



Association Incorporation Bill 2009

NCOSS Response: March 2009

General

Large parts of The *Associations Incorporation Bill 2009* (the Bill) are written in obtuse legalese making it largely inaccessible to the majority of groups currently incorporated under the Act or wishing to incorporate under the Act.

It will be important that the model constitution, when developed, is written in accessible language.

The Bill is very different from the Exposure draft that was available for comment in 2008 and to which NCOSS and several other stakeholder groups provided responses.

While some of our concerns have been addressed, for example the conflation of the roles of the public officer and secretary, others, such as the duties/requirements of Management Committee members and associated penalties for breaches, have been reconfigured in the Bill but still remain a concern.

Specific Concerns:

1. Associations or Corporations Act?

A number of the new provisions in the Bill now 'generally follow sections of the Corporations Act of 2001'. In fact, this Act is referred to at least 32 times in the new Bill. This appears to be a very derivative approach to the setting of a regulatory framework, particularly as the needs of small not for profit (NFP) groups are often different from companies covered by the *Corporations Act 2001*.

It should be noted that the instances where the new Bill 'generally follows sections of the Corporations Act 2001' are not insubstantive, they include the 'Basic features of associations-'Association powers' and 'Assumptions people dealing with associations are entailed to make'.

The vast majority of the 37,000 (approx :) registered associations in NSW are small sporting associations, the sector that NCOSS represents is comprised about 6,400, small to medium sized non-government (NFP) organisations that receive government funding to deliver social services to their communities. These groups are incorporated as associations because the *Corporations Act 2001* is not considered appropriate for small-medium sized NFP NGOs, so it remains unclear why so many of the proposed clauses in the new Bill are derived directly from the *Corporations Act 2001*.

2. New Offences and Penalties

The number of offences have been created in the Bill along with associated penalty notices and fees. NCOSS regards a number of these as excessive and believes they are likely to have a pronounced negative impact of the capacity of the sector to retain and recruit Committee Members.

For example; Division 4 –‘Offences relating to incurring of debts or fraudulent conduct’ include maximum penalties of between 50 – 100 penalty units (to be determined in the regulations) or imprisonment for 1 -2 years or both. There are similar penalties for ‘dishonest use of information and position’.

Likewise, ‘Offences by Committee Members’, detailed in Division 2 of the Bill, appears to have serious implications for the liability of individual members of voluntary Boards: “If an association contravenes, whether by act or omission, any provision of this Act or the regulations, each committee member of the association is taken to have contravened the same provision if he or she knowingly authorised or permitted the contravention’.

As recommended in the NCOSS submission to the Exposure draft, it will be critically important that Committee Members receive adequate training and resourcing to enable them to understand the implications of the new Act and their responsibilities. A less punitive approach, and one based on education and resourcing is required, not stiff penalties.

3. Financial Reporting and Consistency with NSW Funding Agencies.

Financial reporting- Tier 1 and Tier 2 associations has replaced small or medium, but until the regulations are available, it is still unclear how these categories will be determined. For example what constitutes ‘significant income or assets?’ A current guide employed by the NSW Office of Fair Trading indicates that the amount of \$500,000 (including assets, income or expenditure) is used to determine whether a group is appropriate to be an incorporated association or whether it should be covered by the *Corporations Act 2001*.

NCOSS recommended in its submission to the Exposure Draft in April 2008, that whatever definitions are used to determine financial reporting requirements, they are consistent with the major funding agencies in NSW. There is no indication that the Bill has taken account of this recommendation, however there will be the opportunity to address this in the regulations.