Royal Blind Society (Corporate Conversion) Bill 2003

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

Overview of Bill
The Royal Blind Society of New South Wales (the Society) is an organisation incorporated under the Royal Blind Society of New South Wales Act 1901 to promote the interests of blind and vision-impaired persons and to provide services to assist such persons.

Currently, there are 3 classes of members of the Society: honorary life members, life members and ordinary members. Membership of the Society is not acquired by application to the Society.

A person becomes an honorary life member if the council of management of the Society (the council of the Society) confers such membership. A person becomes a life member simply by making a donation of at least $1000 to the Society. A person becomes an ordinary member until 30 June next following the date of a donation or the conclusion of the next annual general meeting following that date (whichever is the later) simply by donating at least $10 but less than $1000 to the Society.

The objects of this Bill are:
(a) to amend the Royal Blind Society of New South Wales Act 1901 to provide that the members of the Society are to be limited to the current members of the council of the Society and such other persons admitted to membership after applying to the council for membership, and
(b) to authorise the Society to apply to be registered as a public company limited by guarantee under the Corporations Act 2001 of the Commonwealth.

Outline of provisions
Part 1 Preliminary

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 its date of assent.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, it defines Corporations legislation to mean the Corporations legislation to which Part 1.1A of the Corporations Act 2001 of the Commonwealth applies. Section 5D of the Corporations Act 2001 of the Commonwealth provides that Part 1.1A of that Act applies to the following Commonwealth legislation:
(a) the Corporations Act 2001 (including regulations made under that Act), and
(b) Part 3 of the Australian Securities and Investments Commission Act 2001 (and regulations made under that Act for the purposes of that Part).

Clause 4 is a formal provision giving effect to amendments to the Royal Blind Society of New South Wales Act 1901 in Schedule 1 concerning the membership of the Society.

Part 2 Registration resolutions

Clause 5 defines the concept of registration resolution for the purposes of the proposed Act. A registration resolution is a resolution passed in accordance with the proposed section by the members of the Society at a general meeting of the Society. The resolution must resolve that the Society be registered as a public company limited by guarantee under the Corporations Act 2001 of the Commonwealth and approve a new constitution for the Society. The passing of
a registration resolution is a necessary precondition before the Society can apply
to be so registered.

Clause 6 provides that a registration resolution (or purported registration
resolution) is not invalidated because of any procedural irregularity unless, on
an application made under the proposed section, the Supreme Court by order
declares the resolution to be invalid (an invalidity order). Any such invalidity
order may only be made on the application of no fewer that 3 persons who were
eligible to vote at the meeting at which the resolution was passed and must be
made within the period specified by the proposed section.

Part 3 Registration of Society as a public company
Division 1 Authorisation to transfer incorporation
Clause 7 authorises the Society to apply to the Australian Securities and
Investments Commission to be registered as a public company limited by
guarantee under Part 5B.1 of the Corporations Act 2001 of the Commonwealth
once the Attorney General issues a compliance certificate under proposed
section 8.

Division 2 Compliance certificate
Clause 8 enables the Attorney General to issue a compliance certificate to the
Society that certifies that the provisions of the proposed Act have been complied
with concerning the transfer of the incorporation of the Society to the
Corporations Act 2001 of the Commonwealth if the Attorney General is
satisfied that:
(a) a registration resolution has been passed, and
(b) the period specified in proposed 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
proposed section 6 in respect of the resolution.

Division 3 Provisions consequent on transfer of
incorporation of the Society
Clause 9 refers to the provisions of section 601BM of the Corporations Act
2001 of the Commonwealth. That section 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.
The proposed section also provides for references to the Society in certain
instruments to be read as if they included a reference to the Society after it is
registered as a public company under the Corporations Act 2001 of the
Commonwealth (the registered Society).

Clause 10 provides that the provisions of the Royal Blind Society of New South
Wales Act 1901 or any by-laws made under that Act cease to have effect on the
day on which the Society is registered as a public company under the
Corporations Act 2001 of the Commonwealth (the registration day).

Clause 11 authorises the registered Society to use the name “Royal Blind
Society of New South Wales” as its corporate name without the word “Limited”
being included in that name.
The provisions of the proposed section are declared to be Corporations
legislation displacement provisions 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, which would otherwise require the registered Society to
use the word “Limited” as part of its name. 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
(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.

Clause 12 enables the regulations to invoke section 5F or 5G of the
Corporations Act 2001 of the Commonwealth in order to avoid inconsistency
between provisions of the proposed Act relating to the registered Society and the
Corporations legislation.

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, the provisions
that are the subject of the declaration will not apply in relation to that matter in
the State concerned.

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.

Part 4 Miscellaneous
Clause 13 enables the Governor to make regulations for the purposes of the
proposed Act.

Clause 14 ensures that the operation of the proposed Act will not result in a
breach of contract or any other civil liability.

Clause 15 provides that State tax is not payable in respect of matters relating to
the registration of the Society as a company under the Corporations Act 2001 of
the Commonwealth.

Clause 16 is a formal provision giving effect to Schedule 2, which contains an
amendment to the Subordinate Legislation Act 1989.

Clause 17 is a formal provision giving effect to Schedule 3, which contains
savings and transitional provisions.

Schedule 1 Amendment of Royal Blind Society of New
South Wales Act 1901
Schedule 1 [1] replaces section 2B of the Royal Blind Society of New South
Wales Act 1901 with a new section setting out the objects of the Society. The
new section makes it clear that the Society may engage in commercial ventures
and other arrangements in pursuance of its objects and engage in activities both
within the State and outside the State.

Schedule 1 [2] repeals sections 5–5B of the Act dealing with the membership of
the Society and replaces it with a new section 5.

Under the new section, the members of the Society will be:
(a) any person who was a member of the council of the Society immediately
before the commencement of the proposed Act and has not ceased to be a
member of the Society, and
(b) any other person who is admitted to membership under the new section by
the council and who has not ceased to be a member of the Society.

A person who is at least 18 years old may be admitted to membership by the
council under the new section by applying to the council for membership and
paying an annual membership fee of $10 or such other amount as the council
determines.

Schedule 1 [3] and [4] amend section 9A of the Act to enable a special general
meeting of the Society to be called to consider a registration resolution without
complying with the advertising requirements of that section if each member of
the Society qualified to vote at the meeting gives the council of the Society
written consent before the meeting to it being held without such advertising.

Schedule 1 [5] inserts a new section 19A in the Act that specifies how notices
and other documents may be given for the purposes of the provisions inserted by
Schedule 1 [2] and [4].

Schedule 2 Amendment of Subordinate Legislation
Act 1989

Schedule 2 amends Schedule 4 to the Subordinate Legislation Act 1989 to
ensure that regulations made under the proposed Act are excluded instruments
for the purposes of the Subordinate Legislation Act 1989.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions. In particular, it
enables the regulations to contain provisions of a savings or transitional nature
consequent on the enactment of the proposed Act.

The Schedule provides that any current members of the Society (other than those
whose membership continues under the new section 5 of the Royal Blind Society
of New South Wales Act 1901 inserted by the proposed Act) cease to be members
of the Society on the commencement of the proposed Act. It also provides that
a person is not entitled to damages or any other compensation by reason of
ceasing to be a member on that commencement.