



New South Wales

# Associations Incorporation Amendment (Review) Bill 2016

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Associations Incorporation Act 2009* to give effect to the recommendations for amendment made in a statutory review of that Act (the *review*) tabled in Parliament on 17 November 2015.

## Outline of provisions

**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 a day or days to be appointed by proclamation.

## Schedule 1      **Amendment of Associations Incorporation Act 2009 No 7**

### **Rights and liabilities of association members**

**Schedule 1 [10]** gives effect to recommendation 1 of the review by clarifying the rights and liabilities of members of an association.

### **Failure to reserve name**

**Schedule 1 [5]** gives effect to recommendation 2 of the review by removing the failure to reserve the name of an association as grounds for the Commissioner for Fair Trading (the *Secretary*) to

refuse an application for registration of the association or an application for change of the association's name.

### **Change of association's name to registration number**

**Schedule 1 [7]** gives effect to recommendation 3 of the review by enabling the Secretary to change an association's name to its registration number if the association fails to change its name as directed by the Secretary. **Schedule 1 [6]** makes a consequential amendment.

### **Model constitution**

**Schedule 1 [9]** gives effect to recommendation 4 of the review by clarifying that an amendment to the provisions of the model constitution for an association changes the constitution of an association that has adopted those provisions without any special resolution to adopt the change or any application to the Secretary for registration of the change. **Schedule 1 [2] and [4]** make consequential amendments. **Schedule 1 [31]** ensures the substitution made by Schedule 1 [9] applies to the constitution of an association registered before the substitution commences.

### **Electronic voting**

**Schedule 1 [15]** gives effect to recommendation 5 of the review by allowing electronic voting at meetings of an association if permitted by the association's constitution. **Schedule 1 [28]** makes a consequential amendment.

### **Address for service of documents**

**Schedule 1 [3], [8] and [14]** give effect to recommendation 6 of the review by revising and standardising the address required for service of documents on an association.

### **Committee members—duty of due diligence and protection from liability**

**Schedule 1 [12]** gives effect to recommendation 7 of the review by imposing a duty on the committee members of an association to carry out their functions for the benefit, so far as practicable, of the association and with due care and diligence, and by protecting committee members who act in good faith from personal (civil) liability.

### **Cancellation of association's registration in public interest**

**Schedule 1 [20]** gives effect to recommendation 8 of the review by enabling the Secretary to cancel an association's registration if it is in the public interest to do so.

### **Statutory declarations as to outstanding liabilities when registration cancellation requested**

**Schedule 1 [18]** gives effect to recommendation 9 of the review by requiring the statement that an association has no outstanding liabilities (which must accompany an application for cancellation of an association's registration) to be verified by statutory declaration by only 1 committee member of the association (instead of 2).

### **Winding up of association on certificate by Secretary**

**Schedule 1 [16]** gives effect to recommendation 10 of the review by providing 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)*). **Schedule 1 [17]** makes a consequential amendment.

### **Winding up to be dealt with in association's constitution**

**Schedule 1 [29]** gives effect to recommendation 11 of the review by requiring an association's constitution to deal with winding up.

### **Maximum number of consecutive terms for office-bearers**

**Schedule 1 [27]** gives effect to recommendation 12 of the review by requiring an association's constitution to deal with the maximum number of consecutive terms of office of any office-bearers on the association's committee.

### **Other amendments**

**Schedule 1 [1]** extends the definition of *authorised officer* in the *Associations Incorporation Act 2009* so that an investigator under the *Fair Trading Act 1987* may exercise the functions of an authorised officer under the *Associations Incorporation Act 2009*.

**Schedule 1 [1]** also updates the name of a Department and the title of an office-holder.

**Schedule 1 [32]** makes consequential amendments.

**Schedule 1 [11] and [13]** insert clarifying headings and a clarifying note.

**Schedule 1 [19] and [21]–[24]** standardise the manner in which the Secretary may serve certain notices on an association and allow the Secretary to serve those notices by email or by post to an alternative postal address if the Secretary suspects the association's official address is no longer in use.

**Schedule 1 [25]** extends the regulation-making power under the *Associations Incorporation Act 2009* with respect to fees.

**Schedule 1 [26]** revises terminology.

**Schedule 1 [30]** allows savings and transitional regulations to be made consequent on the enactment of any Act that amends the *Associations Incorporation Act 2009*.