

## ***Associations Incorporation Amendment Act 2009***

The *Associations Incorporation Amendment Bill 2008*, about which we wrote in our previous issue, became law on 7 April, 2009. The resulting ***Associations Incorporation Amendment Act 2009*** makes substantial amendments to the *Associations Incorporation Act 1981*.

## **Amendments Coming into Immediate Effect**

Most of the amendments came into effect on 8 April, 2009, and now apply to Victorian incorporated associations. The major consequences for associations include the following:

### ***Scope of Purposes***

An association may not exercise a power prohibited by its Rules and may not act outside the scope of its Statement of Purposes. Contravention of this prohibition by the Public Office or a committee member, by act or omission, directly or indirectly may result in personal liability. A member of an association, or the Registrar, may apply to the Magistrates' Court for injunctive relief to restrain an association from acting beyond its powers, or to require a person to do a specific thing.

### ***Oppressive Conduct***

An association may not engage in oppressive conduct, defined as conduct that is unfairly prejudicial to or unfairly discriminatory against a member, or contrary to the interests of members. Failure or refusal to take action can constitute oppressive conduct.

### ***Improved Notice***

Notice of a Special Resolution must set out the resolution in full and state that it is a Special Resolution.

### ***Amending Rules***

The Registrar is empowered to accept some alterations to the Rules of an association and reject others, even if they have been the subject of the same Special Resolution.

### ***Statutory Managers***

The Registrar is empowered to appoint a Statutory Manager to manage the affairs of an association experiencing serious dysfunction. Expenses of the Statutory Management are to be paid from the funds of the association.

### ***Auditor***

An auditor may only be removed from office by resolution of a General Meeting, not simply by resolution of the Committee of Management.

### ***Authentication of Documents***

The Registrar may refuse to accept documents lodged or purporting to be lodged by an association if the Registrar is of the opinion that the documents may not be valid.

**Associations Incorporation Amendment Act 2009****Return of Documents**

The outgoing officeholders of an association must return documents and records of the association in their possession.

**Wind Up**

An association with assets of less than \$10,000 may apply to voluntarily cancel its registration. A liquidator is not required to be appointed.

An association may not distribute surplus assets to members, with certain exceptions such as where a member is also a body corporate, or where an individual member is serving only in their capacity as the Trustee of a Trust.

**Amendments with later effect**

Further amendments have been legislated, but have deferred effect. These include:

**Access to Minutes and Financial Statements**

The rules of an association must provide that the association must take and retain accurate minutes of general (members') and committee meetings; members are entitled to access minutes of general (members') meetings, including financial statements; and whether or not members are to have access to minutes of committee meetings.

**Public Officer merged with Secretary**

The role of the Public Officer is to be merged with the Secretary. The term "Public Officer" will be dropped from the Act. In most cases the Secretary will assume the responsibilities of the Public Officer. Many associations may decide to keep the legal compliance role (currently undertaken by the Public Officer) separate. In that case, they will need to create a new office for the correspondence role, which may not be called "secretary".

**Conclusion**

In light of these amendments some associations may require their Statements of Purpose and Rules to be reviewed with a view to amendment. Moores Legal can advise on the timing of such a review, and assist with the development of appropriate changes in compliance with the evolving legislation, as required. **(May 2009)**

**The Moores Legal Not for Profit Team**

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our Team

**Murray Baird**  
Corporate Governance  
Head of our Not for Profit Team

**Fiona Thomas**  
Not for Profits

**Derek Mortimer**  
Not for Profits

**Libby Klein**  
Not for Profits

**Andrew Sudholz**  
Property Transactions

**Tim Adam**  
Compensation & Schools

**Peter Andrew**  
Employment & Schools Law

**Andrew Simpson**  
Bequests & Estates  
Aged Care Facilities

**Nils Versemann**  
Intellectual Property

**Cecelia Irvine-So**  
Volunteer Law

**Allan Swan**  
Estate Planning, Superannuation & Structuring

**Philip Curtis**  
Estate Planning, Superannuation & Structuring