

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

**ASSOCIATIONS INCORPORATION (OPPRESSIVE OR UNREASONABLE
ACTS) AMENDMENT ACT 2000**

No. 65 of 2000

[Assented to 16 November 2000]

An Act to amend the Associations Incorporation Act 1985.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Substitution of s. 61
 61. Oppressive or unreasonable acts

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Associations Incorporation (Oppressive or Unreasonable Acts) Amendment Act 2000*.

(2) The *Associations Incorporation Act 1985* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 61

3. Section 61 of the principal Act is repealed and the following section is substituted:

Oppressive or unreasonable acts

61. (1) A member or former member of an incorporated association may apply to the Supreme Court or the Magistrates Court for an order under this section on the ground that the association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable.

(2) An application by a former member must be made within six months of the cessation of the person's membership of the association.

(3) A proceeding—

(a) on an application made to the Magistrates Court under this section; or

(b) on an application made to the Supreme Court under this section but transferred under section 19 of the *Magistrates Court Act 1991* to the Magistrates Court,

is a minor statutory proceeding for the purposes of the *Magistrates Court Act 1991*.

(4) The Court hearing a proceeding under this section may, if satisfied that the association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable, make one or more of the following orders:

(a) an order for regulating the conduct of the association's affairs in the future;

(b) an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the association to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the association;

(c) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(d) an order requiring a person to do a specified act or thing;

(e) an order for the alteration of the rules of the association;

- (f) an order that a former member be reinstated as a member of the association;
- (g) any other order that is, in the opinion of the court, necessary to remedy any default, or to resolve any dispute.

(5) The Supreme Court may, in a proceeding under this section, if it considers it appropriate to do so, make an order that the association be wound up or an order appointing a receiver or a receiver and manager of the property of the association.

(6) The Magistrates Court—

- (a) may not make an order that an association be wound up or an order appointing a receiver or a receiver and manager of the property of an association; but
- (b) must transfer a proceeding under this section to the Supreme Court if—
 - (i) the Magistrates Court has explored any possible avenues of achieving a negotiated settlement and a negotiated settlement has not occurred; and
 - (ii) it appears to the Magistrates Court that an order that the association be wound up or an order appointing a receiver or a receiver and manager of the property of the association may be an appropriate order in the proceeding.

(7) The Magistrates Court may, in a proceeding under this section, on its own initiative or on an application by a party to the proceeding—

- (a) transfer the proceeding to the Supreme Court on the ground that the proceeding raises a complex question or matter of general importance;
- (b) despite section 41 of the *Magistrates Court Act 1991*, reserve a question of law for determination by the Supreme Court.

(8) Where a proceeding has been transferred under this section, it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the court to which it is transferred.

(9) The Supreme Court may not make an order under this section that an association be wound up if it is of the opinion that the winding up of the association would unfairly prejudice members affected by conduct of the association that is oppressive or unreasonable.

(10) If an order is made under this section that the association be wound up, the provisions of this Act relating to the winding up of an incorporated association apply, with such modifications, additions or exclusions as may be necessary, as if the order had been made on an application duly filed in the Supreme Court by the association.

(11) If an order is made under this section appointing a receiver or a receiver and manager of the property of the association, the provisions of the *Corporations Law* relating to receivers or receivers and managers apply, with such modifications, additions or exclusions as may be necessary for the purposes of this Act, or as may be prescribed, in relation to the receiver or receiver and manager so appointed as if the association were a company and as if those provisions were incorporated into this Act.

(12) The Magistrates Court and Supreme Court may decline to hear a proceeding taken under this section if it considers that it would be more appropriate for the matter in dispute to be dealt with in another court or a tribunal constituted by law.

(13) If an order under this section makes any alteration to the rules of an association, then, despite anything in any other provision of this Act but subject to the provisions of the order, the association does not have power, without the leave of the Court that made the order, to make any further alteration to the rules inconsistent with the provisions of the order but, subject to this section, the alteration has effect as if it had been duly made by resolution of the association.

(14) An office copy of any order made on an application under this section must be lodged by the applicant with the Commission within 14 days after the making of the order.

Maximum penalty: \$750.

(15) For the purposes of this section—

- (a) an association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable if—
- (i) it has taken action, or proposes to take action, to expel a member from the association in circumstances in which the action was, or would be, oppressive or unreasonable;
 - (ii) it has engaged, or proposes to engage, in conduct that was, or would be, oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or was, or would be, contrary to the interests of the members as a whole; or
 - (iii) the rules of the association contain, or are proposed to be altered so that they will contain, provisions that are oppressive or unreasonable;
- (b) a reference to engaging in conduct includes a reference to refusing or failing to take action.