

I am advised as follows:

The clean-up crew is working in the water and using manual methods to clean sections of the Wollangambe River flowing through the rugged terrain of the Blue Mountains National Park, which is difficult to access. By 14 December 2015 a total of 171 tonnes of coal fines had been removed from 4.477 kilometres of river. The removal of coal fines is expected to extend into 2016.

Under the EPA's clean-up notice, the company is required to recover coal fines while this can be done without causing damage to the river and aquatic ecosystem.

ASSOCIATIONS INCORPORATION AMENDMENT (REVIEW) BILL 2016

Second Reading

Mr SCOT MacDONALD (Parliamentary Secretary) [3.33 p.m.], on behalf of the Hon. John Ajaka:
I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Associations Incorporation Amendment (Review) Bill 2016 is the result of the statutory review of the Associations Incorporation Act 2009. The review was completed with the tabling of the review report in both Houses of Parliament on 17 November 2015.

The Act commenced on 1 July 2010. It replaced its predecessor, 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 with amendments to clarify and to enhance the practicalities of running an association.

Every member of the House would be well aware of the necessary and vital role which incorporated associations play in the social, creative and service fabric of a locality. Sports clubs, interest and recreation groups, friendship and cultural programs, welfare alliances, education and self-help societies all comprise the make-up of a community.

Incorporation of these associations enables the creation of a legal entity and governance structure which is proportionate to the community pursuit.

The Act enables groups of five or more persons 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 both 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, being amendments to the Act. The remaining stages are to remake the Associations Incorporation Regulation this year in consultation with the sector and rewrite and refresh the advisory guidance published by the department to ensure that all the provisions are accessible for the lay person.

The review recommended 12 amendments to the Act. These amendments are straightforward.

The first recommendation was to provide 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 for the utility of legislation.

The second recommendation was to remove the ground being "failure to reserve a name" as a ground for the director general refusing a registration application, section 7 (2) (b), as the reservation of a name is not mandatory requirement. 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 director general 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 to clarify that where an association's constitution is the model constitution any amendments to the model constitution to 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 director general. 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 section 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 which is required for service of documents on an association.

The seventh recommendation was to make explicit provision for two common law duties of the committee. These are 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 proposed new sections 30A and 30B.

There are a number of offences which a committee member may commit in failing to carry out their role honestly. The duties which would be offences if breached are duties to disclose interest in a matter, obligation to use information obtained as a committee member for honest purposes, and a requirement to use their position as a committee member for an honest purpose. However, these are not the only offences which a committee member can commit. For this reason, a note is added in the bill before the section so to make clear the explicit duty to ensure that the association remain solvent and is managed in a financially responsible and legal manner.

The eighth recommendation was to include a ground where the director general may cancel the registration of an association where he or she is satisfied that 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 apply for cancellation of 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 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 are 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 consecutive terms that the same person can hold the office for may be specified. This provision recognises that there may be few willing volunteers for office in an association and a break in holding a particular office on the committee means that there is at least a potential new approach to the association's business, if desired. This provision will mean that there needs to be a sharing of responsibility for organisational roles as well as some succession planning while at the same time as enabling continuous involvement by volunteers.

As a consequence of the amendments relating to the official address of the association, there are amendments 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. 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 proposed amendment for administrative purposes is the proposed amendment to the regulation making powers to make clear the capacity to charge fees in connection with the Act's administration. This proposed amendment regularises the status quo.

Into the future, I believe that the Act will be well placed to continue to provide the flexibility which 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.

I commend the bill to the House.

The Hon. PETER PRIMROSE [3.34 p.m.]: The Associations Incorporation Amendment (Review) Bill 2016 amends the Associations Incorporation Act 2009 to give effect to the recommendations of the statutory review of that Act tabled on 17 November 2015. The statutory review of the current Act included 12 proposed amendments to the Act and four amendments to the Associations Incorporation Regulation 2010. It also recommended updating the guidance material produced for associations by NSW Fair Trading, in particular regarding recordkeeping and the management of conflict of interest.