



Associations Incorporation Bill 2009

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Agreement in Principle

Ms VIRGINIA JUDGE (Strathfield—Minister for Fair Trading, Minister for Citizenship, and Minister Assisting the Premier on the Arts) [10.49 a.m.]: I move:

That this bill be now agreed to in principle.

I am delighted to introduce the Associations Incorporation Bill 2009. The bill rewrites and overhauls the current legislation bringing the regulation of associations up to date with the modern business environment, removing archaic and redundant provisions and making other amendments, which have arisen from a review of the Act. Not-for-profit associations are an important and integral part of our community fabric, and the associations incorporation legislation provides a simple, inexpensive means for community and sporting groups to achieve corporate status. Incorporation allows these groups to act as a body corporate and provides limited liability.

Currently more than 35,000 associations are registered under the New South Wales legislation. Incorporated associations represent a diverse range of activities, from the wonderful local soccer or music club to childcare services, community support groups and animal breeding clubs. The bill will streamline and simplify administrative procedures for these groups and assist associations in managing their affairs more efficiently. The bill will also strengthen the financial accountability of larger associations while ensuring that smaller associations have less onerous financial reporting requirements.

One of the most fundamental reforms is the insertion of the objectives of the Act into the statute itself. Specifically the bill provides that the objects of the legislation are to establish a scheme for the registration of associations engaging in small-scale, non-profit and non-commercial activities and to provide for the corporate governance and financial accountability of associations. The inclusion of these objects will alleviate stakeholders' concerns about the legislative intention in regulating associations.

The bill makes significant changes to the current Act making it easier for associations to manage their own affairs while ensuring they remain accountable to their members and, of course, the public. The review of the Act found that it is not appropriate to impose the same level of administrative obligation on small associations as on associations that have significant turnover and, indeed, assets. In response, the bill introduces a two-tiered financial reporting system, which will distinguish small and large associations on the basis of a financial threshold. This threshold will be based on the association's gross receipts for the financial year last ended or the association's current assets. The threshold will be calculated in accordance with the regulations to allow refinements and adjustments to be made as required. This will provide a comprehensive yet flexible method for determining the appropriate threshold through a comprehensive public consultation process.

Large, tier 1 associations will be required to have their accounts audited annually by an appropriately qualified auditor. Small, tier 2 associations will be exempt from this requirement. The purpose of introducing this two-tiered system is to ensure that larger associations are properly accountable for financial and asset management while recognising that smaller associations should not be unduly burdened by the same financial reporting requirements. On occasions the auditing of large associations' financial records may put individual associations in financial distress, or there may be some other reason why an association is unable to comply with auditing requirements.

Recognising that this legislation is dealing with not-for-profit, usually volunteer-run community groups, the bill includes power for the Commissioner for Fair Trading to make an order exempting an association or a class of associations from the requirements where appropriate. The exemption can be subject to appropriate conditions or a time limit and can be varied, suspended or revoked by the commissioner if necessary. Alternatively, a situation may occur where the commissioner finds it necessary to direct a small association to have its financial records audited either to ensure the association's assets are protected or for some other reason. The bill provides the commissioner with the power to make this directive.

Incorporation under the Act is only suitable for non-profit groups. The current Act provides a list of circumstances in which an association is deemed not to be trading or securing pecuniary gain for its members. During consultation it became apparent that the current definition is difficult to interpret and does not give adequate direction to associations on what constitutes securing pecuniary gain. The bill adds a new clearer definition of the term "pecuniary gain", which includes circumstances where association members will obtain financial benefits. In

addition, the bill retains a list of circumstances in which an association is not considered to be securing pecuniary gain—for example, where an association carries out fundraising activities but no part of the gain is divided among or received by members. The new definition is more comprehensive and provides clearer direction on these matters and greater certainty for associations.

The public officers of associations play a very important role. They are the formal public point of contact for an association and are therefore required to provide an address for the service of notices upon the association. The current Act requires a register of the committee members to be kept at the public officer's residential address and public officers are required to provide their residential address for this purpose. During consultation some stakeholders made the point that, given that some associations are formed to deal with sensitive family or personal issues, it may be inappropriate for the public officer to provide a residential address. The bill addresses these concerns by clarifying that the public officer must provide the commissioner with either a residential address or some other address at which the officer can generally be found.

The register of committee members will be kept in New South Wales at the main premises of the association or the association's official address. The bill also states that an outgoing public officer and committee members must hand over all records and documents relating to the association. This then will eliminate the need for court action to obtain association records, which is both inefficient and costly to the association. In regard to disclosure of interest, the bill will require committee members to disclose any conflict of interest when dealing with contracts and prohibits a member from voting on any matter where a conflict of interest exists. Such provisions are standard practice for good corporate governance and will set ethical standards for committee members as well as providing consistency with the contractual obligations of funding providers.

As part of the process of updating the terminology of the Act and bringing it into line with other corporate structures it was determined that the term "constitution" should be substituted for the term "rules". Reference to by-laws is also removed in the bill and the constitution is defined as the document recorded in the Register of Incorporated Associations for a particular association. The term "constitution" is more comprehensive than "rules" and better represents the role of the document. This terminology aligns with other community organisations, such as sporting groups, which may also be guided by forms of model constitutions for their sports.

The bill includes new provisions, which provide the Commissioner for Fair Trading with wider powers to direct an association to change its name in circumstances where an association's name is unacceptable or has become unacceptable. The current Act does not grant the commissioner these wider powers and does not clearly list the classes of names that are unacceptable for incorporated associations. To address this, the bill includes clear guidelines for determining if a name is unacceptable for the purposes of the Act. Unacceptable names include a name that suggests a connection with the Crown or State, a name similar to or the same as that of another association, or a name that is offensive and/or undesirable. This provision is consistent with the restrictions on the registration of business names set out in the Business Names Act 2002.

The bill includes an independent appeal mechanism, enabling an association to apply for a review by the Administrative Decisions Tribunal with respect to a direction from the commissioner to change its name and for other decisions. The bill also clarifies the process for changing or reserving the name of an association. The review of the Act found that legislative requirements for an incorporated association to use a common seal are archaic and unnecessary. After consultation with stakeholders it was decided that requiring the signatures of two executive association members would be sufficient for the execution of documents. Although the bill removes the requirement for a seal, it does not prevent associations from continuing to use a seal if they wish to do so. This approach is consistent with the Commonwealth Corporations Act 2001 and provides cost savings to associations.

Another finding of the review was that the current Act does not set out clear statutory duties for the members of an association's management committee. Other jurisdictions such as South Australia, Western Australia and Victoria include statutory duties in their Acts and New South Wales stakeholders raised the importance of having a statutory regime to ensure ethical standards are maintained. Accordingly, the bill introduces high-level statutory duties for committee members. The new requirements aim to protect the public associations, and the association members from rogue officers who might improperly use their position or information to the detriment of the association or to gain a personal advantage.

These provisions will empower the Commissioner for Fair Trading to take legal and disciplinary action where the statutory duties and requirements are breached. This is particularly important given that other members of the association may not be in a financial position to take such action. Another important matter dealt with in the bill relates to meetings of an association. The provisions relating to meetings and voting have been updated to enhance the ability of association's to operate efficiently. In particular, more flexibility has been created around the requirements for holding meetings. For example, where an association's constitution allows, a general meeting will now be able to be held at two or more venues using any technology that gives the association's members a reasonable opportunity to participate.

This innovation will be of great benefit to associations whose members are spread across large geographical

areas. The bill also provides associations with the option of holding postal ballots. To protect the integrity of the voting process postal ballots will only be able to be conducted for resolutions of a kind permitted by an association's constitution and must be conducted in accordance with requirements which will be prescribed in the regulations. The bill also streamlines the Act by repealing the defunct provisions contained in the current part 6, which relates to insurance.

Amendments to the regulations in 2002 had already removed any prescribed requirements for insurance. The insurance crisis being experienced at that time had resulted in many associations being in the untenable position of having a legislative requirement to hold public liability insurance but being unable to purchase it. While the Office of Fair Trading strongly advises associations to hold insurance for their association it has not been mandatory under the legislation since 2002. The bill removes these redundant provisions. As a consequence of the requirements of the Ministerial Council Corporations Agreement 2002 the bill redrafts the provisions that currently disapply the operation of the Commonwealth's corporations legislation. Following negotiations with the Australian Government an agreement was reached for the bill to include a blanket disapplication but to reapply a number of key matters. These relate to the areas of financial disclosure, fundraising market misconduct, unconscionable conduct and consumer protection.

In closing, I will give a brief overview of the very extensive consultation process which has led to these reforms that are of such importance to community-based associations and their members. In addition to the consultation carried out during the initial review which involved release of a discussion paper, acceptance of submissions and meetings with stakeholders there has since been ongoing detailed consultation in the development of the bill. These consultation processes included the provision of information on the Fair Trading and other websites, invitations to comment directly mailed to stakeholders and other interested parties, and the preparation and publication of an editorial in a range of community newsletters.

In response to the exposure draft bill released in 2008 Fair Trading received 59 written submissions, the majority from incorporated associations. Consultation meetings were undertaken with stakeholder bodies such as the Council of Social Service of New South Wales peak sporting organisations and the Canterbury Bankstown Migrant Resource Centre. Feedback from the submissions and meetings informed the revision of the draft bill and extensive changes were made in response to the concerns and suggestions of key stakeholders. I am proud to say that this bill is the result of a genuine and two-way communication between Fair Trading and the community members who will be directly affected by it.

I acknowledge the contributions of all the organisations and individuals who assisted in the development of this bill. The resulting legislation addresses the concerns of stakeholders as well as incorporating their proposals for reform. The Associations Incorporation Bill 2009 maintains the current simple and inexpensive alternative for acquiring corporate status for small non-profit non-commercial organisations. In doing so, the bill streamlines the processes involved in the incorporation and regulation of associations. At the same time, the bill simplifies and clarifies many of the current requirements and increases flexibility for associations in carrying out their operations and complying with their obligations. It also better protects associations their member funding bodies and the public from potentially unscrupulous and illegal conduct. Associations play vital roles in our society and I am pleased to introduce a bill that will deliver benefits to both associations and their members throughout New South Wales. I commend the bill to the House.