



Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007

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Extract from NSW Legislative Assembly Hansard and Papers Wednesday 27 June 2007.

Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering) [10.18 a.m.]: I move:
That this bill be now agreed to in principle.

I am pleased to introduce the Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007. The bill seeks to amend the notification provisions for proposals to cancel associations under the Associations Incorporation Act 1984. The bill also introduces a provision that allows the incorporation of an association to be reinstated if it has been incorrectly cancelled. The Associations Incorporation Act 1984 was introduced to provide small non-profit community-based groups with a simple and inexpensive means of creating a legal entity separate from the individual members. Incorporation under the Act is voluntary and is significantly simpler and cheaper than incorporating as a company under the Corporations Act 2001.

Incorporating under the Act provides association members with a valuable legal safeguard in the form of limited liability, which members of unincorporated associations do not enjoy. The Act provides also a legislative framework to assist in the association's general administration. There are more than 39,000 registered incorporated associations in New South Wales. Associations typically fall into the categories of charities, sport, recreation, education, or community service clubs. They play a valuable role in bringing people together for a common cause, providing real benefits for their members and the larger community. Of those, approximately 60 per cent have a turnover of less than \$100,000 and 2 per cent have a turnover of more than \$500,000.

Some of those associations are no longer active but have not applied to the registry to have their incorporation cancelled. As a result of a review of the Act many recommendations have been made for reform of the legislation. The New South Wales Government is currently working on substantial amendments to the Act. However, one of the matters raised in the review was the number of associations that are no longer operating but that are still showing as registered. The current provisions for cancellation are overly complicated and are not in line with the requirements of other jurisdictions or the cancellation requirements for other forms of incorporation. Consequently the registry has not been able to carry out the requisite cancellation of the large number of associations that are no longer operating.

The amendments in this bill address those concerns. They are technical and administrative amendments that have been brought forward, in advance of the bulk of the amendments, so that they can be dealt with in the short term. Work on the majority of the amendments, which will affect the day-to-day operation of associations, can then be dealt with separately and in the longer term and with significant consultation with affected stakeholders. The current Act provides that the Director General of the Office of Fair Trading may cancel the incorporation of an incorporated association if the director general is satisfied of certain matters. These include associations that are no longer in operation; are engaged in trading or securing pecuniary gain for its members; were incorporated by reason of fraud or mistake; or that have not during the preceding period of three years convened an annual general meeting.

The association then can respond and advise whether the grounds for sending the notice are correct or incorrect. The bill seeks to streamline the processes for cancelling associations under the circumstances I have just described. These amendments will streamline the notice of cancellation and the cancellation provisions of the Act in line with similar provisions in legislation of other jurisdictions. Under the proposed amendments the director general must consider an additional three grounds: first, that the association has failed to lodge financial statements for the last three years, secondly, that the association no longer has at least five members and, thirdly, that the association no longer has a public officer who is resident in New South Wales.

Under the proposed amendment, before any cancellation occurs the director general must notify associations of the proposal to cancel the association and set out the reasons why the notice has been sent. The association then has 28 days to respond to the notice and the director general must give due consideration to any submissions made within that time. Under the current provisions, if an association's incorporation is cancelled there is no requirement for how the notice of cancellation must be sent to the association. This amendment bill, however, introduces an important requirement for the director general to send that notice by registered mail. This amendment bill also introduces a key safety net provision for associations whose incorporation has been incorrectly cancelled.

Currently the director general only has the power to reinstate the incorporation of an association if that

incorporation has been cancelled as a result of an error on the part of the director general. This current provision is very limited, yet it is quite foreseeable that there could be many other reasons why an association was incorrectly cancelled. Accordingly, this amendment bill gives the director general the power to reinstate the incorporation of an association if satisfied that the incorporation should not have been cancelled. Under those circumstances the association is taken to have continued in existence as if its incorporation had not been cancelled, thus ensuring that there are no long-term effects on the association as a result of the incorrect cancellation.

There has been direct consultation on the final draft of the amendment bill with agencies that represent those members of our community who are most likely to be involved in associations. A number of organisations were directly consulted. They included: the Council of Social Service of New South Wales [NCOSS], New South Wales Sport and Recreation, the Ethnic Communities Council of New South Wales [ECC], the Community Relations Commission for a Multicultural New South Wales [CRC], National Disability Services New South Wales, New South Wales Office for Women, New South Wales Department of Premier and Cabinet, New South Wales Department of Community Services, the Office of the Registrar of Aboriginal Corporations [ORAC], the Aged and Community Services Association of New South Wales; and the Local Community Services Association.

The Office of Fair Trading received five submissions in response to the request for comments. Those submissions that made comment on the content of the amendment bill provided their support and recognised that this amendment was essentially a technical amendment and would not affect the day-to-day operation of associations. The Government is continuing to work with stakeholders on developing a comprehensive package of amendments that have resulted from the recommendations that were contained in the final report of the review of the Act. I thank all the agencies and consumer and advocacy groups for their contribution to the amendment bill. I commend the bill to the House.