

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 than 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.