

ASSOCIATIONS INCORPORATION AMENDMENT (REVIEW) BILL 2016

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Bill introduced on motion by Mr Victor Dominello, read a first time and printed.**Second Reading****Mr VICTOR DOMINELLO** (Ryde—Minister for Innovation and Better Regulation) [4.40 p.m.]: I move:

That this bill be now read a second time.

The Associations Incorporation Amendment (Review) Bill 2016 is the result of the statutory review of the Associations Incorporation Act 2009. The review of the Act was completed and tabled in both Houses of Parliament on 17 November 2015. The Act commenced on 1 July 2010, replacing the Associations Incorporation Act 1984. Objects for the legislation were introduced for the first time and the regulatory requirements for associations were modernised. The requirement for the Minister to review the Act is imposed by the Act. The purpose of the review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The review found that while the legislation continues to meet its policy objectives, it could be improved by making certain aspects of running an association clearer and more practical. Members would be aware of the necessary and vital role that associations play in the social, creative and service fabric of society. Sports clubs, interest and recreation groups, cultural programs, welfare alliances, education and self-help societies comprise the make-up of our communities. Incorporation of these associations enables the creation of a legal entity and governance structure that is easy to understand, low cost and fit for purpose. The Act enables groups of five or more people to incorporate and is central to community social life and development.

The recommendations of the review were the product of extensive and considered consultation with the sector undertaken in 2013 and 2015. All the recommendations of the review have been adopted by the Government. This amendment bill makes good on the first stage of improvements to the regulatory regime by amending the Act. The remaining stages are to remake the Associations Incorporation Regulation this year in consultation with the sector, and to rewrite and refresh the advisory guidance published by the department to ensure that all the provisions are universally accessible. The review recommended 12 amendments to the Act. These amendments are straightforward and were strongly endorsed by association members through the consultation process.

The first recommendation provides for limitations of rights and liabilities of members of an association. This will be achieved by the proposed amendment to section 26, which makes an existing provision easier to comprehend—a crucial aspect to the value of legislation. The second recommendation was to remove the failure to reserve a name as a ground for refusing a registration application: section 7 (2) (b). This ground is removed where it occurs in the proposed amendments to sections 7 (2) (b) and 12 (2) (c). The third recommendation was to enable the secretary to change the association's name to its registration number where an association has failed to change its name as directed. This will be achieved by the proposed amendment to section 11.

The fourth recommendation was that if an association uses a model constitution, the constitution is updated whenever the model is amended. Any amendments to the model constitution will take effect on the day the relevant amendment to the model constitution comes into operation. The model constitution is set out in the regulation. The amendment to the constitution takes effect without the requirement of a special resolution of the association and does not require the approval of the secretary. This will be achieved by the proposed amendment to section 25 and supporting consequential amendments.

The fifth recommendation was to permit electronic voting when association members are voting remotely,

provided this is permitted by the association's constitution. The proposed amendments to sections 38 and 39 will achieve this outcome. The sixth recommendation was to clarify that the official address of an association must be for the public officer—who is the official contact—and must be an address at which it is possible to serve documents on the association personally or by post in accordance with section 101 of the Act. The proposed amendment to sections 6, 13 and 34 revise and standardise the address required for the service of documents on an association.

The seventh recommendation was to make explicit provision for two common law duties of the committee. It is the duty of each member of a committee of an association to carry out his or her functions for the benefit of the association so far as practicable and with due care and diligence, and to include protection from personal liability for members of a committee who act in good faith. This will be achieved by the proposed new sections 30A and 30B. As a result of the new duties a note is added before the existing section 31, which sets out disclosure of interest obligations on a committee member, to make explicit the duty to ensure that the association remains solvent and is managed in a financially responsible and legal manner. The eighth recommendation was to include a ground where the registration of an association may be cancelled when it is in the public interest to do so. This will be achieved by the proposed amendment to section 76.

The ninth recommendation was to streamline the process for an association to cancel its registration. In addition to the other requirements for an application for cancellation, the proposed amendment to section 72 (2) (c) will require that the accompanying statutory declaration verifying that the association has no outstanding liabilities need only be signed by a single committee member, not two committee members. The tenth recommendation was to provide 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). This will be achieved by the proposed new section 61A.

The eleventh recommendation was to amend schedule 1 of the Act to require that the association's constitution deal with winding up. Winding-up provisions which ensure that assets and income are transferred to another organisation with similar purposes being an organisation which is not carried on for profit or gain of its individual members is absolutely essential. The proposed amendment will ensure this outcome. The twelfth recommendation is given effect by the proposed amendment to schedule 1, which concerns the composition of an association's committee. If the constitution provides for office bearers, the number of terms that the same person can hold office can be specified. As a consequence of the amendments relating to the official address of the association, amendments are proposed to sections 74, 76 and 80 to ensure consistency for the sending of notices by the secretary.

The bill also includes minor updates such as to refer to the current department and officials who are responsible for the administration of the Act. Two proposed amendments relate to the administration of the legislation and have been put forward by legal observers to clarify issues. First, the definition of an authorised officer under the Act is proposed to be amended to include an investigator within the meaning of the Fair Trading Act 1987. This is a sensible reflection of the way legislation is usually enforced. The second is for the regulation-making powers to make clear the capacity to charge fees in connection with the Act's administration. Into the future I believe the Act will be well placed to continue to provide the flexibility associations need to support their diverse activity. The Act remains simple to understand and comply with. It contains the essentials for good governance without burdensome red tape. As Minister for Innovation and Better Regulation I am pleased to lead on the Government commitment for better regulation through the Associations Incorporation Amendment (Review) Bill 2016. I commend the bill to the House.

Debate adjourned on motion by Mr Guy Zangari and set down as an order of the day for a future day.