

LEGISLATIVE COUNCIL

Sydney University Settlement Incorporation Amendment Bill 2005

Schedule of Government Amendments agreed to on Wednesday 8 June 2005 in Committee of the Whole

No. 1 Page 2. Insert after line 10:

4 Repeal of amendments

- (1) Sections 2A, 2B, 3A and 11–18 of, and Schedule 1 to, the *Sydney University Settlement Incorporation Act 1959* are repealed:
 - (a) one year after the date of assent to this Act, or
 - (b) on a day specified by the Governor by proclamation, whichever is later.
- (2) The Governor may make more than one proclamation under this section.

No. 2 Page 5, Schedule 1 [2], proposed section 3A (3), line 6. Omit “75 per cent”. Insert instead “two-thirds”.

No. 3 Page 6, Schedule 1 [3]. Insert after line 12:

11 Voluntary winding up

- (1) The corporation may be voluntarily wound up under this section if:
 - (a) a notice of the proposed voluntary winding up is published in a newspaper circulating in the Sydney area, and
 - (b) at least one month after that notice is published at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of voluntary winding up, and
 - (c) the Minister has issued a certificate:
 - (i) approving the voluntary winding up of the corporation, and
 - (ii) certifying that the requirements of this subsection have been satisfied.
- (2) Except with the leave of the Supreme Court, the members of the corporation cannot resolve that it be wound up voluntarily if proceedings for the corporation to be wound up by the Court under section 12 have been commenced and have not been finally determined.
- (3) The corporation is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the corporation continue until it is wound up under this section.
- (4) If the Minister has certified that all of the requirements of subsection

- (1) have been satisfied, the corporation must be wound up.
- (5) The Minister must ensure that notice of the winding up of the corporation under the *Corporations Act 2001* of the Commonwealth is published in a newspaper circulating in the Sydney area.
- (6) Subsection (3) ceases to apply if the Minister decides not to approve a voluntary winding up.

12 Winding up by the Court

- (1) The Supreme Court may order the winding up of the corporation if:
 - (a) at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of winding up by the Court, or
 - (b) the Minister has issued a certificate certifying that he or she is of the opinion that the corporation is unable to properly carry out its functions, or
 - (c) the corporation is unable to meet its liabilities, or
 - (d) the Court is otherwise of the opinion that it is just and equitable that the Corporation be wound up.
- (2) An application to the Court for the winding up of the Corporation may be made by:
 - (a) the Corporation (but only if a resolution is passed by at least 75 per cent of the members in favour of making the application), or
 - (b) the Minister.

13 Procedure for winding up

- (1) The winding up of the corporation is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (*the applied provisions*), subject to the following modifications:
 - (a) the applied provisions have effect subject to the provisions of sections 11 and 12 of this Act,
 - (b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to the corporation,
 - (c) a past or present member of the executive committee or the Settlement is not liable to pay the corporations's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,
 - (d) the distribution of surplus property after the corporation is wound up is to be dealt with in accordance with section 14 despite anything to the contrary in the applied provisions,
 - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of

the declaration under subsection (1), but only if:

- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

14 Distribution of surplus property

- (1) Despite the provisions of any other Act or law, if there is property of the corporation after the corporation is wound up, the liquidator must transfer the property to another person or body that is approved in writing by the Minister.
- (2) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.
- (3) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

15 Vesting of assets after winding up of corporation

- (1) To the extent to which any assets:
 - (a) are given to the corporation, or to a person for the benefit of the corporation, or
 - (b) are payable to, or recoverable by, the corporation or any person on behalf of the corporation,by or under an instrument that takes effect on or after the date on which the corporation is wound up, a reference in the instrument to the corporation is to be treated as a reference to the Minister.
- (2) Assets referred to in subsection (1) are to be transferred by the Minister to another person or body and section 14 (2) and (3) apply to the transfer as if it were a transfer of property under section 14.
- (3) In this section:

instrument means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.

16 Application to Court

The Minister, or any other interested person who has leave of the Supreme Court, may apply to the Court:

- (a) to determine any question arising in the winding up of the

corporation under this Act, or in the application by section 13 of provisions of the *Corporations Act 2001* of the Commonwealth to the winding up, or

- (b) to exercise all or any of the powers that the Court might exercise if the corporation were being wound up by the Court.

17 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

No. 4 Page 7, Schedule 1 [3], proposed clause 2 of Schedule 1. Insert after line 4:

- (2) Despite subclause (1), section 3A (5) does not apply to a registrable dealing for the transfer of land, if the contract for the sale of the land was entered into before the date of assent.