

Associations Incorporation and Business Names (Amendment) Bill

EXPLANATORY MEMORANDUM

This Bill makes amendments to the *Associations Incorporation Act* 1981 and the *Business Names Act* 1962. The former Act provides a relatively simple means by which clubs and other non-commercial unincorporated bodies can obtain the benefits of incorporation. The latter Act provides a register of the proprietors of businesses who trade under a name other than their own. It thus enables members of the public to ascertain the identity of the persons with whom they trade.

PART 1

Contains preliminary provisions

Clause 1 states the purpose of the Act.

Clause 2 provides for the operation of the Act twenty-eight days after it receives Royal Assent.

PART 2

Contains amendments to the *Associations Incorporation Act* 1981

Clause 3 defines the Principal Act for the purposes of this Part of the Act.

Clause 4 amends the Principal Act to allow Public Officers to continue to hold office after attaining the age of 72 years.

Clause 5 ensures that the obligation to lodge the Incorporated Associations Annual Statement is not contingent upon the holding of the annual meeting. It thus enables the Registrar to determine if the Association is still operating.

Clause 6 amends the Principal Act to enable the Registrar to satisfy a request from the public for information about an Incorporated Association by providing a computer generated extract of information held on the register.

Clause 7 provides a simplified evidentiary means of establishing whether a requirement of the Principal Act has been complied with.

Clause 8 extends the period in which a prosecution for a breach of the Principal Act may be laid from the present period of 12 months to three years.

Clause 9 ensures that the obligation to do an act, such as lodge a document, continues even though there may have been a successful prosecution for the initial default. This will provide a means to ensure the information on the register is complete and accurate. It also inserts a new provision to allow the Registrar to issue a Penalty Notice (on the spot fine) where a breach of the Principal Act has occurred. Payment of the penalty set out in the Notice is expressed not to be an admission of liability, and operates to preclude a prosecution for that breach.

Clause 10 modifies the means adopted to exclude the application of the *Companies (Victoria) Code*.

Clause 11 amends the regulation making power in the Principal Act. The amendments widen the scope of the regulations to cover penalty notices and provide for greater flexibility in prescribing forms.

Clause 12 corrects a minor drafting error and repeals the table of Parts contained in the body of the Act.

PART 3

Contains amendments to the *Business Names Act 1962*

Clause 13 defines the Principal Act for the purposes of this Part.

Clause 14 and *15* alter provisions of the Principal Act to adopt more neutral terminology with respect to the names of the proprietors of business names.

Clause 16 amends the Principal Act to require each proprietor's date of birth to be set out on the application form. It also allows any address within Victoria to be nominated as the registered address and repeals a superfluous provision.

Clause 17 extends the period of time that a business name is unavailable after expiry of the registration period. This will allow the original proprietor a longer time in which to renew the registration.

Clause 18 allows changes in particulars of a business name to be notified by one of the proprietors. It also makes other changes consequential upon amendments made by clauses 14 and 16 and repeals some obsolete provisions.

Clause 19 corrects a minor drafting error.

Clause 20 amends the Principal Act to enable the Commissioner to satisfy a request for information about a business name by providing a computer generated extract of information.

Clause 21 inserts a new provision to allow the Commissioner to issue a Penalty Notice (on the spot fine) where certain breaches of the Principal Act have occurred. Payment of the penalty set out in the Notice is expressed not to be an admission of liability and operates to preclude a prosecution for that breach.

Clause 22 widens the regulation making power to provide greater flexibility in prescribing forms and removes the monetary limit of fees payable under the Principal Act. It also provides the power to prescribe matters relating to the Penalty Notices.

Clause 23 repeals an obsolete provision.

PART 4

Contains consequential amendments to the *Magistrates (Summary Proceedings) Act 1975*

Clause 24 defines the Principal Act for the purposes of this Part.

Clause 25 amends the provisions of this Part of the Principal Act to allow Penalty Notices issued under the Business Names Act and the Associations Incorporation Act to be enforced under that Part.

Clause 26 amends the list of offences for which an alternative procedure summons can be issued under the Business Names Act.