be wound up by the Court under section 12 have been commenced and have not been finally determined.
- (3) The corporation is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the corporation continue until it is wound up under this section.
- (4) If the Minister has certified that all of the requirements of subsection (1) have been

satisfied, the corporation must be wound up.

- (5) The Minister must ensure that notice of the winding up of the corporation under the *Corporations Act 2001* of the Commonwealth is published in a newspaper circulating in the Sydney area.
- (6) Subsection (3) ceases to apply if the Minister decides not to approve a voluntary winding up.

12 Winding up by the Court

- (1) The Supreme Court may order the winding up of the corporation if:
 - (a) at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of winding up by the Court, or
 - (b) the Minister has issued a certificate certifying that he or she is of the opinion that the corporation is unable to properly carry out its functions, or
 - (c) the corporation is unable to meet its liabilities, or
 - (d) the Court is otherwise of the opinion that it is just and equitable that the Corporation be wound up.
- (2) An application to the Court for the winding up of the Corporation may be made by:
 - (a) the Corporation (but only if a resolution is passed by at least 75 per cent of the members in favour of making the application), or
 - (b) the Minister.

13 Procedure for winding up

- (1) The winding up of the corporation is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (the **applied provisions**), subject to the following modifications:
 - (a) the applied provisions have effect subject to the provisions of sections 11 and 12 of this Act,
 - (b) 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 the corporation,
 - (c) a past or present member of the executive committee or the Settlement is not liable to pay the corporations'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,

- (d) the distribution of surplus property after the corporation is wound up is to be dealt with in accordance with section 14 despite anything to the contrary in the applied provisions,
 - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

14 Distribution of surplus property

- (1) Despite the provisions of any other Act or law, if there is property of the corporation after the corporation is wound up, the liquidator must transfer the property to another person or body that is approved in writing by the Minister.
- (2) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.
- (3) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

15 Vesting of assets after winding up of corporation

- (1) To the extent to which any assets:
 - (a) are given to the corporation, or to a person for the benefit of the corporation, or
 - (b) are payable to, or recoverable by, the corporation or any person on behalf of the corporation,

by or under an instrument that takes effect on or after the date on which the corporation is wound up, a reference in the instrument to the corporation is to be treated as a reference to the Minister.

(2) Assets referred to in subsection (1) are to be transferred by the Minister to another person or body and section 14 (2) and (3) apply to the transfer as if it were a transfer of property under section 14.

(3) In this section:

instrument means an instrument (other than this Act) 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 will or any judgment, order or process of a court or tribunal.

16 Application to Court

The Minister, or any other interested person who has leave of the Supreme Court, may apply to the Court:

- (a) to determine any question arising in the winding up of the corporation under this Act, or in the application by section 13 of provisions of the [Corporations Act 2001](#) of the Commonwealth to the winding up, or
- (b) to exercise all or any of the powers that the Court might exercise if the corporation were being wound up by the Court.

17 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.

18 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 18)

1 Regulations

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

[Sydney University Settlement Incorporation Amendment Act 2005](#)

(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.

2 Disposal of property

- (1) Section 3A (5) applies to any registrable dealing that is not registered before the date of assent to the *Sydney University Settlement Incorporation Amendment Act 2005*.
- (2) Despite subclause (1), section 3A (5) does not apply to a registrable dealing for the transfer of land, if the contract for the sale of the land was entered into before the date of assent.