

Associations Incorporation Bill 2014

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Associations Incorporation Bill 2014

A Bill for

An Act to —

- **establish a scheme for the incorporation of associations;**
- **make provision for corporate governance, financial accountability and matters relating to the rules and membership of incorporated associations;**
- **repeal the *Associations Incorporation Act 1987*;**
- **make provision for related matters.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Associations Incorporation Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

alter, in relation to the rules of an incorporated association, includes to add to, replace or rescind;

approved form means a form approved by the Commissioner for the purposes of the provision in which the term is used;

a repealed Act means —

- (a) the *Associations Incorporation Act 1987* repealed by section 185;
- (b) the *Associations Incorporation Act 1895* repealed by section 47 of the Act mentioned in paragraph (a);

association includes society, club, institution or body;

books includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, as each of those terms is defined in section 62, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

- 1 **Commissioner** means the person for the time being designated
2 as the Commissioner under section 153;
- 3 **Corporations Act** means the *Corporations Act 2001*
4 (Commonwealth);
- 5 **Department** means the department of the Public Service
6 principally assisting in the administration of this Act;
- 7 **financial year** means the period provided for under Schedule 1
8 Division 2 clause 4 or 5;
- 9 **full voting rights**, in relation to an association, means the right
10 to vote at its general meetings;
- 11 **incorporated association** means an association that is, or is
12 taken to be, incorporated under this Act;
- 13 **liability** means any liability, duty or obligation whether actual,
14 contingent or prospective, liquidated or unliquidated, and
15 whether owed alone or jointly or jointly and severally with any
16 other person;
- 17 **management committee**, in relation to an incorporated
18 association, has the meaning given in section 38;
- 19 **model rules** means the model rules prescribed under section 26;
- 20 **officer**, of an incorporated association, means any of the
21 following —
- 22 (a) a member of the management committee of the
23 association;
- 24 (b) a person, including an employee of the association, who
25 makes, or participates in making, decisions that affect
26 the whole, or a substantial part, of the operations of the
27 association;
- 28 (c) a person who has the capacity to significantly affect the
29 association's financial standing;
- 30 (d) a person in accordance with whose instructions or
31 wishes the management committee of the association is
32 accustomed to act (but excluding a person who gives
33 advice to the association in the proper performance of

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1 functions attaching to the person's professional capacity
2 or to the person's business relationship with members of
3 the management committee or with the association);

4 **property** means any legal or equitable estate or interest in, or
5 claim to, real or personal property of any description, whether
6 present or future and whether vested or contingent, and
7 includes —

8 (a) a thing in action; and

9 (b) money;

10 **special resolution** means a resolution of an incorporated
11 association passed in accordance with section 51;

12 **surplus property**, in relation to an incorporated association,
13 means property remaining after satisfaction of —

14 (a) the debts and liabilities of the association; and

15 (b) the costs, charges and expenses of winding up or
16 cancelling the incorporation of the association,

17 but does not include books pertaining to the management of the
18 association;

19 **the repealed Act** means the *Associations Incorporation*
20 *Act 1987* repealed by section 185.

Part 2 — Incorporation of association

Division 1 — Eligibility

4. Associations eligible for incorporation

Without limiting section 11(1), an association is eligible to be incorporated under this Act if —

- (a) it is formed and carried on for one or more of the following purposes —
 - (i) a religious, educational, charitable or benevolent purpose;
 - (ii) the purpose of promoting or encouraging literature, science or the arts;
 - (iii) the purpose of providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability or condition;
 - (iv) the purpose of sport, recreation or amusement;
 - (v) the purpose of establishing, carrying on or improving a community centre, or promoting the interests of a local community or a particular section of a local community;
 - (vi) the purpose of conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
 - (vii) the purpose of promoting the interests of students or staff of an educational institution;
 - (viii) a political purpose;
 - (ix) the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry;
 - (x) any purpose approved by the Commissioner;
- and

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Part 2 Incorporation of association

Division 1 Eligibility

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- 1 (b) it has at least 6 members who under its rules have full
2 voting rights; and
3 (c) it is not excluded by section 5 or under regulations made
4 for the purposes of section 6.

5 **5. Associations not eligible for incorporation**

- 6 (1) Despite section 4, an association is not eligible to be
7 incorporated under this Act if it is formed or carried on for the
8 purpose of securing pecuniary profit for its members from its
9 transactions.
- 10 (2) An association secures pecuniary profit for its members if —
11 (a) it carries on any activity for the purpose of securing
12 pecuniary profit for its members; or
13 (b) it has capital that is divided into shares or stock held by
14 its members; or
15 (c) it holds property in which its members have a disposable
16 interest, whether directly or in the form of shares or
17 stock in the capital of the association or otherwise; or
18 (d) it is an association that —
19 (i) is prescribed for the purposes of this subsection;
20 or
21 (ii) belongs to a class of associations that is so
22 prescribed.
- 23 (3) An association is not ineligible under subsection (1) by reason
24 only of any one or more of the following circumstances —
25 (a) that the association itself is empowered to make a
26 pecuniary profit, unless that profit or some part of it is
27 divided among or received by its members or some of
28 them;
29 (b) that the association is established for the protection or
30 regulation of some trade, business, industry or calling in
31 which the members are engaged or interested (the

1 **6. Regulations may declare associations to be ineligible**

2 An association is not eligible to be incorporated under this Act
3 if, according to a determination of the Commissioner, it is an
4 association that —

- 5 (a) is prescribed for the purposes of this section; or
6 (b) belongs to a class of associations that is so prescribed.

7 **Division 2 — Requirements for application for incorporation**

8 **7. Application to Commissioner**

9 (1) An application for the incorporation of an association must be
10 lodged with the Commissioner in the approved form by a person
11 duly authorised by the association to apply for incorporation.

12 (2) An application must —

- 13 (a) state the name and address of the association; and
14 (b) include a certificate given by the applicant that the
15 applicant is authorised by the association to apply for
16 incorporation; and
17 (c) comply with any other requirements prescribed for the
18 purposes of this subsection.

19 (3) An application for the incorporation of an association must be
20 accompanied by —

- 21 (a) if an association's proposed rules on incorporation will
22 be its own rules — a copy of the proposed rules certified
23 by the applicant as a true copy; or
24 (b) if the association has approved the adoption of the
25 model rules —
26 (i) a statement to that effect; and
27 (ii) the information referred to in subsection (4).

28 (4) The following information is to be provided for the purposes of
29 subsection (3)(b)(ii) —

- 30 (a) the name of the association;

- 1 (b) the objects or purposes of the association;
2 (c) the quorum for a general meeting of members of the
3 association;
4 (d) the quorum for a meeting of the management committee
5 of the association;
6 (e) the period of the first financial year of the association.
- 7 (5) The applicant must provide the Commissioner with such other
8 information and documents as the Commissioner may in writing
9 request.

10 **8. Commissioner may require public notice of application for**
11 **incorporation**

- 12 (1) The Commissioner may in writing require an applicant under
13 section 7 to give public notice of the application in some way
14 that the Commissioner thinks appropriate.
- 15 (2) For the purposes of section 9, the applicant must include in the
16 public notice a statement in wording approved by the
17 Commissioner showing —
- 18 (a) that a written request, including the reasons for the
19 request, may be given to the Commissioner by any
20 person under that section; and
- 21 (b) the period within which any request must be received by
22 the Commissioner.

23 **9. Request for refusal of incorporation**

- 24 (1) Where public notice is given under section 8 in respect of an
25 association, any person may, in accordance with the terms of the
26 notice, request the Commissioner to decline to incorporate the
27 association under this Act.
- 28 (2) A request under subsection (1) must include the reasons for the
29 request.

Division 3 — Incorporation

10. Incorporation of association

- (1) Unless section 11 applies, the Commissioner must incorporate an association by the issue to the association of a certificate of incorporation if —
- (a) an application for the incorporation of an association is made under Division 2; and
 - (b) the Commissioner is of the opinion that —
 - (i) the association is eligible to be incorporated under this Act; and
 - (ii) the rules of the association lodged with the Commissioner conform to the requirements of this Act; and
 - (iii) the name of the association is appropriate having regard to section 12.
- (2) The Commissioner must not incorporate the association until —
- (a) the time during which any request might be made under section 9 has expired; and
 - (b) any request made under that section has been finally refused.
- (3) For the purposes of subsection (2), a request under section 9 has been finally refused if the request is refused by the Commissioner and either —
- (a) the time for making an application for review under section 170 has expired without such an application being made; or
 - (b) any application for review made under section 170 —
 - (i) has resulted in the Commissioner’s refusal being confirmed; or
 - (ii) has been dismissed or struck out.

1 **11. Refusal of incorporation**

- 2 (1) The Commissioner must not incorporate an association under
3 this Act if in the opinion of the Commissioner —
- 4 (a) it is more appropriate for the activities of the association
5 to be carried on by a body corporate incorporated under
6 some other law; or
- 7 (b) the incorporation of the association is against the public
8 interest.
- 9 (2) The grounds on which the Commissioner may form the opinion
10 that subsection (1)(a) or (b) applies include the following —
- 11 (a) the likely scale or nature of the activities of the
12 association;
- 13 (b) the likely value or nature of the property of the
14 association;
- 15 (c) the extent or nature of the dealings the association is
16 likely to have with the public;
- 17 (d) any other matter the Commissioner considers relevant.
- 18 (3) The Commissioner must not incorporate an association if, in the
19 Commissioner’s opinion, any ground for refusal of
20 incorporation prescribed by the regulations applies to the
21 association.

22 **12. Restrictions as to names of associations**

- 23 The Commissioner must not incorporate an association under
24 this Act by a name that in the opinion of the Commissioner is —
- 25 (a) offensive or undesirable; or
- 26 (b) likely to mislead the public as to the object or purpose of
27 the association; or
- 28 (c) identical to the name by which an association in
29 existence is, or is taken to be, incorporated under this
30 Act or which resembles any such name in a manner
31 likely to mislead the public; or

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Part 2 Incorporation of association

Division 3 Incorporation

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- 1 (d) identical to, or likely to be confused with, the name of
2 any other body corporate or a business name registered
3 to another body under the *Business Names Registration*
4 *Act 2011* (Commonwealth); or
5 (e) prescribed for the purposes of this section; or
6 (f) of a kind that is so prescribed.

7 **13. Effect of incorporation**

- 8 (1) Upon incorporation of an association under this Act —
9 (a) the association becomes a body corporate with perpetual
10 succession and may have a common seal; and
11 (b) the corporate name of the association is the name of the
12 association as stated in the certificate of incorporation,
13 concluding with the word “Incorporated” or the
14 abbreviation “Inc.”; and
15 (c) except as provided in subsection (2), all rights and
16 liabilities exercisable against members or members of
17 the management committee of the association in their
18 capacity as such immediately before the incorporation of
19 the association become rights and liabilities of and
20 exercisable against the incorporated association; and
21 (d) the association may sue or be sued in its corporate name.
22 (2) Subsection (1)(c) is not to be construed so as to relieve or
23 release any person in respect of liabilities incurred by or on
24 behalf of the association prior to incorporation.

25 **14. Powers of incorporated association**

- 26 (1) Subject to this Act and to its rules, an incorporated association
27 may do all things necessary or convenient for carrying out its
28 objects and purposes, and in particular, may —
29 (a) acquire, hold, deal with, and dispose of any real or
30 personal property; and
31 (b) open and operate bank accounts; and

- 1 (c) invest its money —
- 2 (i) as trust funds may be invested under the *Trustees*
- 3 *Act 1962* Part III; or
- 4 (ii) in any other manner authorised by the rules of
- 5 the association;
- 6 and
- 7 (d) borrow money upon such terms and conditions as the
- 8 association thinks fit; and
- 9 (e) give such security for the discharge of liabilities
- 10 incurred by the association as the association thinks fit;
- 11 and
- 12 (f) appoint agents to transact any business of the association
- 13 on its behalf; and
- 14 (g) enter into any other contract it considers necessary or
- 15 desirable.
- 16 (2) An incorporated association may, unless its rules otherwise
- 17 provide, act as trustee and accept and hold real and personal
- 18 property upon trust, but an incorporated association does not
- 19 have power to do any act or thing as a trustee that, if done
- 20 otherwise than as a trustee, would contravene this Act or the
- 21 rules of the association.

22 **15. Manner in which contract may be made**

- 23 (1) Contracts may be made by or on behalf of an incorporated
- 24 association as follows —
- 25 (a) a contract which, if made between natural persons,
- 26 would be required to be in writing under seal may be
- 27 made by the incorporated association under its common
- 28 seal;
- 29 (b) a contract which, if made between natural persons,
- 30 would be required to be in writing signed by the parties
- 31 may be made on behalf of the association in writing by
- 32 any person acting under its express or implied authority;

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1 (c) a contract which, if made between natural persons,
2 would be valid although not in writing signed by the
3 parties may be made orally on behalf of the association
4 by any person acting under its express or implied
5 authority.

6 (2) A contract may be varied or rescinded by or on behalf of an
7 incorporated association in the same manner as it is authorised
8 to be made.

9 **16. When contract affected by deficiency in association's legal**
10 **capacity**

11 (1) A contract made with an incorporated association is not invalid
12 by reason of any deficiency in the legal capacity of the
13 association to enter into, or carry out, the contract unless the
14 person contracting with the association has actual notice of the
15 deficiency.

16 (2) An incorporated association that enters into a contract that
17 would, but for the provisions of subsection (1), be invalid is
18 empowered to carry out the contract.

19 (3) This section does not prejudice an action by a member of an
20 incorporated association to restrain the association from
21 entering into a transaction that is beyond the powers of the
22 association.

23 **17. Requirements of section 4 continue after incorporation**

24 (1) After its incorporation an association —
25 (a) must continue to be carried on for one or more purposes
26 mentioned in section 4(a); and
27 (b) must at all times have at least 6 members who under its
28 rules have full voting rights; and
29 (c) must not, itself or as a trustee secure pecuniary profit for
30 its members.

1 (2) The application of subsection (1) extends to an association that
2 is, or is deemed to be, an incorporated association immediately
3 before the commencement of this section.

4 **18. Certain property vests in incorporated association**

5 (1) On the incorporation of an association under section 10 all real
6 and personal property held by any person for or on behalf of the
7 association vests, by virtue of this subsection, in the
8 incorporated association.

9 (2) Any property vested in an incorporated association by
10 subsection (1) is vested subject to any trust, restriction or
11 obligation to which that property was subject immediately
12 before it became so vested.

13 (3) On —

14 (a) the application of an incorporated association in which
15 any estate or interest in land has been vested by
16 subsection (1); and

17 (b) the production of such duplicate instruments of title and
18 other documents as the Registrar of Titles or the
19 Registrar of Deeds and Transfers may require,

20 the Registrar of Titles or the Registrar of Deeds and Transfers
21 must record and register the vesting of that estate or interest in
22 land in the association.

23 **19. Liability of members of management committee, trustees**
24 **and members**

25 (1) A member of the management committee, trustee or a member
26 of an incorporated association is not by reason only of being
27 such a member of the management committee, trustee or
28 member liable in respect of the liabilities of the association.

29 (2) Subsection (1) does not apply in respect of liabilities incurred
30 by or on behalf of the association prior to incorporation.

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1 **20. Issue of replacement certificate**

2 The Commissioner must issue a replacement certificate of
3 incorporation of an association if —

- 4 (a) the incorporated association satisfies the Commissioner
5 that the certificate has been lost or destroyed; and
6 (b) the fee prescribed by the regulations is paid by the
7 incorporated association.

Part 3 — Rules

Division 1 — Rules of incorporated association

21. Effect of rules

- (1) The rules of an incorporated association bind the association and the members of the association as if —
- (a) they contained an agreement on the part of each member to be bound by and observe all the provisions of the rules; and
 - (b) that agreement were duly executed by each member.
- (2) Subsection (1) has effect only so far as the rules are consistent with this Act.
- (3) The application of this section extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this section.

22. General requirements for content of rules

- (1) The rules of an incorporated association must specify the following —
- (a) the name of the association;
 - (b) the objects or purposes of the association;
 - (c) the quorum for a general meeting of members of the incorporated association;
 - (d) the quorum for a meeting of the management committee of the incorporated association.
- (2) The rules of an incorporated association must include a provision in, or substantially in, the following terms —
- The property and income of the association must be applied solely towards the promotion of the objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any

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- 1 member of the association, except in good faith in the
2 promotion of those objects or purposes.
- 3 (3) Subject to section 23, the rules of an incorporated association
4 must at all times —
- 5 (a) address each of the matters set out in Schedule 1
6 Division 1; and
- 7 (b) comply with any applicable requirement under
8 Schedule 1 Division 2; and
- 9 (c) be otherwise consistent with this Act.
- 10 (4) The rules of an incorporated association must include a
11 reference to any exemption or approval under section 23(1)
12 or 25(1) and the effect of the exemption or approval.
- 13 (5) An incorporated association is taken to have met the
14 requirements of subsection (3) if the association —
- 15 (a) adopts the model rules without modification as its rules;
16 and
- 17 (b) provides to the Commissioner the information referred
18 to in section 7(3)(b)(ii) or 29(5), as the case requires.
- 19 (6) The rules of an incorporated association that adopts the model
20 rules are taken to include the information provided by the
21 association under section 7(3)(b)(ii) or 29(5).
- 22 (7) The application of this section extends to an association that is,
23 or is deemed to be, an incorporated association immediately
24 before the commencement of this section.
- 25 **23. Commissioner may exempt from requirement of section 22**
- 26 (1) A provision in Schedule 1 does not apply to an incorporated
27 association to the extent that the Commissioner in writing
28 exempts it from that provision.
- 29 (2) The Commissioner may at any time revoke or amend an
30 exemption.

- 1 (3) An exemption has effect subject to compliance with any
2 condition that the Commissioner attaches to it.
- 3 (4) An application for an exemption may be lodged —
4 (a) on behalf of an association as part of an application
5 under section 7; or
6 (b) by an incorporated association.
- 7 (5) The Commissioner is only to grant an exemption in respect of a
8 provision if satisfied —
9 (a) that the special circumstances of the association justify
10 the exemption; and
11 (b) that the exemption will not affect the objects or purposes
12 of the association; and
13 (c) that the application of the provision to the association
14 would cause undue hardship to its members; and
15 (d) as to any other prescribed matter.
- 16 (6) The Commissioner must give written notice of a decision under
17 this section to the association, and allow the association a
18 reasonable time to comply with the provision concerned as
19 affected by the decision.

20 **24. Restriction on distribution of surplus property**

- 21 (1) There is implied in the rules of every incorporated association a
22 provision that, on the cancellation of the incorporation or the
23 winding up of the association, its surplus property can only be
24 distributed to one or more of the following —
25 (a) an incorporated association;
26 (b) a company limited by guarantee that is registered as
27 mentioned in the Corporations Act section 150;
28 (c) a company holding a licence that continues in force
29 under the Corporations Act section 151;

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- 1 (d) a body corporate that at the time of the distribution is the
2 holder of a licence under the *Charitable Collections*
3 *Act 1946*;
- 4 (e) a body corporate that —
5 (i) is a member or former member of the
6 incorporated association; and
7 (ii) at the time of the distribution of surplus property,
8 has rules that prevent the distribution of property
9 to its members;
- 10 (f) a trustee for a body corporate referred to in
11 paragraph (e);
- 12 (g) a co-operative registered under the *Co-operatives*
13 *Act 2009* that, at the time of the distribution of surplus
14 property, is a non-distributing co-operative as defined in
15 that Act.

16 (2) The provision described in subsection (1) has effect —

- 17 (a) subject to section 134; and
18 (b) despite any inconsistent provision in the rules of an
19 incorporated association.

20 (3) The application of this section extends to an association that is,
21 or is deemed to be, an incorporated association immediately
22 before the commencement of this section.

23 **25. Commissioner may approve variation of provision implied**
24 **by section 24**

- 25 (1) The Commissioner may, for the rules of a particular
26 incorporated association, approve in writing a variation of the
27 provision implied by section 24 so that it includes a reference
28 to —
29 (a) a particular body corporate; or
30 (b) a particular body corporate that is to apply property for a
31 particular charitable purpose approved by the
32 Commissioner.

- 1 (2) An approval has effect subject to compliance with any condition
2 that the Commissioner attaches to it.
- 3 (3) An application for an approval under subsection (1) may be
4 made —
- 5 (a) on behalf of an association as part of an application for
6 incorporation under section 7; or
- 7 (b) by an incorporated association.
- 8 (4) An application for an approval under subsection (1) must
9 include the written consent of the body corporate concerned to
10 the application being made.
- 11 (5) The Commissioner may revoke or amend an approval given
12 under subsection (1).

13 **26. Model rules**

- 14 (1) Regulations are to be made prescribing model rules for
15 incorporated associations.
- 16 (2) The model rules must —
- 17 (a) address each of the matters set out in Schedule 1
18 Division 1 other than specifying the following —
- 19 (i) the name of the incorporated association;
- 20 (ii) the objects or purposes of the incorporated
21 association;
- 22 (iii) the quorum for a general meeting of members of
23 the incorporated association;
- 24 (iv) the quorum for a meeting of the management
25 committee of the incorporated association;
- 26 and
- 27 (b) comply with the requirements under Schedule 1
28 Division 2 other than fixing the period of the first
29 financial year of an incorporated association.
- 30 (3) The model rules may deal with any other matter.

1 **27. Rules of associations existing at the commencement of**
2 **section 185**

3 (1) This section applies to an association that was incorporated
4 under a repealed Act and whose incorporation has effect
5 immediately before the commencement of section 185.

6 (2) The rules of an association as in force immediately before the
7 commencement of section 185 continue to have effect but
8 without limiting —

9 (a) the ability of the association, or of the management
10 committee of the association, to alter the rules of the
11 association in accordance with Division 2 or
12 section 200; or

13 (b) the operation of section 22 as qualified by Part 16
14 Division 2 Subdivision 4.

15 **28. Rules of an incorporated association**

16 (1) On the registration of an incorporated association under this
17 Act, the rules of the association are —

18 (a) the rules that accompanied the application for the
19 registration of the association; or

20 (b) if the application was accompanied by a statement that
21 the model rules have been approved as the rules of the
22 proposed incorporated association — the model rules
23 including the information provided under
24 section 7(3)(b)(ii) or 29(5).

25 (2) The model rules apply as the rules of an association on its
26 incorporation —

27 (a) if the association does not have its own rules; or

28 (b) if the association has its own rules, to the extent that
29 they do not —

30 (i) address a matter referred to in Schedule 1
31 Division 1; or

- 1 (ii) comply with any applicable requirement under
2 Schedule 1 Division 2.

3 **29. Adoption of model rules**

- 4 (1) An incorporated association may, by special resolution, approve
5 the adoption of the model rules as the rules of the association at
6 any time after its incorporation under this Act.
- 7 (2) If an incorporated association approves the adoption of the
8 model rules as its rules, it is taken to have adopted any
9 subsequent amendment to the model rules as an alteration of its
10 rules.
- 11 (3) An alteration of the rules of an incorporated association referred
12 to in subsection (2) —
- 13 (a) takes effect on the day the relevant amendment to the
14 model rules comes into operation; and
- 15 (b) takes effect without the requirement of a special
16 resolution of the association; and
- 17 (c) does not require the approval of the Commissioner.
- 18 (4) If an incorporated association that has approved the adoption of
19 the model rules as its own rules alters those rules under
20 section 30, other than an alteration to its name, objects, purposes
21 or quorums, the association is taken to have adopted its own
22 rules and subsections (2) and (3) do not apply to those rules.
- 23 (5) An incorporated association that approves the adoption of the
24 model rules as its own rules under subsection (1) must notify the
25 Commissioner and include in the notification the following
26 information —
- 27 (a) the name of the association;
- 28 (b) the objects or purposes of the association;
- 29 (c) the quorum for a general meeting of members of the
30 association;

- 1 (d) the quorum for a meeting of the management committee
2 of the association;
- 3 (e) if relevant, the period of the first financial year of the
4 association.

5 **Division 2 — Alteration of rules**

6 **30. Alteration of rules**

- 7 (1) Subject to sections 31 and 33, an incorporated association may
8 alter its rules by special resolution but not otherwise.
- 9 (2) In this section, a reference to rules includes a reference to
10 information provided under section 7(3)(b)(ii) or 29(5).
- 11 (3) Within one month after the passing of a special resolution
12 altering its rules, or such further time as the Commissioner may
13 in a particular case allow, an incorporated association must
14 lodge the required documents with the Commissioner.
15 Penalty: a fine of \$1 000.
- 16 (4) The required documents are —
- 17 (a) a notice of the special resolution setting out particulars
18 of the alterations; and
- 19 (b) a certificate in the approved form that the resolution was
20 duly passed as a special resolution; and
- 21 (c) except where only the model rules will apply, a
22 consolidated copy of the rules of the incorporated
23 association, including all alterations to which the special
24 resolution relates.
- 25 (5) The certificate under subsection (4)(b) must be signed by a
26 member of the management committee of the incorporated
27 association.
- 28 (6) An alteration of the rules of an incorporated association does
29 not take effect until subsection (3) is complied with.

1 (7) The regulations may make provision for the circumstances and
2 manner in which notice of any alteration of an incorporated
3 association's rules must be given to members of the association.

4 **31. Change of name by alteration of rules**

5 (1) An alteration of the rules of an incorporated association having
6 effect to change the name of the association does not take effect
7 until section 30 is complied with and the approval of the
8 Commissioner is given to the change of name.

9 (2) The Commissioner may direct that notice of a proposed change
10 of name of an incorporated association be published in
11 accordance with the Commissioner's directions as a prerequisite
12 to approval of the change.

13 (3) The Commissioner must not approve a name under this section
14 unless the Commissioner is of the opinion that the proposed
15 name is an appropriate name under which an association might
16 be incorporated under this Act.

17 (4) The Commissioner must issue a new certificate of incorporation
18 in the approved form showing the new name of the incorporated
19 association if —

- 20 (a) the Commissioner approves a change of name; and
21 (b) subsection (5) is complied with; and
22 (c) any fee prescribed for the purposes of this subsection
23 has been paid.

24 (5) A new certificate of incorporation under subsection (4) must not
25 be issued unless —

- 26 (a) the certificate of incorporation previously issued has
27 been returned to the Commissioner; or
28 (b) the Commissioner is satisfied that the certificate has
29 been lost or destroyed.

1 **32. Corporate identity and other matters not affected by change**
2 **of name**

- 3 (1) A change of name of an incorporated association does not
4 affect —
5 (a) the corporate identity of the incorporated association; or
6 (b) its rights and obligations; or
7 (c) any legal proceeding by or against it.
- 8 (2) A legal proceeding that might have been commenced or
9 continued by or against the incorporated association in its
10 former name may be commenced or continued by or against it
11 in its new name.

12 **33. Certain other rule alterations to be approved by**
13 **Commissioner**

- 14 (1) This section applies to an alteration of the rules of an
15 incorporated association having effect to alter —
16 (a) the objects or purposes of the association; or
17 (b) the manner in which surplus property of the association
18 must be distributed or dealt with if the association is
19 wound up or its incorporation is cancelled.
- 20 (2) The alteration does not take effect until section 30 is complied
21 with and the approval of the Commissioner is given to it.
- 22 (3) The Commissioner may direct that notice of the proposed
23 alteration be published in accordance with the Commissioner's
24 directions as a prerequisite to it being approved.

25 **34. Request for refusal of change of name or other rule**
26 **alterations**

- 27 (1) Any person may, in accordance with the terms of a public notice
28 given under —
29 (a) section 31(2) in respect of a change of name; or

- 1 (b) section 33(3) in respect of a rule alteration to which
2 section 33 applies,
3 request the Commissioner to decline to approve the change or
4 alteration.
5 (2) A request under subsection (1) must include the reasons for the
6 request.

7 **Division 3 — Provision of rules to members**

8 **35. Rules to be available to members**

- 9 (1) An incorporated association must keep and maintain in an
10 up-to-date condition a copy of the rules of the association.
11 Penalty: a fine of \$2 750.
12 (2) At the request of a member of an incorporated association, the
13 association must make the copy of the rules available for
14 inspection by the member.
15 Penalty: a fine of \$2 750.
16 (3) The member may make a copy of or take an extract from the
17 copy of the rules but does not have the right to remove the rules
18 for that purpose.

19 **36. When member to receive copy of rules**

- 20 (1) Without limiting section 35, an incorporated association
21 must —
22 (a) at the request of a member of the association, give to the
23 member a copy of the association's rules, or of any
24 particular part of those rules to which the request relates,
25 as in force at the time of the request; and
26 (b) give to each person who becomes a member of the
27 association a copy of the association's rules as in force
28 when the membership commences.
29 Penalty: a fine of \$2 750.

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1 (2) An incorporated association must not make a charge for taking
2 any action that it is required to take under this section.

3 (3) The regulations may make provision for the manner in which a
4 copy of an incorporated association's rules or of any part of
5 those rules may be, or must be, given under this section.

6 **37. Further provision as to obligations under sections 35 and 36**

7 The obligations under sections 35 and 36 in respect of the rules
8 of an association include reference to —

- 9 (a) model rules if those rules are the rules of the association;
10 and
11 (b) the association's own rules.

Part 4 — Management

Division 1 — Management committee

38. Management committee

The persons who under the rules of the incorporated association have the power to manage the affairs of the association constitute the management committee of the association for the purposes of this Act.

39. Persons who are not to be members of management committee

(1) Subject to section 40, this section applies to the following persons —

- (a) a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or person whose affairs are under insolvency laws;
- (b) a person who has been convicted, within or outside the State, of —
 - (i) an indictable offence in relation to the promotion, formation or management of a body corporate; or
 - (ii) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than 3 months; or
 - (iii) an offence under Division 3 or section 127.

(2) A person to whom this section applies must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an incorporated association.

Penalty: a fine of \$10 000.

1 **40. Limitation of period for which section 39 applies to certain**
2 **persons**

3 Section 39 applies to a person referred to in subsection (1)(b) of
4 that section, in relation to the person's conviction of an offence,
5 only for the period of 5 years —

- 6 (a) from the time of the person's conviction; or
7 (b) if the conviction results in a term of imprisonment, from
8 the time of the person's release from custody.

9 **41. Handing over of documents and records when membership**
10 **of management committee ceases**

11 (1) In this section —

12 *relevant documents and records* means documents and records
13 pertaining to the management of the affairs of an incorporated
14 association that —

- 15 (a) if subsection (2)(a) applies, were in the possession of the
16 member of the management committee immediately
17 before the member's death; or
18 (b) if subsection (2)(b) applies, are in the possession of the
19 person who has ceased to be a member of the
20 management committee.

21 (2) This section applies where a member of the management
22 committee of an incorporated association —

- 23 (a) dies; or
24 (b) otherwise ceases to be a member of the management
25 committee.

26 (3) As soon as is practicable after a person has ceased to be a
27 member of the management committee of an incorporated
28 association —

- 29 (a) the person; or

- 1 (b) if subsection (2)(a) applies, the personal representative
2 of the person,
3 must deliver to a member of the management committee of the
4 association all relevant documents and records or, in the case of
5 relevant documents or records that are stored on a computer, a
6 copy of all such documents and records.
7 Penalty: a fine of \$10 000.

8 **Division 2 — Matters of material personal interest**

9 **42. Disclosure of material personal interest**

- 10 (1) A member of the management committee of an incorporated
11 association who has a material personal interest in a matter
12 being considered at a management committee meeting must, as
13 soon as the member becomes aware of the interest, disclose the
14 nature and extent of the interest to the management committee.
15 Penalty: a fine of \$10 000.
- 16 (2) A member of the management committee of an incorporated
17 association who has a material personal interest in a matter
18 being considered at a management committee meeting must
19 disclose the nature and extent of the interest at the next general
20 meeting of the association.
21 Penalty: a fine of \$10 000.
- 22 (3) Subsections (1) and (2) do not apply in respect of a material
23 personal interest —
24 (a) that exists only because the member —
25 (i) is an employee of the incorporated association;
26 or
27 (ii) is a member of a class of persons for whose
28 benefit the association is established;
29 or
30 (b) that the member has in common with all, or a substantial
31 proportion of, the members of the association.

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Division 2 Matters of material personal interest

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- 1 (4) If a member of the management committee of an incorporated
2 association discloses a material personal interest in a contract or
3 proposed contract in accordance with this section, and the
4 member has complied with section 43(1) or the member's
5 interest is not required to be disclosed because of
6 subsection (3) —
- 7 (a) the contract is not liable to be avoided by the association
8 on any ground arising from the fiduciary relationship
9 between the member and the association; and
- 10 (b) the member is not liable to account for profits derived
11 from the contract.
- 12 (5) A disclosure of a material personal interest required by
13 subsection (1) or (2) must give details of —
- 14 (a) the nature and extent of the interest; and
15 (b) the relation of the interest to the activities of the
16 incorporated association.
- 17 (6) The details referred to in subsection (5) must be recorded in the
18 minutes of the meeting of the management committee at which
19 the disclosure is made.

20 **43. Voting on contract in which management committee**
21 **member has a material personal interest**

- 22 (1) A member of the management committee of an incorporated
23 association who has a material personal interest in a matter
24 being considered at a meeting of the management committee
25 must not —
- 26 (a) be present while the matter is being considered at the
27 meeting; or
- 28 (b) vote on the matter.
- 29 Penalty: a fine of \$10 000.

- 1 (2) Subsection (1) does not apply in respect of a material personal
2 interest —
- 3 (a) that exists only because the member belongs to a class
4 of person for whose benefit the association is
5 established; or
- 6 (b) that the member has in common with all, or a substantial
7 proportion of, the members of the association.
- 8 (3) If there are not enough management committee members to
9 form a quorum to consider a matter because of subsection (1) —
- 10 (a) one or more committee members (including those who
11 have a material personal interest in the matter) may call
12 a general meeting; and
- 13 (b) the general meeting may pass a resolution to deal with
14 the matter.

15 **Division 3 — Duties of officers**

16 **44. Duty of care and diligence**

- 17 (1) An officer of an incorporated association must exercise his or
18 her powers and discharge his or her duties with the degree of
19 care and diligence that a reasonable person would exercise if
20 that person —
- 21 (a) were an officer of the association in the association’s
22 circumstances; and
- 23 (b) occupied the office held by, and had the same
24 responsibilities within the association as, the officer.
- 25 Penalty: a fine of \$10 000.
- 26 (2) An officer of an incorporated association who makes a business
27 judgment is taken to meet the requirements of subsection (1),
28 and his or her equivalent duties at common law and in equity, in
29 respect of the judgment if the officer —
- 30 (a) makes the judgment in good faith for a proper purpose;
31 and

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- 1 (b) does not have a material personal interest in the subject
2 matter of the judgment; and
3 (c) informs himself or herself about the subject matter of
4 the judgment to the extent the officer reasonably
5 believes to be appropriate; and
6 (d) rationally believes that the judgment is in the best
7 interests of the association.

8 (3) For the purposes of subsection (2) —
9 ***business judgment*** means any decision to take or not take
10 action in respect of a matter relevant to the operations of the
11 incorporated association.

12 (4) The officer's belief that the judgment is in the best interests of
13 the incorporated association is a rational one unless the belief is
14 one that no reasonable person in the position of the officer
15 would hold.

16 **45. Duty of good faith and proper purpose**

17 An officer of an incorporated association must exercise his or
18 her powers and discharge his or her duties —

- 19 (a) in good faith in the best interests of the association; and
20 (b) for a proper purpose.

21 Penalty: a fine of \$10 000.

22 **46. Use of position**

23 An officer of an incorporated association must not improperly
24 use his or her position to —

- 25 (a) gain an advantage for the officer or another person; or
26 (b) cause detriment to the association.

27 Penalty: a fine of \$10 000.

1 **47. Use of information**

2 A person who obtains information because the person is, or has
3 been, an officer of an incorporated association must not
4 improperly use the information to —

- 5 (a) gain an advantage for the person or another person; or
6 (b) cause detriment to the association.

7 Penalty: a fine of \$10 000.

8 **48. Interaction of sections 44 to 47 with other laws**

9 (1) Sections 44 to 47 —

10 (a) have effect in addition to, and not in derogation of, any
11 rule of law relating to the duty or liability of a person
12 because of his or her office in relation to an incorporated
13 association; and

14 (b) do not prevent the commencement of civil proceedings
15 for a breach of a duty or in respect of a liability referred
16 to in paragraph (a).

17 (2) This section does not apply to section 44(2), (3) and (4) to the
18 extent to which those provisions operate on the duties at
19 common law and in equity that are equivalent to the
20 requirements of section 44(1).

21 **49. Reliance on information or advice**

22 (1) This section applies if the reasonableness of the reliance of an
23 officer of an incorporated association on information or advice
24 given to the officer arises in a proceeding brought to determine
25 whether the officer has performed a duty under this Act or an
26 equivalent duty at common law or in equity.

27 (2) Unless the contrary is proved, the officer's reliance on the
28 information or advice is taken to be reasonable if —

- 29 (a) the information or advice was given or prepared by —
30 (i) an employee of the incorporated association
31 whom the officer reasonably believed to be

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- 1 reliable and competent in relation to the matters
2 concerned; or
- 3 (ii) a professional advisor or expert in relation to the
4 matters that the officer reasonably believed to be
5 within that person's professional or expert
6 competence; or
- 7 (iii) another officer of the incorporated association in
8 relation to matters within the other officer's
9 authority; or
- 10 (iv) a sub-committee of the incorporated association
11 of which the officer was not a member in relation
12 to matters within the sub-committee's authority;
- 13 and
- 14 (b) the reliance was made —
- 15 (i) in good faith; and
- 16 (ii) after making an independent assessment of the
17 information or advice, having regard to the
18 officer's knowledge of the incorporated
19 association and the complexity of the structure of
20 the incorporated association.

21 **Division 4 — Annual general meeting and special resolutions**

22 **50. Annual general meeting**

- 23 (1) Except as allowed under subsection (2), an incorporated
24 association must in each calendar year hold an annual general
25 meeting.
26 Penalty: a fine of \$5 000.
- 27 (2) An incorporated association may hold its first annual general
28 meeting at any time within 18 months after incorporation.
- 29 (3) Except as allowed under subsection (2), an incorporated
30 association must hold its annual general meeting —
- 31 (a) within 6 months after the end of the association's
32 financial year; or

1 (b) within such longer period as may in a particular case be
2 allowed by the Commissioner.

3 Penalty: a fine of \$2 750.

4 **51. Requirements for special resolution**

5 (1) For the purposes of this Act, a resolution is a special resolution
6 if it is passed —

7 (a) at a general meeting of an incorporated association; and

8 (b) by the votes of not less than three-fourths of the
9 members of the association who cast a vote at the
10 meeting.

11 (2) A person is taken to cast a vote at a general meeting as
12 mentioned in subsection (1) if the person has a right under the
13 rules of the association to vote on the resolution and —

14 (a) votes in person at the meeting; or

15 (b) where proxies or postal votes are allowed by the rules of
16 the association, votes on the resolution by proxy or
17 postal vote.

18 (3) Before the general meeting, written notice of —

19 (a) the proposed special resolution; and

20 (b) the time and place of the general meeting at which it is
21 proposed to move the resolution,

22 must be given, as required under the rules of the incorporated
23 association, to each member of the association.

24 (4) The notice must set out the wording of the proposed special
25 resolution.

26 (5) If notice is not given in accordance with subsections (3) and (4)
27 the special resolution has no effect.

1 **52. Evidence of passing of resolution**

- 2 (1) At a general meeting of an incorporated association at which a
3 resolution proposed as a special resolution is submitted, a
4 declaration by the person presiding that the resolution has been
5 passed as a special resolution is evidence of the fact.
- 6 (2) Subsection (1) does not apply if, during the meeting at which
7 the resolution is submitted, a poll is demanded —
- 8 (a) in accordance with the rules of the incorporated
9 association; or
- 10 (b) if the rules do not make provision as to the manner in
11 which a poll may be demanded, by at least 3 members of
12 the association present in person or, where proxies are
13 allowed, by proxy.
- 14 (3) If a poll is taken under subsection (2), a declaration by the
15 person presiding as to the result of a poll is evidence of the
16 matter so declared.

17 **Division 5 — Register of members**

18 **53. Register to be maintained**

- 19 (1) An incorporated association must —
- 20 (a) maintain a register of its members in accordance with
21 the regulations and the requirements of this section; and
- 22 (b) record in the register any change in the membership of
23 the association within 28 days after the change occurs.
- 24 Penalty: a fine of \$2 750.
- 25 (2) The register of members must include each member's name
26 and —
- 27 (a) residential address; or
- 28 (b) postal address; or
- 29 (c) email address; or

1 (d) information, by means of which contact can be made
2 with the member, that is prescribed for the purposes of
3 this paragraph.

4 **54. Inspection of register by member**

5 (1) An incorporated association must, at the request of a member,
6 make the register of members available for inspection by the
7 member.

8 Penalty: a fine of \$2 750.

9 (2) Subject to any rules of the kind mentioned in subsection (3), a
10 member inspecting the register of members may make a copy
11 of, or take an extract from, the register but is not entitled to
12 remove the register for that purpose.

13 (3) The rules of an incorporated association may require a member
14 who wishes to make a copy of, or take an extract from, the
15 register of members to provide a statutory declaration setting
16 out the purpose for which the copy or extract is required and
17 declaring that the purpose is connected with the affairs of the
18 association.

19 **55. Commissioner may request copy of register**

20 (1) The Commissioner may request an incorporated association to
21 provide the Commissioner with a copy of the register of
22 members.

23 (2) The incorporated association must comply with the request
24 within 14 days after it is made.

25 Penalty: a fine of \$5 000.

26 **56. Member may request copy of register**

27 (1) A member of an incorporated association may in writing request
28 the association to provide the member with a copy of the
29 register of members.

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1 (2) The rules of an incorporated association may require a member
2 who requests a copy of the register of members to provide a
3 statutory declaration setting out the purpose for which the
4 request is made and declaring that the purpose is connected with
5 the affairs of the association.

6 (3) Subject to any rules of the kind mentioned in subsection (2), the
7 incorporated association must comply with the request on
8 payment of any amount required to be paid under
9 subsection (4).

10 Penalty: a fine of \$2 750.

11 (4) The management committee may —

12 (a) determine a reasonable charge for the cost of complying
13 with a request under subsection (1); and

14 (b) require the person making the request to pay the charge
15 to the association.

16 (5) The regulations may make provision for —

17 (a) the manner in which a copy of the register of members
18 may be, or must be, provided to a member under
19 subsection (3); and

20 (b) the maximum amount, or a method of calculating the
21 maximum amount, that may be charged under
22 subsection (4).

23 **57. Improper use of information in register**

24 (1) A person must not use or disclose information in the register of
25 members of an incorporated association except for a purpose —

26 (a) that is directly connected with the affairs of the
27 association; or

28 (b) that is related to the administration of this Act.

29 Penalty: a fine of \$10 000.

- 1 (2) Without limiting subsection (1), a person contravenes that
2 subsection if the person —
- 3 (a) uses information obtained from the register of members
4 of an incorporated association for advertising purposes;
5 or
- 6 (b) discloses information obtained from the register of
7 members of an incorporated association to another
8 person, knowing that the information is likely to be used
9 for advertising purposes.
- 10 (3) The reference in subsection (2) to the use of information for
11 advertising purposes is a reference to using it to contact, or send
12 material to, the association or a member of the association for
13 the purpose of advertising for political, religious, charitable or
14 commercial purposes.
- 15 (4) Subsection (2) does not apply if the use or disclosure of the
16 information is approved by the incorporated association
17 concerned.

18 **Division 6 — Record of office holders**

19 **58. Record of office holders**

- 20 (1) In this section —
21 **address** means —
- 22 (a) a residential or business address; or
23 (b) a post office box address; or
24 (c) an email address.
- 25 (2) An incorporated association must maintain a record of —
26 (a) the names and addresses of the persons who —
27 (i) are members of its management committee; or
28 (ii) hold other offices of the association provided for
29 by its rules;
30 and

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1 (b) the name and address of any person who is authorised to
2 use the common seal of the association (if it has a
3 common seal); and

4 (c) the name and address of any person who is appointed or
5 acts as trustee on behalf of the association.

6 Penalty: a fine of \$2 750.

7 (3) The incorporated association must, upon the request of a
8 member of the association, make available the record for the
9 inspection of the member.

10 Penalty: a fine of \$5 000.

11 (4) The member may make a copy of or take an extract from the
12 record but does not have a right to remove the record for that
13 purpose.

14 (5) A person must not use or disclose information in the record
15 maintained under subsection (2) except for a purpose —

16 (a) that is directly connected with the affairs of the
17 association; or

18 (b) that is related to the administration of this Act.

19 Penalty: a fine of \$10 000.

20 **59. Commissioner may ask apparent office holders to provide**
21 **information**

22 (1) This section applies to a person if it appears to the
23 Commissioner that the person is or may be the holder of an
24 office provided for by the rules of an incorporated association.

25 (2) The Commissioner may, by notice served on the person, require
26 the person, within the time specified in the notice, to lodge with
27 the Commissioner in writing —

28 (a) particulars of the person's residential address; and

- 1 (b) a statement showing —
2 (i) whether or not the person holds or has held the
3 office specified in the Commissioner’s notice;
4 and
5 (ii) if the person has held the office, when the person
6 ceased to hold it.
- 7 (3) A person must comply with any requirement made of the person
8 by a notice under subsection (2).
9 Penalty: a fine of \$5 000.

10 **Division 7 — Direction by Commissioner to convene**
11 **general meeting**

12 **60. Commissioner may direct that general meeting be convened**

- 13 (1) In this section —
14 **relevant office holder** means any person who under the rules of
15 an incorporated association has power to convene a general
16 meeting of the association;
17 **specified** means specified in a direction given under
18 subsection (3).
- 19 (2) This section applies if the Commissioner is of the opinion
20 that —
21 (a) there is a dispute or matter affecting the proper conduct
22 of the affairs of an incorporated association; and
23 (b) the giving of a direction under this section may assist in
24 or towards the resolution of the dispute or matter.
- 25 (3) The Commissioner may in writing given to a relevant office
26 holder of the incorporated association direct the office holder to
27 take such steps as are required under the rules of the association
28 to convene a general meeting of the association at a specified
29 time or within a specified period.

1 (4) A direction under subsection (3) may also require the office
2 holder to take such steps as are reasonably required to enable
3 any specified matter to be discussed and determined at the
4 meeting or at an adjourned meeting, including the putting of any
5 specified motion for consideration at the meeting.

6 (5) The Commissioner may in writing given to a relevant office
7 holder revoke or amend a direction given to that person under
8 subsection (3).

9 (6) A relevant office holder to whom a direction is given under
10 subsection (3) must not, without reasonable excuse, fail to
11 comply with the direction.

12 Penalty: a fine of \$5 000.

13 **61. Rights of Commissioner or a delegate at meeting**

14 (1) In this section —

15 *authorised person* means —

16 (a) the Commissioner; or

17 (b) a person authorised in writing by the Commissioner to
18 attend a meeting as the representative of the
19 Commissioner;

20 *meeting* means a meeting convened pursuant to a direction
21 under section 60 and includes an adjourned meeting.

22 (2) An authorised person may attend a meeting and take part in the
23 consideration and discussion of the dispute or matter in relation
24 to which the direction under section 60 was given and of any
25 incidental matter.

26 (3) An authorised person cannot vote at a meeting and is not to be
27 counted for the purpose of determining the existence of a
28 quorum.

**Part 5 — Financial records, reporting
and accountability**

Division 1 — Preliminary

62. Terms used

In this Part —

accounting standards means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations;

auditing standards means the standards issued by the Auditing and Assurance Standards Board, as in force for the time being, and including any modifications prescribed by the regulations;

financial records includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements;

financial report has the meaning given in section 63;

financial statements means the financial statements in relation to an incorporated association required under Division 3;

tier 1 association has the meaning given in section 64(1);

tier 2 association has the meaning given in section 64(2);

tier 3 association has the meaning given in section 64(3).

- 1 **63. Financial reports of tier 2 and tier 3 associations**
- 2 (1) The financial report for a financial year of a tier 2 association or
- 3 tier 3 association consists of —
- 4 (a) the financial statements for the year; and
- 5 (b) the notes to the financial statements; and
- 6 (c) the management committee’s declaration about the
- 7 statements and notes.
- 8 (2) The notes to the financial statements of an incorporated
- 9 association are —
- 10 (a) the disclosures required by the regulations; and
- 11 (b) notes required by the accounting standards; and
- 12 (c) any other information necessary to give a true and fair
- 13 view of the financial position and performance of the
- 14 association.
- 15 (3) The management committee’s declaration is a declaration by the
- 16 management committee stating —
- 17 (a) whether, in the management committee’s opinion, there
- 18 are reasonable grounds to believe that the association
- 19 will be able to pay its debts as and when they become
- 20 due and payable; and
- 21 (b) whether, in the management committee’s opinion, the
- 22 financial statements and notes are in accordance with
- 23 this Part.
- 24 (4) The management committee’s declaration must —
- 25 (a) be made in accordance with a resolution of the
- 26 management committee; and
- 27 (b) specify the date on which the declaration is made; and
- 28 (c) be signed by at least 2 members of the management
- 29 committee who are authorised to do so by the
- 30 management committee.

- 1 **64. Tier 1, tier 2 and tier 3 associations**
- 2 (1) An incorporated association is a ***tier 1 association*** in respect of
- 3 a financial year if —
- 4 (a) for the year it has revenue of less than —
- 5 (i) an amount prescribed for the purposes of this
- 6 subsubsection; or
- 7 (ii) if no amount is prescribed, \$250 000;
- 8 or
- 9 (b) the Commissioner has declared the incorporated
- 10 association to be a tier 1 association in respect of the
- 11 financial year under section 65(1)(a).
- 12 (2) An incorporated association is a ***tier 2 association*** in respect of
- 13 a financial year if —
- 14 (a) for the year it is not a tier 1 association or a tier 3
- 15 association; or
- 16 (b) the Commissioner has declared the incorporated
- 17 association to be a tier 2 association in respect of the
- 18 financial year under section 65(1)(b).
- 19 (3) An incorporated association is a ***tier 3 association*** in respect of
- 20 a financial year if for the year it has revenue of or exceeding —
- 21 (a) an amount prescribed for the purposes of this
- 22 subsubsection; or
- 23 (b) if no amount is prescribed, \$1 000 000.
- 24 (4) Revenue is to be calculated for the purposes of this section in
- 25 accordance with the accounting standards in force at the
- 26 relevant time (even if the standards do not otherwise apply to
- 27 the financial year of the incorporated association concerned).

1 **65. Commissioner may declare association to be tier 1 or tier 2**
2 **association**

- 3 (1) On application by an incorporated association, the
4 Commissioner may, in writing, in respect of a financial year
5 declare the incorporated association to be —
6 (a) a tier 1 association; or
7 (b) a tier 2 association.
- 8 (2) The Commissioner may make a declaration under subsection (1)
9 only if the Commissioner is satisfied that unusual and
10 non-recurring circumstances warrant the making of the
11 declaration.
- 12 (3) An application by an incorporated association to the
13 Commissioner for a declaration under subsection (1) in respect
14 of a financial year must be made within 3 months after the end
15 of the financial year.

16 **Division 2 — Financial records**

17 **66. Obligation to keep financial records**

18 An incorporated association must keep financial records that —

- 19 (a) correctly record and explain its transactions and
20 financial position and performance; and
21 (b) enable true and fair financial statements to be prepared
22 in accordance with Division 3.

23 Penalty: a fine of \$2 750.

24 **67. Retention of financial records**

25 An incorporated association must retain its financial records for
26 at least 7 years after the transactions covered by the records are
27 completed.

28 Penalty: a fine of \$2 750.

1 **Division 3 — Financial statements and reports**

2 **Subdivision 1 — Tier 1 associations**

3 **68. Obligation to prepare annual financial statements**

4 (1) Within 6 months after the end of each financial year, a tier 1
5 association in respect of the financial year must prepare
6 financial statements that give a true and fair view of the
7 financial position and performance of the association.

8 Penalty: a fine of \$2 750.

9 (2) For the purposes of subsection (1) —

10 (a) a tier 1 association that uses the cash basis of accounting
11 may prepare —

12 (i) a statement of receipts and payments for the
13 financial year; and

14 (ii) a reconciled statement of bank account balances
15 as at the end of the financial year; and

16 (iii) a statement of assets and liabilities as at the end
17 of the financial year;

18 and

19 (b) a tier 1 association that uses the accrual basis of
20 accounting may prepare —

21 (i) a statement of income and expenditure for the
22 financial year; and

23 (ii) a balance sheet.

24 **69. Review or audit of financial statements**

25 (1) A tier 1 association in respect of a financial year must ensure
26 that its financial statements for the financial year are reviewed
27 or audited in accordance with Divisions 5, 6 and 7 before being
28 submitted to the annual general meeting of the association if —

29 (a) a majority of the members present at a general meeting
30 of the association pass a resolution to that effect; or

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Division 3 Financial statements and reports

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1 (b) the association is directed by the Commissioner to do so.
2 Penalty: a fine of \$2 750.

3 (2) A resolution or direction under subsection (1) must specify
4 whether the financial statements are to be reviewed or audited.

5 **70. Financial reporting to annual general meeting and**
6 **Commissioner**

7 (1) This section applies to an incorporated association that is a tier 1
8 association in respect of its last financial year.

9 (2) At the annual general meeting of an incorporated association, if
10 section 69(1)(a) or (b) does not apply in respect of its last
11 financial year, the association must present for consideration the
12 financial statements of the association for that financial year.
13 Penalty: a fine of \$5 500.

14 (3) At the annual general meeting of an incorporated association to
15 which section 69(1)(a) or (b) applies in respect of its last
16 financial year, the association must present for consideration —
17 (a) the financial statements of the association for that
18 financial year reviewed or audited as required under
19 section 69; and
20 (b) a copy of the report of the review or the auditor's report,
21 as the case requires, on those financial statements.

22 Penalty: a fine of \$5 500.

23 (4) If section 69(1)(b) applies to an incorporated association in
24 respect of its last financial year, the association must give to the
25 Commissioner as soon as is practicable after receiving them —
26 (a) the financial statements of the association for that
27 financial year reviewed or audited as required under
28 section 69; and
29 (b) a copy of the report of the review or the auditor's report,
30 as the case requires, on those financial statements.

31 Penalty: a fine of \$5 500.

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Subdivision 2 — Tier 2 associations

71. Obligation to prepare annual financial report

(1) Within 6 months after the end of each financial year, a tier 2 association in respect of the financial year must prepare a financial report for the financial year that complies with subsection (2).

Penalty: a fine of \$2 750.

(2) The financial statements for the year and the notes to the financial statements that are included in the financial report must —

- (a) give a true and fair view of the financial position and performance of the association; and
- (b) comply with the accounting standards.

72. Review or audit of financial reports

(1) A tier 2 association in respect of a financial year must ensure that its financial report for the year is reviewed in accordance with Divisions 5, 6 and 7.

Penalty: a fine of \$2 750.

(2) Subsection (1) does not apply if the tier 2 association is required under subsection (3) to have the financial report audited.

(3) A tier 2 association in respect of a financial year must ensure that its financial report for the year is audited in accordance with Divisions 5, 6 and 7 if —

- (a) a majority of the members present at a general meeting of the association make a resolution to that effect; or
- (b) the association is directed by the Commissioner to do so.

Penalty: a fine of \$2 750.

1 **73. Financial reporting to annual general meeting and**
2 **Commissioner**

3 (1) This section applies to an incorporated association that is a tier 2
4 association in respect of its last financial year.

5 (2) At the annual general meeting of an incorporated association to
6 which section 72(3)(a) or (b) does not apply in respect of its last
7 financial year, the association must present for consideration —

8 (a) the financial report of the association for that financial
9 year reviewed as required under section 72(1); and

10 (b) a copy of the report of the review of the financial report.

11 Penalty: a fine of \$5 500.

12 (3) At the annual general meeting of an incorporated association to
13 which section 72(3)(a) or (b) applies in respect of its last
14 financial year, the association must present for consideration —

15 (a) the financial report of the association for that financial
16 year audited as required under section 72(3); and

17 (b) a copy of the auditor's report on the financial report.

18 Penalty: a fine of \$5 500.

19 (4) If section 72(3)(b) applies to an incorporated association in
20 respect of its last financial year, the association must give to the
21 Commissioner as soon as is practicable after receiving them —

22 (a) the financial report of the association for that financial
23 year audited as required under section 72(3); and

24 (b) a copy of the auditor's report on the financial report.

25 Penalty: a fine of \$5 500.

26 **Subdivision 3 — Tier 3 associations**

27 **74. Obligation to prepare annual financial report**

28 (1) Within 6 months after the end of each financial year, a tier 3
29 association in respect of the financial year must prepare a

1 financial report for the financial year that complies with
2 subsection (2).

3 Penalty: a fine of \$2 750.

4 (2) The financial statements for the year and the notes to the
5 financial statements that are included in the financial report
6 must —

7 (a) give a true and fair view of the financial position and
8 performance of the association; and

9 (b) comply with the accounting standards.

10 **75. Audit of financial report**

11 A tier 3 association in respect of a financial year must ensure
12 that its financial report for the year is audited in accordance with
13 Divisions 5, 6 and 7.

14 Penalty: a fine of \$2 750.

15 **76. Financial reporting to annual general meeting**

16 At the annual general meeting of an incorporated association
17 that is a tier 3 association in respect of its last financial year, the
18 association must present for consideration —

19 (a) the financial report of the association for that financial
20 year audited as required under section 75; and

21 (b) a copy of the auditor's report on the financial report.

22 Penalty: a fine of \$5 500.

23 **Division 4 — Special audit**

24 **77. Commissioner may require special audit to be carried out**

25 (1) The Commissioner may direct an incorporated association to
26 cause —

27 (a) the whole or any specified part of the association's
28 financial records to be audited; and

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1 (b) an auditor's report to be lodged with the Commissioner,
2 within the time specified in the direction.

3 (2) The direction may be given regardless of whether the financial
4 records have previously been audited.

5 (3) An incorporated association to which the direction is given must
6 ensure that the direction is complied with.

7 Penalty: a fine of \$2 750.

8 (4) An auditor's report under this section must state whether the
9 incorporated association's financial records —

10 (a) have been properly kept; and

11 (b) give a true and fair view of the association's affairs.

12 **Division 5 — Reviews and audits**

13 **78. Review or audit to be conducted in accordance with auditing**
14 **standards**

15 A reviewer or auditor must conduct a review or audit under this
16 Part in accordance with the auditing standards.

17 Penalty: a fine of \$5 500.

18 **79. Working papers to be retained for 7 years**

19 A reviewer or auditor who conducts a review or audit under this
20 Part must retain all working papers prepared by or for, or
21 considered or used by, the reviewer or auditor in accordance
22 with the requirements of the auditing standards for at least
23 7 years after the date of the report prepared in relation to the
24 review or audit.

25 Penalty: a fine of \$5 500.

26 **80. Reviewer's or auditor's independence declaration**

27 (1) A reviewer or auditor who conducts a review or audit of
28 financial statements or a financial report of an incorporated
29 association under Division 3 must give the management

- 1 committee of the association with the report of the review or
2 audit —
- 3 (a) a written declaration that, to the best of the reviewer’s or
4 auditor’s belief, there have been no contraventions of
5 any applicable code of professional conduct in relation
6 to the review or audit; or
- 7 (b) a written declaration that, to the best of the reviewer’s or
8 auditor’s belief, the only contraventions of any
9 applicable code of professional conduct in relation to the
10 review or audit are those contraventions details of which
11 are set out in the declaration.

12 Penalty: a fine of \$5 500.

- 13 (2) The declaration must be signed by the reviewer or auditor.
- 14 (3) The reviewer or auditor is not excused from giving a declaration
15 under this section on the ground that giving the declaration
16 might tend to incriminate the reviewer or auditor or expose the
17 reviewer or auditor to a penalty.
- 18 (4) However, neither —
- 19 (a) the information included in the declaration; nor
20 (b) any information, document or thing obtained as a direct
21 or indirect consequence of including the information in
22 the declaration,

23 is admissible in evidence against the reviewer or auditor in any
24 criminal proceedings, or in any proceedings that would expose
25 the reviewer or auditor to a penalty.

26 **81. Reviewer’s report on financial statements or financial**
27 **report**

28 A reviewer must include in the reviewer’s report on financial
29 statements or a financial report of an incorporated
30 association —

- 31 (a) a statement as to whether the reviewer became aware of
32 any matter that causes the reviewer to believe that the

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Division 5 Reviews and audits

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- 1 financial statements do not, or the financial report does
2 not, satisfy the requirements of Division 3; and
3 (b) a description of any matter that causes the reviewer to
4 believe that the financial statements do not, or the
5 financial report does not, satisfy the requirements of
6 Division 3; and
7 (c) a statement as to why that matter causes the reviewer to
8 so believe.

9 Penalty: a fine of \$5 500.

10 **82. Auditor's opinion and report on financial statements or**
11 **financial report**

- 12 (1) An auditor who conducts an audit of financial statements or a
13 financial report of an incorporated association under this Part
14 must form an opinion about the following —
15 (a) whether the financial statements satisfy, or the financial
16 report satisfies, the requirements of this Part;
17 (b) whether the auditor has been given all information,
18 explanations and assistance necessary for the conduct of
19 the audit;
20 (c) whether the association has kept financial records
21 sufficient to enable financial statements or a financial
22 report to be prepared and audited;
23 (d) whether the association has kept other records as
24 required by this Part.
25 (2) An auditor who audits the financial statements or the financial
26 report of an incorporated association must report to the
27 members of the association in accordance with subsection (3).
28 Penalty: a fine of \$5 500.

- 1 (3) The auditor's report must —
- 2 (a) include a statement as to —
- 3 (i) whether the auditor is of the opinion that the
- 4 financial statements are, or the financial report is,
- 5 in accordance with this Part; and
- 6 (ii) if not of that opinion, why not;
- 7 and
- 8 (b) describe —
- 9 (i) any defect or irregularity in the financial
- 10 statements or the financial report; and
- 11 (ii) any deficiency, failure or shortcoming in respect
- 12 of the matters referred to in subsection (1)(b), (c)
- 13 or (d);
- 14 and
- 15 (c) include any statements or disclosures required by the
- 16 auditing standards; and
- 17 (d) specify the date on which it is made.
- 18 (4) If the auditor is of the opinion that the financial statements have
- 19 not, or the financial report has not, been prepared in accordance
- 20 with this Part, the auditor's report must —
- 21 (a) to the extent that it is practicable to do so, quantify the
- 22 effect that non-compliance has on the financial
- 23 statements or financial report; and
- 24 (b) if it is not practicable to quantify the effect fully, say
- 25 why.

1 **83. Reporting breaches of Act to Commissioner**

2 (1) If —

3 (a) a reviewer or auditor conducting a review or audit of the
4 financial statements or the financial report of an
5 incorporated association under this Part is aware of
6 circumstances that —

7 (i) the reviewer or auditor has reasonable grounds to
8 suspect amount to a contravention of this Part; or

9 (ii) amount to an attempt, in relation to the review or
10 audit, by any person to unduly influence, coerce,
11 manipulate or mislead a person involved in the
12 conduct of the review or audit; or

13 (iii) amount to an attempt, by any person, to
14 otherwise interfere with the proper conduct of
15 the review or audit;

16 and

17 (b) if paragraph (a)(i) applies —

18 (i) the contravention is a significant one; or

19 (ii) if the contravention is not a significant one and
20 the reviewer or auditor believes that the
21 contravention has not been or will not be
22 adequately dealt with by commenting on it in the
23 reviewer's or auditor's report or bringing it to the
24 attention of the management committee of the
25 incorporated association,

26 the reviewer or auditor must notify the Commissioner in writing
27 of those circumstances as soon as practicable, and in any case
28 within 28 days, after the auditor becomes aware of those
29 circumstances.

30 Penalty: a fine of \$5 500.

- 1 (2) In determining for the purposes of subsection (1) whether a
2 contravention of this Act is a significant contravention, regard
3 must be had to the following —
- 4 (a) the level of penalty provided for in relation to the
5 contravention;
- 6 (b) the effect that the contravention has, or may have, on the
7 following —
- 8 (i) the overall financial position of the incorporated
9 association;
- 10 (ii) the adequacy of the information available about
11 the overall financial position of the incorporated
12 association;
- 13 (iii) any other relevant matter.

14 **Division 6 — Provisions relating to reviewers and**
15 **auditors generally**

16 **84. Fees and expenses**

17 The reasonable fees and expenses of a reviewer or auditor of an
18 incorporated association are payable by the association.

19 **85. Information and assistance**

20 (1) An officer of an incorporated association must allow a reviewer
21 or auditor of the association access at all reasonable times to the
22 books of the association.

23 Penalty: a fine of \$2 750.

24 (2) A reviewer or auditor of an incorporated association may
25 require an officer of the association to give the reviewer or
26 auditor information, explanations or other assistance for the
27 purposes of the review or audit.

28 (3) A requirement under subsection (2) must be a reasonable one.

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Division 7 Appointment and removal of reviewers and auditors

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1 (4) An officer of an incorporated association must comply with a
2 requirement under subsection (2).

3 Penalty: a fine of \$2 750.

4 **86. Right to attend general meeting and be heard**

5 (1) A reviewer or auditor of an incorporated association, or an agent
6 of a reviewer or auditor authorised by the reviewer or auditor in
7 writing for the purpose, is entitled —

8 (a) to receive all notices of and other communications
9 relating to any general meeting of the association that a
10 member is entitled to receive; and

11 (b) to attend any general meeting of the association; and

12 (c) to be heard at any general meeting that the reviewer or
13 auditor attends on any part of the business of the
14 meeting that concerns the functions of the reviewer or
15 auditor under this Part.

16 (2) Subsection (1) applies despite the fact that the reviewer or
17 auditor retires at the meeting or a resolution to remove the
18 reviewer or auditor from office is passed at the meeting.

19 (3) An incorporated association must ensure that a reviewer or
20 auditor is afforded the rights conferred by this section.

21 Penalty: a fine of \$2 750.

22 **Division 7 — Appointment and removal of reviewers**
23 **and auditors**

24 **87. Appointment of reviewer or auditor**

25 (1) Except as provided in subsection (2), a reviewer or auditor, as
26 the case requires, for an incorporated association may only be
27 appointed by resolution of the members of the association at a
28 general meeting.

- 1 (2) The management committee of the incorporated association
2 may appoint a reviewer or auditor, as the case requires, if —
3 (a) under this Part the management committee of an
4 incorporated association is required to ensure that its
5 financial statements for a year are reviewed or audited;
6 and
7 (b) no appointment is of effect under subsection (1) for the
8 association.
- 9 (3) A reviewer or auditor of an incorporated association appointed
10 at a general meeting holds office until the reviewer or auditor —
11 (a) dies; or
12 (b) becomes an insolvent under administration as that term
13 is defined in the Corporations Act; or
14 (c) ceases to be qualified for appointment as provided by
15 section 88(2); or
16 (d) is removed from office under section 89; or
17 (e) resigns from office under subsection (5).
- 18 (4) A reviewer or auditor appointed under subsection (2) holds
19 office until the report of the review or the auditor's report, as the
20 case requires, has been presented for consideration at the annual
21 general meeting of the incorporated association.
- 22 (5) A reviewer or auditor of an incorporated association may, by
23 notice in writing given to the association, resign as reviewer or
24 auditor of the association.
- 25 (6) An incorporated association must, within 14 days after being
26 given a notice of resignation by a reviewer or auditor, lodge
27 with the Commissioner notice of the resignation in the approved
28 form.
29 Penalty: a fine of \$1 000.

1 **88. Qualifications for appointment**

2 (1) An incorporated association or management committee must not
3 appoint a person as the reviewer or auditor for the association if
4 the person is not qualified for appointment.

5 (2) A person is qualified for appointment as a reviewer or auditor if
6 the person is —

7 (a) a member of a professional accounting body who has a
8 designation in respect of that membership that is
9 prescribed by the regulations for the purposes of this
10 paragraph; or

11 (b) a registered company auditor under the Corporations
12 Act; or

13 (c) a person the Commissioner considers has appropriate
14 qualifications or experience and approves for the
15 purposes of this section.

16 **89. Removal of reviewer or auditor by resolution**

17 (1) A reviewer or auditor of an incorporated association may be
18 removed from office by resolution at a general meeting of the
19 association in accordance with this section but not otherwise.

20 (2) Written notice of an intention to move a resolution referred to in
21 subsection (1) must be given to every member of the association
22 at least 2 months before the general meeting is to be held.

23 (3) The notice must state in full the proposed resolution.

24 (4) As soon as possible after being given the notice of the
25 resolution, the committee of management of the association
26 must —

27 (a) give a copy of the notice to the reviewer or auditor; and

28 (b) lodge a copy of the notice with the Commissioner.

29 Penalty: a fine of \$1 000.

1 **90. Reviewer or auditor may make representations**

- 2 (1) A reviewer or auditor of an incorporated association who
3 receives a notice from the association under section 89(4)(a)
4 may, within 30 days after receiving the notice, make a written
5 representation, not exceeding a reasonable length, to the
6 management committee of the incorporated association.
- 7 (2) Subject to section 91, if the reviewer or auditor makes a
8 representation under subsection (1), a resolution proposing the
9 reviewer's or auditor's removal is of no effect unless —
- 10 (a) the management committee gives a copy of the
11 representation to all members of the association at least
12 7 days before the meeting at which the resolution is to
13 be considered; and
- 14 (b) the reviewer or auditor is allowed to attend the meeting
15 and address the members present before the vote on the
16 resolution.
- 17 (3) A document required to be given to a member of an
18 incorporated association under this section may be given —
- 19 (a) personally; or
20 (b) by post; or
21 (c) by any other means authorised under the rules of the
22 association.
- 23 (4) All costs associated with giving a document to the members of
24 an incorporated association under this section are to be borne by
25 the association.

26 **91. Exemption from section 90(2) requirements**

- 27 (1) An incorporated association may lodge with the Commissioner
28 an application for an order exempting the association from the
29 requirements of section 90(2).
- 30 (2) The application must —
- 31 (a) be in writing; and

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- 1 (b) state the reasons for the exemption; and
2 (c) be accompanied by the prescribed fee, if any.
3 (3) The Commissioner may make the order subject to any
4 conditions the Commissioner considers appropriate.

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Part 6 — Transfer of incorporation

92. Term used: prescribed body corporate

In this Part —

prescribed body corporate means —

- (a) a company within the meaning of the Corporations Act that is taken to be registered in Western Australia; or
- (b) a co-operative within the meaning of the *Co-operatives Act 2009*; or
- (c) an entity that —
 - (i) is a body corporate under another Commonwealth Act or a written law other than this Act; and
 - (ii) is prescribed for the purposes of this definition.

93. Incorporated association may apply for approval of registration or incorporation under another law

- (1) An incorporated association may by special resolution decide to apply for registration or incorporation as a prescribed body corporate and, subject to this section, the association is authorised to give effect to that decision.
- (2) An incorporated association cannot lodge an application for registration or incorporation unless the Commissioner has, on application made to the Commissioner by the association, approved —
 - (a) the application being lodged; and
 - (b) the doing of the things that are reasonably necessary to obtain the registration or incorporation.
- (3) An application lodged with the Commissioner under subsection (2) must —
 - (a) be made in the approved form; and

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- 1 (b) include a copy of the special resolution referred to in
2 subsection (1); and
- 3 (c) include any information required by the regulations; and
- 4 (d) specify the period within which the application for
5 registration or incorporation is expected to be made; and
- 6 (e) be accompanied by the fee prescribed.

7 **94. Approval of Commissioner**

- 8 (1) The Commissioner must approve an application for registration
9 or incorporation being lodged if satisfied that the continued
10 incorporation of the association under this Act would for any
11 reason be inappropriate, including —
- 12 (a) on account of the incorporated association having, in the
13 opinion of the Commissioner, ceased to be eligible to be
14 incorporated under this Act; or
- 15 (b) because any prescribed circumstances exist.
- 16 (2) The Commissioner may approve an application for registration
17 or incorporation being lodged if, in the opinion of the
18 Commissioner, it would be more appropriate for the activities of
19 the incorporated association that lodged the application to be
20 carried on by a body corporate registered or incorporated under
21 some other law.
- 22 (3) The grounds on which the Commissioner may form an opinion
23 for the purposes of subsection (2) include the following —
- 24 (a) the scale or nature of the activities of the incorporated
25 association;
- 26 (b) the value or nature of the property of the incorporated
27 association;
- 28 (c) the extent or nature of the dealings the incorporated
29 association has with the public;
- 30 (d) any other matter the Commissioner considers relevant.

- 1 (4) An incorporated association must act in accordance with the
2 terms and conditions of the Commissioner's approval —
3 (a) in making an application for registration or
4 incorporation; and
5 (b) in doing the things that are reasonably necessary to
6 obtain it.

7 **95. Commissioner may direct incorporated association to apply**
8 **for other registration or incorporation**

- 9 (1) This section applies if —
10 (a) the Commissioner is satisfied that the continued
11 incorporation of an association under this Act would for
12 any reason be inappropriate, including —
13 (i) on account of the incorporated association
14 having, in the opinion of the Commissioner,
15 ceased to be eligible to be incorporated under
16 this Act; or
17 (ii) because any prescribed circumstances exist;
18 or
19 (b) in the opinion of the Commissioner, it would be more
20 appropriate for the activities of the incorporated
21 association that lodged the application to be carried on
22 by a body corporate registered or incorporated under
23 some other law.
24 (2) The grounds on which the Commissioner may form an opinion
25 for the purposes of subsection (1)(b) include the following —
26 (a) the scale or nature of the activities of the incorporated
27 association;
28 (b) the value or nature of the property of the incorporated
29 association;
30 (c) the extent or nature of the dealings the incorporated
31 association has with the public;
32 (d) any other matter the Commissioner considers relevant.

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- 1 (3) The Commissioner may in writing direct the incorporated
2 association to apply for, and do all things that are reasonably
3 necessary to obtain, registration or incorporation as a prescribed
4 body corporate.
- 5 (4) A direction under subsection (3) —
- 6 (a) must specify the period within which the application
7 must be made; and
- 8 (b) may specify any terms and conditions that are to be
9 observed in making the application for registration or
10 incorporation or doing the things that are reasonably
11 necessary to obtain it.
- 12 (5) The Commissioner may, by notice in writing to the incorporated
13 association —
- 14 (a) from time to time extend the period referred to in
15 subsection (4)(a); or
- 16 (b) revoke or amend a direction given under subsection (3).
- 17 **96. Commissioner must give notice of intention to give direction**
- 18 (1) Before the Commissioner gives a direction to an incorporated
19 association under section 95(3) or notice of an amendment
20 under section 95(5)(b), the Commissioner must give notice in
21 writing to the association stating —
- 22 (a) the Commissioner’s intention to give the direction or
23 make the amendment; and
- 24 (b) the grounds on which the Commissioner is proposing to
25 act; and
- 26 (c) that written submissions on the proposed direction or
27 amendment may be made to the Commissioner within a
28 specified period.
- 29 (2) The period specified under subsection (1)(c) must not be less
30 than 90 days after the notice is given but the Commissioner
31 may, on application made by the association, extend the
32 specified period for a further period not exceeding 90 days.

- 1 (3) Before the Commissioner gives or amends a direction to an
2 incorporated association under section 95, the Commissioner
3 must have regard to any submission made by the association in
4 accordance with the notice.

5 **97. SAT review of proposed direction or amendment**

- 6 (1) An incorporated association to which a notice is given under
7 section 96 may, not later than the end of the period specified
8 under section 96(1)(c) or any extension of that period, apply to
9 the State Administrative Tribunal for a review of the proposed
10 direction or amendment.
- 11 (2) If an application is so made, the Commissioner cannot give the
12 direction or make the amendment unless —
- 13 (a) the application results in the Commissioner’s proposed
14 action being confirmed; or
- 15 (b) the application is dismissed or struck out.

16 **98. Association must comply with section 95 direction**

- 17 (1) Subject to section 97(2), an incorporated association must
18 comply with a direction given to the association under
19 section 95(3) or a direction as amended under section 95(5)(b).
- 20 (2) A contract to which an incorporated association is a party is not
21 illegal, void or unenforceable by reason only of a failure by the
22 association to comply with a direction or notice under
23 section 95.

24 **99. Cancellation of incorporation under this Act**

- 25 (1) The registration or incorporation of an incorporated association
26 as a prescribed body corporate automatically cancels the
27 incorporation of the association under this Act.
- 28 (2) If an incorporated association becomes registered or
29 incorporated as a prescribed body corporate, the body must

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1 notify the Commissioner in writing of the registration or
2 incorporation within 14 days after it occurs.

3 Penalty: a fine of \$5 000.

4 **100. Transition to incorporation under another law**

5 (1) In this section, a reference to a transfer of incorporation by an
6 incorporated association is a reference to an incorporated
7 association becoming registered or incorporated as a prescribed
8 body corporate (the *body corporate*).

9 (2) The transfer of incorporation by an incorporated association
10 does not affect —

11 (a) the identity of the association, which is to be taken to be
12 the same body before and after the transfer of
13 incorporation; or

14 (b) any act, matter or thing done or omitted to be done, or
15 any circumstance subsisting, before the transfer to the
16 extent that the act, matter, thing, omission or
17 circumstance has any relevance to the association after
18 the transfer.

19 (3) Without limiting subsection (2) —

20 (a) proceedings by or against an incorporated association
21 subsisting immediately before the transfer of
22 incorporation may be continued by or against the body
23 corporate in the name of the incorporated association;
24 and

25 (b) proceedings that might have been brought by or against
26 an incorporated association immediately before the
27 transfer of incorporation may be commenced by or
28 against the body corporate.

29 (4) Without limiting subsection (2), a transfer of incorporation does
30 not affect —

31 (a) any obligation or liability incurred under this Act; or

- 1 (b) any penalty or forfeiture incurred in respect of any
2 offence committed against this Act; or
- 3 (c) any investigation, proceeding or remedy in respect of
4 any such obligation, liability, penalty or forfeiture.
- 5 (5) Any such investigation, proceeding or remedy may be
6 instituted, continued or enforced, and any such penalty or
7 forfeiture may be imposed, as if the body corporate were an
8 incorporated association.
- 9 (6) This section has effect in relation to a matter concerning an
10 incorporated association that is registered as a company under
11 the Corporations Act only to the extent that the matter is not
12 dealt with by that Act.

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Part 7 — Amalgamation

101. Term used: new body

In this Part —

new body has the meaning given in section 102(1).

102. Application for incorporation of body formed by amalgamation

- (1) An application may be lodged with the Commissioner in the approved form for the incorporation of an association (the *new body*) that is an amalgamation of 2 or more existing incorporated associations.
- (2) The application must be made by a person duly authorised to do so by each of the existing associations.
- (3) An application cannot be made if the proposed amalgamation is inconsistent with the rules of any of the existing associations.
- (4) An application cannot be made unless —
 - (a) the terms of amalgamation; and
 - (b) the name and the objects or purposes of the new body; and
 - (c) the rules of the new body,have been approved by a special resolution of each of the existing incorporated associations concerned.

103. What must be included in application

- (1) An application under section 102 must contain —
 - (a) copies of the special resolutions referred to in section 102(4); and
 - (b) a statement signed by a member of the management committee of each incorporated association concerned that the special resolution of that association was passed in accordance with this Act; and

- 1 (c) the same information in relation to the new body as is
2 required to be provided in relation to an association
3 under section 7; and
4 (d) any other information prescribed for the purposes of this
5 subsection.
- 6 (2) Sections 7(2), (3), (4) and (5), 23, 24 and 25 apply in respect of
7 a new body, with all necessary changes, and any reference in
8 those sections to an application for incorporation includes a
9 reference to an application under section 102.

10 **104. Commissioner may require public notice of application**

- 11 (1) The Commissioner may in writing require an applicant under
12 section 102 to give public notice of the application in either or
13 both of the following ways —
14 (a) by advertisement in a manner determined by the
15 Commissioner;
16 (b) in some other way that the Commissioner thinks
17 appropriate.
- 18 (2) For the purposes of section 105, the applicant must include in
19 the public notice a statement in wording approved by the
20 Commissioner showing —
21 (a) that a written request, including the reasons for the
22 request, may be given to the Commissioner by any
23 person under that section; and
24 (b) the period within which any request must be received by
25 the Commissioner.

26 **105. Request for refusal of incorporation of new body**

- 27 (1) Where public notice is given under section 104, any person
28 may, in accordance with the terms of the notice, request the
29 Commissioner to decline to incorporate the new body under
30 section 106.
- 31 (2) A request under subsection (1) must include the reasons for the
32 request.

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1 **106. Incorporation of new body**

- 2 (1) If on application duly made the Commissioner is satisfied that
3 the requirements set out in subsection (2) have been met, the
4 Commissioner must, subject to subsection (4) and section 107,
5 incorporate the new body by the issue to it of a certificate of
6 incorporation in the approved form.
- 7 (2) The requirements referred to are that —
- 8 (a) the special resolutions mentioned in section 102(4) have
9 been passed; and
- 10 (b) the new body is eligible to be incorporated under this
11 Act; and
- 12 (c) the considerations mentioned in section 11(1)(a) or (b)
13 do not apply; and
- 14 (d) the name of the new body is appropriate having regard
15 to section 12; and
- 16 (e) the rules of the new body comply with section 22.
- 17 (3) The issue of a certificate of incorporation to the new body
18 automatically cancels the incorporation of an incorporated
19 association that is a party to the amalgamation.
- 20 (4) The Commissioner must not issue a certificate of incorporation
21 to the new body unless —
- 22 (a) each certificate of incorporation of an incorporated
23 association that is a party to the amalgamation has been
24 returned to the Commissioner; or
- 25 (b) the Commissioner is satisfied that the certificate has
26 been lost or destroyed.

27 **107. Time to be allowed for operation of section 105**

- 28 (1) The Commissioner is not to incorporate the new body until —
- 29 (a) the time during which any request might be made under
30 section 105 has expired; and

- 1 (b) any request made under that section has been finally
2 refused.
- 3 (2) For the purposes of subsection (1) a request under section 105
4 has been finally refused if the request is refused by the
5 Commissioner and either —
- 6 (a) the time for making an application for review under
7 section 170 has expired without such an application
8 being made; or
- 9 (b) any application for review made under section 170 —
- 10 (i) has resulted in the Commissioner’s refusal being
11 confirmed; or
- 12 (ii) has been dismissed or struck out.
- 13 **108. Vesting of property and liabilities in new body**
- 14 Schedule 2 has effect in relation to the new body on its
15 incorporation.

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**Part 8 — Statutory management of
incorporated association**

109. Application by Commissioner to appoint statutory manager

- (1) The Commissioner may apply to the State Administrative Tribunal for the appointment of a statutory manager to administer the affairs of an incorporated association.
- (2) The Commissioner must give a copy of the application to the incorporated association.
- (3) For the purposes of the *State Administrative Tribunal Act 2004* section 36, the incorporated association is a party to the proceeding on an application under this section.

110. State Administrative Tribunal may appoint statutory manager

- (1) The State Administrative Tribunal may, on application by the Commissioner under section 109, make an order appointing a statutory manager to administer the affairs of an incorporated association subject to the terms and conditions determined by the Tribunal.
- (2) The State Administrative Tribunal must not appoint a statutory manager unless it is of the opinion that —
 - (a) the incorporated association is not functioning effectively in accordance with its objects or purposes or this Act; and
 - (b) the appointment of a statutory manager is —
 - (i) likely to improve the functioning of the incorporated association; and
 - (ii) in the best interests of the association.

1 **111. Effect of appointment of statutory manager**

2 (1) On the appointment of a statutory manager of an incorporated
3 association —

4 (a) the members of the management committee of the
5 association are suspended from office; and

6 (b) the statutory manager has the functions of the
7 management committee, including the committee's
8 powers of delegation.

9 (2) Except as provided by section 114, a member of the
10 management committee of an incorporated association cannot
11 be appointed or elected so long as a statutory manager is in
12 office in respect of the association.

13 **112. Variation and revocation of order**

14 (1) In this section —

15 *other persons* means —

16 (a) if an application is made under this section by the
17 Commissioner — the incorporated association and the
18 statutory manager;

19 (b) if an application is made under this section by the
20 incorporated association — the Commissioner and the
21 statutory manager;

22 (c) if an application is made under this section by the
23 statutory manager — the Commissioner and the
24 incorporated association.

25 (2) The State Administrative Tribunal may, on application by the
26 Commissioner, the incorporated association or the statutory
27 manager under this section, vary or revoke an order appointing a
28 statutory manager under section 110.

29 (3) The applicant must give a copy of the application to the other
30 persons.

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- 1 (4) The State Administrative Tribunal may give any directions it
2 considers necessary or expedient for the purposes of this
3 section.
- 4 (5) For the purposes of the *State Administrative Tribunal Act 2004*
5 section 36, the other persons are parties to the proceeding on an
6 application under this section.

7 **113. Duration of appointment**

- 8 (1) An appointment of a statutory manager continues in force until
9 it is revoked —
- 10 (a) by the State Administrative Tribunal under section 112;
11 or
12 (b) by operation of subsection (2).
- 13 (2) The appointment of a statutory manager of an incorporated
14 association is automatically revoked if any of the following
15 occurs —
- 16 (a) a voluntary administrator is appointed to administer the
17 affairs of the association;
- 18 (b) a liquidator is appointed to carry out the winding up of
19 the association;
- 20 (c) the incorporation of the association is cancelled under
21 section 99(1) or 106(3);
- 22 (d) the Commissioner cancels the incorporation of the
23 association under Part 10.

24 **114. Prerequisites of revocation of appointment**

- 25 (1) Before revoking the appointment of a statutory manager of an
26 incorporated association, the State Administrative Tribunal
27 must —
- 28 (a) appoint another statutory manager of the association; or
29 (b) be satisfied that the members of the management
30 committee of the association who were suspended under
31 section 111(1)(a) are able to continue in office; or

- 1 (c) be satisfied that members of the management committee
2 of the association have been elected in accordance with
3 the rules of the association at a meeting convened by the
4 statutory manager in accordance with those rules; or
5 (d) be satisfied that the Commissioner has appointed
6 members to the management committee of the
7 association under subsection (2).
- 8 (2) The Commissioner may appoint the management committee
9 members of an incorporated association for which a statutory
10 manager is appointed.
- 11 (3) Members of the management committee elected or appointed in
12 accordance with this section —
- 13 (a) take office on the revocation of the statutory manager’s
14 appointment; and
- 15 (b) in the case of members appointed under subsection (2),
16 hold office, subject to section 118, until the next annual
17 general meeting of the association after the revocation of
18 that appointment.

19 **115. Statutory manager to report to Commissioner**

- 20 (1) A statutory manager of an incorporated association —
- 21 (a) must report to the Commissioner on the affairs of the
22 association as directed by the Commissioner; and
- 23 (b) may at any time on the statutory manager’s own
24 initiative report to the Commissioner on those affairs.
- 25 Penalty for an offence under subsection (1)(a): a fine of
26 \$10 000.
- 27 (2) After the revocation of a statutory manager’s appointment, the
28 person who held the office —
- 29 (a) must, as soon as is practicable, make a final report to the
30 Commissioner on the affairs of the association; and

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1 (b) must, give a copy of the final report to the incorporated
2 association.

3 Penalty: a fine of \$10 000.

4 (3) The Commissioner may, after considering a report under
5 subsection (2), refer any matter back to the person for further
6 consideration and report to the Commissioner.

7 (4) For the purposes of subsections (2) and (3) the person who held
8 the office has access to the books of the incorporated
9 association concerned whenever necessary.

10 (5) The person must report to the Commissioner as required under
11 subsection (3).

12 Penalty for an offence under subsection (5): a fine of \$10 000.

13 **116. Expenses of statutory management**

14 (1) The expenses of and incidental to the conduct of an
15 incorporated association's affairs by a statutory manager are
16 payable from the association's funds.

17 (2) The expenses of conducting an incorporated association's
18 affairs include —

19 (a) if the statutory manager is a person who is appointed or
20 employed under the *Public Sector Management*
21 *Act 1994* in the Public Sector — the amount that the
22 Commissioner certifies should be paid to the State as
23 repayment of the statutory manager's remuneration; or

24 (b) if paragraph (a) does not apply — remuneration of the
25 statutory manager at a rate approved by the State
26 Administrative Tribunal.

27 (3) An amount certified under subsection (2)(a) is recoverable from
28 the incorporated association by the Commissioner in a court of
29 competent jurisdiction as a debt due to the State.

1 (4) A statutory manager has, in relation to the expenses mentioned
2 in subsection (1), the same priority on the winding up of an
3 incorporated association as a liquidator of the association.

4 **117. Protection from liability**

5 (1) Except as provided in subsection (4), a statutory manager, or a
6 person acting at the direction of a statutory manager, is not
7 liable for any loss incurred by an incorporated association in
8 respect of the period of the statutory manager's appointment.

9 (2) The Commissioner or the State is not liable for —

10 (a) any loss incurred by an incorporated association in
11 respect of the period of a statutory manager's
12 appointment; or

13 (b) any act or omission of a statutory manager or a person
14 acting at the direction of a statutory manager.

15 (3) Subsection (1) does not affect the duty of a statutory manager to
16 provide information to the Commissioner in respect of any loss
17 in a report under section 115.

18 (4) A statutory manager is liable for a loss incurred by the
19 incorporated association in respect of the period of the statutory
20 manager's appointment because of the statutory manager's —

21 (a) fraud or dishonesty; or

22 (b) negligence; or

23 (c) wilful failure to comply with this Act or the rules of the
24 association.

25 **118. Additional powers of Commissioner**

26 (1) If the Commissioner appoints members of the management
27 committee of an incorporated association under section 114, the
28 Commissioner may, by notice in writing given to the
29 association, specify —

30 (a) a period during which this section is to apply in relation
31 to the association; and

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- 1 (b) the terms and conditions on which all or any of the
2 members of the management committee hold office; and
3 (c) the rules that are to be the rules of the association.
- 4 (2) While this section applies to an incorporated association, the
5 Commissioner may —
6 (a) from time to time remove or appoint members of the
7 management committee; and
8 (b) from time to time alter the terms and conditions or the
9 rules specified under subsection (1).
- 10 (3) The Commissioner may, by notice in writing given to an
11 incorporated association, extend the period during which this
12 section is to apply to the association.
- 13 (4) While this section applies to an incorporated association, rules
14 specified by the Commissioner under this section for the
15 association —
16 (a) are not to be altered or revoked except under this
17 section; and
18 (b) if they are inconsistent with any other rule of the
19 association, prevail over that other rule.
- 20 (5) Section 160(2)(d) applies to a copy of rules specified by the
21 Commissioner under subsection (1) as if they had been lodged
22 with the Commissioner.

23 **119. Proceedings against association stayed**

- 24 (1) After a statutory manager has been appointed to administer the
25 affairs of an incorporated association, a person cannot begin or
26 continue a proceeding in a court against the association until the
27 appointment of the statutory manager is revoked except —
28 (a) with the leave of the Supreme Court; and
29 (b) if that Court grants leave, in accordance with the terms
30 and conditions that it imposes.

- 1 (2) A person intending to apply for leave of the Supreme Court
2 under subsection (1) must give the Commissioner not less than
3 10 days' notice of that intention.
4 Penalty: a fine of \$5 000.
- 5 (3) On the hearing of an application under subsection (1), the
6 Commissioner may be represented and may oppose the granting
7 of the application.

1 **Part 9 — Administration and winding up**

2 **Division 1 — Voluntary administration and winding up**

3 **120. Administration under Corporations Act**

4 (1) This section makes provision for the voluntary administration
5 under the Corporations Act of an incorporated association.

6 (2) Subsection (3) is made for the purposes of the *Corporations*
7 (*Ancillary Provisions*) Act 2001 Part 3.

8 (3) The administration of an incorporated association is declared to
9 be an applied Corporations legislation matter in relation to the
10 Corporations Act Part 5.3A subject to the following
11 modifications —

12 (a) the modifications to the text of that Act set out in
13 Schedule 3;

14 (b) such other modifications (within the meaning of the
15 *Corporations (Ancillary Provisions) Act 2001* Part 3) as
16 may be prescribed by the regulations.

17 **121. Voluntary winding up under Corporations Act**

18 (1) This section applies to an incorporated association that has
19 surplus property to be distributed on winding up.

20 (2) An incorporated association may be wound up voluntarily if the
21 association so resolves by special resolution.

22 (3) The voluntary winding up of an incorporated association is
23 declared to be an applied Corporations legislation matter in
24 relation to the Corporations Act Parts 5.5 and 5.6 subject to the
25 following modifications —

26 (a) the modifications to the text of that Act set out in
27 Schedule 3;

28 (b) such other modifications (within the meaning of the
29 *Corporations (Ancillary Provisions) Act 2001* Part 3) as
30 may be prescribed by the regulations.

1 **122. Further application of Corporations Act**

2 Any matter declared under section 120 or 121 to be an applied
3 Corporations legislation matter is, in addition, an applied
4 Corporations legislation matter in relation to the Corporations
5 Act Part 5.9 Division 3, subject to the following
6 modifications —

- 7 (a) the modifications to the text of that Act set out in
8 Schedule 3; and
9 (b) such other modifications (within the meaning of the
10 *Corporations (Ancillary Provisions) Act 2001* Part 3) as
11 may be prescribed by the regulations.

12 **Division 2 — Winding up by Supreme Court**

13 **123. Grounds on which winding up may be ordered**

14 An incorporated association may be wound up by the Supreme
15 Court on application made on any ground specified in
16 Schedule 4.

17 **124. By whom application may be made**

18 An application to the Supreme Court for the winding up of an
19 incorporated association may be made by —

- 20 (a) the incorporated association; or
21 (b) a member of the incorporated association; or
22 (c) the Commissioner; or
23 (d) the Minister; or
24 (e) a creditor, in the case of an application based on the
25 ground specified in Schedule 4 item 5.

26 **125. Application of Corporations Act**

- 27 (1) The winding up of an incorporated association (other than by a
28 voluntary winding up) by the Supreme Court is declared to be
29 an applied Corporations legislation matter in relation to the

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- 1 Corporations Act Part 5.7, subject to the following
2 modifications —
- 3 (a) the modifications to the text of that Act set out in
4 Schedule 3; and
- 5 (b) the provisions of Part 5.7 of that Act are to be read as if
6 they extended to the winding up of the affairs of an
7 incorporated association in the State; and
- 8 (c) such other modifications (within the meaning of the
9 *Corporations (Ancillary Provisions) Act 2001* Part 3) as
10 may be prescribed by the regulations.
- 11 (2) Any matter declared under this section to be an applied
12 Corporations legislation matter is, in addition, an applied
13 Corporations legislation matter in relation to the Corporations
14 Act Part 5.9 Division 3, subject to the following
15 modifications —
- 16 (a) the modifications to the text of that Act set out in
17 Schedule 3;
- 18 (b) such other modifications (within the meaning of the
19 *Corporations (Ancillary Provisions) Act 2001* Part 3) as
20 may be prescribed by the regulations.
- 21 **126. Cancellation of incorporation upon winding up by Supreme**
22 **Court**
- 23 (1) When the Commissioner is satisfied that the winding up of an
24 incorporated association under this Division has been completed
25 the Commissioner must, in writing, cancel the incorporation of
26 the association with effect on and from a day that the
27 Commissioner considers appropriate and specifies.
- 28 (2) The Commissioner may cause notice of a cancellation under
29 subsection (1) to be published in the *Gazette* if the
30 Commissioner considers that public notification of the
31 cancellation is desirable.

1 **Division 3 — Offence related to incurring of debt**

2 **127. Duties of management committee members with respect to**
3 **incurring of debt**

- 4 (1) If an incorporated association incurs a debt and —
- 5 (a) the association is insolvent at the time the debt is
6 incurred or becomes insolvent by incurring that debt, or
7 by incurring at that time debts including that debt; and
- 8 (b) immediately before the debt is incurred —
- 9 (i) there are reasonable grounds to expect that the
10 association is insolvent; or
- 11 (ii) there are reasonable grounds to expect that, if the
12 association incurs the debt, the association will
13 become insolvent,

14 any person who was a member of the management committee of
15 the association at the time the debt was incurred commits an
16 offence.

17 Penalty: a fine of \$5 000.

- 18 (2) In any proceedings against a person under subsection (1) it is a
19 defence if the accused proves that, at the time the debt was
20 incurred, the accused had reasonable grounds to expect, and did
21 expect, that the incorporated association was solvent at that time
22 and would remain solvent even if it incurred that debt and any
23 other debts that it incurred at that time.

- 24 (3) Without limiting subsection (2), in any proceedings against a
25 person under subsection (1) it is a defence if the accused proves
26 that, at the time the debt was incurred, the accused —

- 27 (a) had reasonable grounds to believe and did believe —
- 28 (i) that a competent and reliable person (the *other*
29 *person*) was responsible for providing to the
30 accused adequate information about whether the
31 association was solvent; and

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- 1 (ii) that the other person was fulfilling that
2 responsibility;
- 3 and
- 4 (b) expected, on the basis of information provided to the
5 accused by the other person, that the incorporated
6 association was solvent at that time and would remain
7 solvent even if it incurred that debt and any other debts
8 that it incurred at that time.
- 9 (4) In any proceedings against a person under subsection (1) it is a
10 defence if the accused proves that, at the time the debt was
11 incurred, because of illness or for some other good reason, the
12 accused did not take part at that time in the management of the
13 incorporated association.
- 14 (5) In any proceedings against a person under subsection (1) it is a
15 defence if the accused proves that the accused took all
16 reasonable steps to prevent the incorporated association
17 incurring the debt.
- 18 (6) In determining whether a defence under subsection (5) has been
19 proved, the matters to which regard must be had include, but are
20 not limited to the following —
- 21 (a) any action the accused took with a view to appointing an
22 administrator of the incorporated association;
- 23 (b) when that action was taken;
- 24 (c) the results of that action.

1 **Part 10 — Cancellation of incorporation**
2 **Division 1 — Voluntary cancellation where there is property to**
3 **be distributed**

4 **128. Term used: distribution plan**

5 In this Division —

6 *distribution plan* means a statement showing —

- 7 (a) the intended recipients of surplus property of the
8 incorporated association concerned; and
9 (b) an estimate of the amount or value of the property that
10 each intended recipient is to receive.

11 **129. Initiation of cancellation of incorporation under this**
12 **Division**

13 Before the incorporation of an incorporated association may be
14 cancelled under this Division —

- 15 (a) the management committee of the association must
16 examine the affairs of the association and by resolution
17 declare that in its opinion the association is able to pay
18 or meet its debts and liabilities; and
19 (b) the association must then pass special resolutions —
20 (i) that its incorporation be cancelled under this
21 Division; and
22 (ii) approving a distribution plan that complies with
23 sections 133 and 134;
24 and
25 (c) the distribution plan must be approved by the
26 Commissioner.

1 **130. Application for approval of distribution plan and**
2 **cancellation**

3 (1) If an incorporated association has passed the special resolutions
4 referred to in section 129(b), the association must apply in the
5 approved form to the Commissioner for —

- 6 (a) approval of the distribution plan; and
7 (b) cancellation of incorporation.

8 Penalty: a fine of \$1 000.

9 (2) The application must —

- 10 (a) set out the terms of —
11 (i) the special resolutions; and
12 (ii) the resolution referred to in section 129(a);
13 and
14 (b) be accompanied by a copy of the distribution plan
15 approved by the incorporated association; and
16 (c) contain a statement signed by a member of the
17 management committee of the association that the
18 special resolutions were passed in accordance with this
19 Act.

20 (3) The incorporated association must also provide the
21 Commissioner with such further information and documents as
22 the Commissioner may in writing request.

23 (4) The application must be lodged within 28 days after the passing
24 of the special resolutions or within such longer period as the
25 Commissioner may allow.

26 **131. Commissioner may require public notice of application**

27 (1) The Commissioner may in writing require an applicant under
28 section 130 to give public notice of the application and the
29 distribution plan in some way that the Commissioner thinks
30 appropriate.

- 1 (2) For the purposes of section 132, the applicant must include in
2 the public notice a statement in wording approved by the
3 Commissioner showing —
4 (a) that a written request, including the reasons for the
5 request, may be given to the Commissioner by any
6 person under that section; and
7 (b) the period within which any request must be received by
8 the Commissioner.

9 **132. Request for refusal to approve or cancel**

- 10 (1) Where public notice is given under section 131 in respect of an
11 incorporated association, any person may, in accordance with
12 the terms of the notice, request the Commissioner to decline to
13 approve the distribution plan or cancel the incorporation of the
14 association.
15 (2) A request under subsection (1) must include the reasons for the
16 request.

17 **133. Content and operation of distribution plan**

- 18 (1) A distribution plan in respect of an incorporated association
19 must provide for the distribution of the surplus property in
20 accordance with the rules of the association, being rules that —
21 (a) make provision of the kind mentioned in Schedule 1
22 Division 1 item 19; and
23 (b) are consistent with the provision implied by section 24.
24 (2) Surplus property distributed under a distribution plan is subject
25 to any trust affecting the property or any part of it.

26 **134. Position where conditions attached to grant**

- 27 (1) In this section —
28 *body* includes a public authority;
29 *public authority* means —
30 (a) Minister of the State or the Commonwealth; or

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- 1 (b) a government department, agency or organisation of the
2 State or the Commonwealth; or
- 3 (c) a body, corporate or unincorporated, that is established
4 or continued for a public purpose by the State or the
5 Commonwealth, regardless of the way it is established;
6 or
- 7 (d) a local government or regional local government;
- 8 **relevant contract** means a contract as to the manner in which
9 property referred to in subsection (2), or any part of the
10 property, is to be dealt with if an incorporated association is
11 wound up or its incorporation is cancelled.
- 12 (2) Where property has been provided to an incorporated
13 association by any body, a distribution plan in respect of the
14 association must give effect to any relevant contract that has
15 been made between the association and the body.
- 16 (3) Subsection (2) —
- 17 (a) applies only if, and to the extent that, the contract is
18 binding on the association; and
- 19 (b) does not apply if, or to the extent that, the body
20 concerned agrees otherwise.
- 21 (4) Subject to subsection (2), property of the association consisting
22 of property provided by a public authority, must be returned
23 to —
- 24 (a) the public authority that provided the property; or
25 (b) a body nominated by that public authority.

26 **135. Approval of distribution plan**

- 27 (1) A distribution plan lodged under section 130 does not have
28 effect unless it is approved by the Commissioner.
- 29 (2) The Commissioner must not approve the distribution plan
30 until —
- 31 (a) the time during which any request might be made under
32 section 132 has expired; and

- 1 (b) any request made under that section has been finally
2 refused.
- 3 (3) For the purposes of subsection (2) a request under section 132
4 has been finally refused if the request is refused by the
5 Commissioner and either —
- 6 (a) the time for making an application for review under
7 section 170 has expired without such an application
8 being made; or
- 9 (b) any application for review made under section 170 —
- 10 (i) has resulted in the Commissioner’s refusal being
11 confirmed; or
- 12 (ii) has been dismissed or struck out.

13 **136. Refusal to approve distribution plan**

- 14 (1) The Commissioner may refuse to approve a distribution plan for
15 the purposes of this Division if the Commissioner is of the
16 opinion that —
- 17 (a) the distribution plan does not comply with section 133;
18 or
- 19 (b) the incorporated association should be wound up.
- 20 (2) The grounds on which the Commissioner may form an opinion
21 for the purposes of subsection (1)(b) are —
- 22 (a) because of any of the following matters, as determined
23 by the Commissioner —
- 24 (i) the scale or nature of the activities of the
25 incorporated association; or
- 26 (ii) the value or nature of the property of the
27 incorporated association; or
- 28 (iii) the extent or nature of the dealings the
29 incorporated association has with the public;
- 30 or
- 31 (b) because any prescribed circumstances exist.

1 **137. Time limit for implementation of plan**

2 The Commissioner must, when approving a distribution plan
3 under this Division, fix a period within which the
4 implementation of the plan must be completed, and may from
5 time to time extend the period so fixed.

6 **138. Duty of association**

7 An incorporated association that has had a distribution plan
8 approved under this Division must ensure that —

- 9 (a) its surplus property is properly distributed in accordance
10 with the distribution plan; and
11 (b) the distribution is completed within the period required
12 under section 137.

13 **139. Reporting to Commissioner**

14 (1) The incorporated association concerned must —

- 15 (a) provide such information or documents for the
16 Commissioner on the implementation of a distribution
17 plan as the Commissioner may in writing require; and
18 (b) as soon as is practicable after the implementation of a
19 distribution plan has been completed, prepare a
20 certificate in the approved form certifying that the
21 surplus property of the association has been distributed
22 in accordance with the plan.

23 (2) An incorporated association prepares a certificate under
24 subsection (1) when the association, or the management
25 committee of the association, determines by resolution the
26 content of the certificate.

27 (3) The incorporated association must lodge a certificate prepared
28 under subsection (1)(b) with the Commissioner as soon as is
29 practicable after it is prepared.

1 **140. Cancellation of incorporation under this Division**

- 2 (1) The Commissioner must, in writing, cancel the incorporation of
3 an incorporated association with effect on and from a day that
4 the Commissioner considers appropriate and specifies if —
5 (a) the Commissioner is satisfied that the requirements of
6 this Division in respect of the association have been
7 complied with; and
8 (b) the association has lodged with the Commissioner the
9 certificate referred to in section 139(1)(b).
- 10 (2) The Commissioner may cause notice of a cancellation under
11 subsection (1) to be published in the *Gazette* if the
12 Commissioner considers that public notification of the
13 cancellation is desirable.

14 **Division 2 — Voluntary cancellation where there are no debts**
15 **or surplus property**

16 **141. Application for cancellation under this Division**

- 17 (1) An incorporated association may lodge with the Commissioner
18 an application in the approved form to have the incorporation of
19 the association cancelled under this Division.
- 20 (2) An application cannot be made under subsection (1) by an
21 incorporated association unless —
22 (a) the management committee of the association has
23 examined the affairs of the association and by resolution
24 declared that in its opinion the debts and liabilities of the
25 association have been satisfied and there is no surplus
26 property to be distributed; and
27 (b) the making of the application has been approved by a
28 special resolution of the incorporated association.

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Division 2 Voluntary cancellation where there are no debts or surplus property

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1 **142. Content of application**

2 (1) An application by an incorporated association for cancellation
3 of its incorporation under this Division must contain —

- 4 (a) copies of each of the resolutions referred to in
5 section 141(2); and
6 (b) a statement signed by a member of the management
7 committee of the association that the special resolution
8 referred to in section 141(2)(b) was passed in
9 accordance with this Act.

10 (2) The incorporated association must also provide the
11 Commissioner with such further information and documents as
12 the Commissioner may in writing request.

13 **143. Commissioner may grant application**

14 (1) On application duly made under section 141, the Commissioner
15 may, in writing, cancel the incorporation of the association
16 concerned if the Commissioner is satisfied that —

- 17 (a) the special resolution referred to in section 141(2)(b)
18 was passed in accordance with this Act; and
19 (b) the debts and liabilities of the association have been
20 satisfied and there is no surplus property remaining; and
21 (c) all of the requirements of this Act in respect of the
22 association have been met.

23 (2) A cancellation under subsection (1) has effect on and from a day
24 that the Commissioner considers appropriate and specifies in
25 writing.

26 (3) The Commissioner may cause notice of a cancellation under
27 subsection (1) to be published in the *Gazette* if the
28 Commissioner considers that public notification of the
29 cancellation is desirable.

1 **Division 3 — Cancellation of incorporation by Commissioner**
2 **on certain grounds**

3 **144. Grounds on which Commissioner may act**

4 Section 145 applies if the Commissioner has reasonable cause to
5 believe that an incorporated association —

- 6 (a) was not at the time of incorporation eligible for
7 incorporation under this Act; or
- 8 (b) has contravened or is contravening section 17; or
- 9 (c) has suspended its operations, or has in effect been
10 dormant, for a whole year or more; or
- 11 (d) has resolved to wind up but no person is prepared to act
12 as liquidator; or
- 13 (e) has failed to comply with a direction of the
14 Commissioner under section 95; or
- 15 (f) has refused or failed to remedy a contravention of this
16 Act within 60 days after notice of the contravention has
17 been given to the association by the Commissioner.

18 **145. Commissioner may require association to show cause**

19 (1) Where this section applies, the Commissioner may give to the
20 incorporated association a notice —

- 21 (a) stating that the Commissioner proposes to cancel the
22 incorporation of the association; and
- 23 (b) specifying the ground or grounds on which it is
24 proposed to do so; and
- 25 (c) informing the association that, if it does not show cause
26 within the allowed period, the incorporation of the
27 association will be cancelled.

28 (2) The Commissioner may also have the notice published in a
29 manner the Commissioner considers appropriate.

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- 1 (3) The allowed period under subsection (1)(c) is —
2 (a) 60 days after the day on which the notice is given; or
3 (b) if subsection (2) applies, 60 days after the day on which
4 the notice has been both given and published.

5 **146. How association may show cause**

6 Where a notice has been given to an incorporated association
7 under section 145, the association shows cause for the purposes
8 of this Division if it satisfies the Commissioner that the ground
9 or grounds stated in the notice does or do not apply to the
10 incorporated association.

11 **147. Cancellation of incorporation where cause not shown**

- 12 (1) If the incorporated association does not show cause within the
13 allowed period, the Commissioner may, by order published in
14 the *Gazette*, cancel the incorporation of the association with
15 effect on and from a day that the Commissioner considers
16 appropriate and specifies in the order.
- 17 (2) Before the Commissioner makes an order under subsection (1),
18 the Commissioner must give notice in writing to the
19 incorporated association stating that the Commissioner proposes
20 to make the order after the expiration of 28 days from the day
21 on which the notice is given.
- 22 (3) An incorporated association to which a notice is given under
23 subsection (2) may, not later than the end of the period specified
24 under that subsection, apply to the State Administrative
25 Tribunal for a review of the Commissioner's proposal.
- 26 (4) If an application is so made, the Commissioner cannot make the
27 order unless —
28 (a) the application results in the Commissioner's proposal
29 being substantially confirmed; or
30 (b) the application is dismissed or struck out.

- 1 **148. Powers in respect of property**
- 2 (1) On the making of an order under section 147 cancelling the
3 incorporation of an association —
- 4 (a) the property held by the association immediately before
5 the cancellation vests in the State; and
- 6 (b) the Commissioner acting on behalf of, and in the name
7 of, the State has power to realise such property, pay the
8 debts and liabilities of the association, distribute its
9 surplus property and wind up its affairs.
- 10 (2) Nothing in this section imposes an obligation or liability on the
11 Commissioner or the State to do any act or thing required by
12 law to be done by the owner or occupier of the property other
13 than the satisfaction or payment of the charge, claim or liability
14 out of the property of the incorporated association so far as it is,
15 in the opinion of the Commissioner, properly available for and
16 applicable to the payment.
- 17 (3) The Commissioner may for the purposes of this section or any
18 incidental purpose —
- 19 (a) do all such other acts and things as are reasonably
20 necessary or expedient; and
- 21 (b) appoint a person to investigate the affairs of the
22 association and exercise any power on behalf of the
23 Commissioner; and
- 24 (c) give such directions as the Commissioner thinks fit; and
- 25 (d) do or omit any act or thing, or take any step, that is
26 prescribed.
- 27 (4) The reasonable costs, charges and expenses of the
28 Commissioner or the State and a person appointed under
29 subsection (3)(b) relating to the exercise and performance of the
30 powers and functions conferred by or under this section in
31 respect of an incorporated association are to be paid out of the
32 property of the association.

1 **149. Property vested in the State**

2 Property vested in the State under section 148(1)(a) —

- 3 (a) is to be administered in the Department by the
4 Commissioner acting on behalf of, and in the name of,
5 the State; and
- 6 (b) is subject to any charge, claim or liability imposed by
7 law on or affecting that property to which the property
8 would have been subject had the property continued to
9 be held by the incorporated association by which it was
10 held immediately before it vested in the State.

11 **Division 4 — General**

12 **150. Liabilities not affected by cancellation of incorporation**

13 Any liability of a member of the management committee or
14 member of an association —

- 15 (a) is not affected by the cancellation of the incorporation of
16 the association under this Act; and
- 17 (b) may be enforced as if the incorporation of the
18 association had not been cancelled.

19 **151. Reinstatement of incorporation**

20 (1) If the Commissioner is satisfied that the incorporation of an
21 association should not have been cancelled under this Part, and
22 the association has not become incorporated under any other
23 Act or law, the Commissioner may in writing reinstate its
24 incorporation under this section.

25 (2) If an association's incorporation is reinstated under this section,
26 the body corporate previously established by this Act in relation
27 to the association is, as from the time of reinstatement, taken to
28 have continued in existence as if the association's incorporation
29 had not been cancelled.

30 (3) The Commissioner may cause notice of a reinstatement under
31 subsection (1) to be published in the *Gazette* if the

- 1 Commissioner considers that public notification of the
2 reinstatement is desirable.
- 3 (4) The regulations may make provision of a savings or transitional
4 nature consequent on the reinstatement of an association's
5 incorporation under this section.

1 **Part 11 — Exclusion from Corporations legislation**

2 **152. Excluded matters for Corporations Act section 5F**

3 (1) The following matters are declared to be excluded matters for
4 the purposes of the Corporations Act section 5F in relation to
5 the whole of the Corporations legislation to which Part 1.1A of
6 that Act applies —

- 7 (a) an incorporated association;
8 (b) any act or omission of any person, body or other entity
9 in relation to an incorporated association.

10 (2) Subsection (1) does not exclude the application of the following
11 provisions of the Corporations Act —

- 12 (a) provisions that relate to any matter that the regulations
13 provide must not be excluded from the operation of the
14 Corporations legislation;
15 (b) provisions that relate to the role of an incorporated
16 association in the formation of a company;
17 (c) provisions that relate to registration as a company under
18 the Corporations Act Chapter 5B;
19 (d) provisions that relate to substantial holdings, by or
20 involving an incorporated association, in a company;
21 (e) provisions that confer or impose functions on an
22 incorporated association as a member, or former
23 member, of a corporation;
24 (f) provisions that relate to dealings by an incorporated
25 association in securities of a body corporate, other than
26 securities of the incorporated association itself;
27 (g) provisions that confer or impose functions on an
28 incorporated association in its dealings with a
29 corporation, not being dealings in securities of the
30 incorporated association;

- 1 (h) provisions that relate to securities of an incorporated
2 association, other than debentures of or deposits with an
3 incorporated association;
- 4 (i) provisions relating to financial markets and participants
5 in financial markets;
- 6 (j) provisions relating to financial services licensees whose
7 licence covers dealing in, or providing advice about,
8 financial products;
- 9 (k) provisions relating to carrying on a financial services
10 business;
- 11 (l) provisions relating to financial statements, and audit of
12 financial statements, of financial services licensees
13 whose licence covers dealing in, or providing advice
14 about, financial products;
- 15 (m) provisions relating to clients of financial services
16 licensees whose licence covers dealing in, or providing
17 advice about, financial products;
- 18 (n) provisions relating to registers of interests in financial
19 products.
- 20 (3) The provisions specified in subsection (2) only apply to an
21 incorporated association to the extent to which an incorporated
22 association may engage in the activities covered by those
23 provisions.

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Part 12 — Administration

Division 1 — General

153. Commissioner

- (1) In this section —
executive officer has the meaning given in the *Public Sector Management Act 1994* section 3(1).
- (2) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (3) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

154. General functions of Commissioner

The functions of the Commissioner include the following —

- (a) to facilitate the establishment and operation of incorporated associations in accordance with this Act;
- (b) to promote and encourage compliance with this Act;
- (c) to receive complaints and information concerning non-compliance with the Act and, if the Commissioner considers it warranted, to investigate the complaints and information and to take whatever action in respect of the complaints and information as seems proper to the Commissioner;
- (d) to conduct compliance and educational activities in relation to matters concerning incorporated associations;
- (e) to investigate, research and publish reports and information in relation to matters concerning incorporated associations as the Commissioner considers appropriate;
- (f) to report to the Minister on matters referred to the Commissioner by the Minister and on matters of

- 1 importance investigated by the Commissioner, whether
2 referred to the Commissioner by the Minister or not;
- 3 (g) to perform any other functions that are conferred or
4 imposed on the Commissioner by this Act or any other
5 Act.

6 **155. Delegation by Commissioner**

- 7 (1) The Commissioner may delegate to any other person employed
8 in the Department any power or duty of the Commissioner
9 under another provision of this Act.
- 10 (2) The delegation must be in writing signed by the Commissioner.
- 11 (3) A person to whom a power or duty is delegated under this
12 section cannot delegate that power or duty.
- 13 (4) A person exercising or performing a power or duty that has been
14 delegated to the person under this section is to be taken to do so
15 in accordance with the terms of the delegation unless the
16 contrary is shown.
- 17 (5) Nothing in this section limits the ability of the Commissioner to
18 perform a function through an officer or agent.

19 **156. Regulations for the provision of information to the**
20 **Commissioner**

- 21 (1) The regulations may make provision for prescribed information
22 that is —
- 23 (a) in respect of an incorporated association; and
24 (b) relevant to the operation of this Act,
- 25 to be provided, in accordance with the regulations, to the
26 Commissioner by an incorporated association or a member of its
27 management committee.
- 28 (2) Provision made under subsection (1) may include prescribed
29 information to be provided by way of periodical returns in

1 respect of prescribed periods that are to be lodged with the
2 Commissioner in accordance with the regulations.

3 (3) The regulations may require that the information be verified by
4 a statutory declaration.

5 **157. Commissioner may require documents relating to financial**
6 **affairs to be produced**

7 (1) The Commissioner may by written notice require an
8 incorporated association to produce to the Commissioner at a
9 time and place specified in the notice a specified relevant
10 document relating to the financial affairs of the incorporated
11 association.

12 (2) The incorporated association must produce the document,
13 unless the association has a reasonable excuse for not producing
14 it.

15 Penalty: a fine of \$2 750.

16 (3) The Commissioner may keep a document that is produced —

17 (a) to take an extract from the document; or

18 (b) to make a copy of it.

19 (4) The Commissioner must return the document to the
20 incorporated association as soon as practicable after taking the
21 extract or making the copy.

22 **158. Application of *Fair Trading Act 2010* sections 61, 112**
23 **and 113**

24 The *Fair Trading Act 2010* sections 61, 112 (other than
25 subsection (3)(c)(ii), (da) and (f)) and 113 extend and apply,
26 with such modifications as are necessary, to this Act as if the
27 sections were a part of this Act and the following applied —

28 (a) a reference to the Commissioner in section 61 of that
29 Act were a reference to the Commissioner as defined in
30 section 3;

- 1 (b) a reference to “this Act” in section 112 of that Act were
2 a reference to this Act;
- 3 (c) a reference to the Department in section 113 of that Act
4 were a reference to the Department as defined in
5 section 3.

6 **159. Protection from liability**

- 7 (1) A person is not liable for anything that the person has, in good
8 faith, done in the performance or purported performance of a
9 function under this Act or a repealed Act.
- 10 (2) The State is also relieved of any liability that it might otherwise
11 have had for another person having done anything as described
12 in subsection (1).
- 13 (3) The protection given by this section applies even though the
14 thing done as described in subsection (1) may have been
15 capable of being done whether or not this Act or a repealed Act
16 had been enacted.
- 17 (4) In this section, a reference to the doing of anything includes a
18 reference to an omission to do anything.

19 **160. Evidentiary provisions**

- 20 (1) In this section —
21 *specified* means specified in the Commissioner’s certificate.
- 22 (2) A certificate of the Commissioner to the effect of any of the
23 following is evidence of the matter or matters set out in the
24 certificate —
- 25 (a) that on a specified day a specified association was or
26 was not an incorporated association;
- 27 (b) that on a specified day no incorporated association was
28 incorporated under this Act by a specified name;

- 1 (c) that a specified requirement of this Act —
2 (i) had or had not been complied with as at a day or
3 within a specified period; or
4 (ii) had been complied with as at a specified day but
5 not before that day;
6 (d) that a copy of the rules of a specified incorporated
7 association is a true copy of those rules as lodged with
8 the Commissioner as at a specified day.
9 (3) A certificate of incorporation of an association issued under this
10 Act is conclusive evidence of the incorporation of the
11 association under this Act on the day specified in the certificate
12 as the day of incorporation.

13 **Division 2 — Information and documents kept by**
14 **Commissioner**

15 **161. Commissioner must keep register of incorporated**
16 **associations and other documents**

- 17 (1) The Commissioner must keep —
18 (a) a register of incorporated associations; and
19 (b) a copy of the following —
20 (i) the rules of each incorporated association;
21 (ii) any alteration to the rules of an incorporated
22 association;
23 (iii) every other document required by this Act to be
24 lodged with the Commissioner.
25 (2) The register may contain such particulars as the Commissioner
26 thinks fit.
27 (3) The register and documents may be kept in the manner the
28 Commissioner thinks fit.

1 **162. Inspection of register or documents**

- 2 (1) A person may, on payment of the prescribed fee —
- 3 (a) inspect the register kept under section 161(1)(a); or
- 4 (b) inspect any document lodged with the Commissioner for
- 5 the purposes of this Act, not being a document that has
- 6 been destroyed or otherwise disposed of; or
- 7 (c) obtain from the Commissioner a certified copy of, or
- 8 extract from, the register or any document lodged with
- 9 the Commissioner under this Act, not being a document
- 10 that has been destroyed or otherwise disposed of.
- 11 (2) If a reproduction or transparency of a document is produced for
- 12 inspection, a person is not entitled under subsection (1) to
- 13 require the production of the original.
- 14 (3) A person may, on payment of the prescribed fee, obtain from
- 15 the Commissioner a copy, or a certified copy, of the duplicate
- 16 held by the Commissioner of an incorporated association's
- 17 certificate of incorporation.
- 18 (4) The Commissioner may withhold a person's personal
- 19 information from a document to be inspected or copied, or an
- 20 extract of the document, in circumstances prescribed by the
- 21 regulations.
- 22 (5) In subsection (4) —
- 23 *personal information* has the meaning given in the *Freedom of*
- 24 *Information Act 1992* Glossary clause 1.

25 **163. Certification of document**

26 A copy of or extract from any document lodged with the

27 Commissioner for the purposes of this Act that is certified by

28 the Commissioner to be a true copy or extract is in any

29 proceedings admissible in evidence as of equal validity with the

30 original document.

1 **164. Destruction of documents by Commissioner**

2 (1) The Commissioner may destroy or dispose of any document,
3 and any copy or transparency of a document, lodged in respect
4 of an incorporated association that for not less than 15 years has
5 been dissolved.

6 (2) Subsection (1) only applies if in the Commissioner's opinion it
7 is no longer necessary or desirable to retain the document, copy
8 or transparency.

9 **165. Lodgment of documents**

10 A document is not lodged under this Act unless —

11 (a) all information required to be provided in or with the
12 document is provided; and

13 (b) the fee, if any, prescribed by the regulations is paid.

14 **166. Documents may be lodged by facsimile or electronic
15 transmission**

16 (1) Subject to section 165, it is sufficient compliance with a
17 requirement under this Act that a document be lodged with the
18 Commissioner if the Commissioner receives a copy of the
19 document by facsimile or electronic transmission.

20 (2) If the Commissioner receives from a person a copy of a
21 document under subsection (1), the Commissioner may require
22 that person to produce and lodge the original within the time
23 specified by the Commissioner.

24 (3) If the person does not comply with a requirement of the
25 Commissioner within the specified time, the person is to be
26 taken not to have lodged the document.

27 **167. Commissioner may refuse lodgment of document**

28 (1) The Commissioner may refuse the lodgment of a document for
29 the purposes of this Act if the Commissioner considers that the
30 document —

31 (a) contains matter contrary to law; or

- 1 (b) has not been prepared in good faith; or
2 (c) contains matter, that in a material particular, is false or
3 misleading in the form or context in which it is included;
4 or
5 (d) by reason of an omission or misdescription, has not been
6 duly completed; or
7 (e) does not comply with the requirements of this Act; or
8 (f) contains any error, alteration or erasure; or
9 (g) if submitted in electronic form, is not readily accessible
10 by the Commissioner so as to be useable by the
11 Commissioner.
- 12 (2) If the lodgment of a document is refused under subsection (1),
13 the Commissioner may request —
14 (a) that the document be appropriately amended and
15 re-lodged; or
16 (b) that a fresh document be lodged in its place; or
17 (c) if the document has not been duly completed, that the
18 document be appropriately completed and re-lodged or a
19 supplementary document in a form approved by the
20 Commissioner be lodged.

21 **168. No constructive notice of contents of documents**

- 22 A person is not taken to have knowledge of —
23 (a) the statement of the objects or purposes of an
24 incorporated association; or
25 (b) the rules of an incorporated association; or
26 (c) any of the contents of the statement of objects or
27 purposes or of the rules of an incorporated association;
28 or
29 (d) any other document or its contents; or

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- 1 (e) any particulars,
2 by reason only that the statement of objects or purposes, the
3 rules, the document or the particulars —
4 (f) is or are lodged with the Commissioner for the purposes
5 of this Act; or
6 (g) is or are referred to in any other document that is so
7 lodged.

1 **Part 13 — Review**

2 **169. Reviewable decisions of Commissioner**

3 (1) For the purposes of this Part —

4 (a) a *reviewable decision* is a decision of the Commissioner
5 to do something referred to in an item in the Table; and

6 (b) an *affected person*, in relation to a reviewable decision
7 referred to in an item in the Table, is a person referred to
8 in the same item.

9 **Table**

Item	Reviewable decision	Affected person
1	Determine under section 6 that an association is prescribed for the purposes of that section or belongs to a class of associations that is so prescribed.	The applicant for incorporation
2	Refuse request made under section 9(1)	The person who made the request
3	Refuse under section 11(1) or (3) to incorporate an association	The applicant for incorporation
4	Refuse under section 12 to incorporate an association by a name that in the Commissioner's opinion is not appropriate	The applicant for incorporation
5	Refuse to approve a name under section 31	The incorporated association that applied for approval

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Item	Reviewable decision	Affected person
6	Refuse under section 33 to approve a rule alteration	The incorporated association that applied for approval
7	Refuse request made under section 34(1)	The person who made the request
8	Give a direction under section 60(3) or amend a direction under section 60(5)	Person given the direction or notice of amendment
9	Refuse an application made under section 93(2)	The incorporated association that made the application
10	Refuse application made under section 102 to incorporate association that is amalgamation of incorporated associations	The person who applied for incorporation of the association
11	Refuse request made under section 105(1)	Person who made the request
12	Certify an amount under section 116(2)(a)	The incorporated association by which the amount is payable
13	Refuse request made under section 132	Person who made the request

Item	Reviewable decision	Affected person
14	Refuse approval of a distribution plan under section 136	The incorporated association that applied for approval
15	Refuse to cancel incorporation under section 140	The incorporated association that applied for cancellation
16	Refuse application made under section 141 to cancel incorporation	The incorporated association that made the application
17	Refuse to approve alteration of rules under section 200	The incorporated association that applied for approval

- 1 (2) The regulations may provide —
- 2 (a) that specified decisions made under the regulations are
- 3 reviewable decisions for the purposes of this Part; and
- 4 (b) that specified persons are affected persons in relation to
- 5 those reviewable decisions.

6 **170. Review by SAT of reviewable decisions**

7 An affected person may apply to the State Administrative

8 Tribunal for a review of a reviewable decision.

1 **Part 14 — Investigation and enforcement**

2 **171. Term used: authorised person**

3 In this Part —

4 ***authorised person*** means —

- 5 (a) the Commissioner; and
- 6 (b) in relation to a power of the Commissioner under this
7 Act, a person to whom that power is delegated under
8 section 155; and
- 9 (c) an investigator designated under the *Fair Trading*
10 *Act 2010* section 64 as applied by section 172 of this
11 Act.

12 **172. Application of *Fair Trading Act 2010* Part 6**

13 The *Fair Trading Act 2010* Part 6 (other than Division 4A)
14 applies, with such modifications as are necessary, to and in
15 relation to investigations and enforcement under this Act as if it
16 were a part of this Act and the following applied —

- 17 (a) a reference to an authorised person in that Part were a
18 reference to an authorised person as defined in
19 section 171;
- 20 (b) a reference to the Commissioner in that Part were a
21 reference to the Commissioner as defined in section 3;
- 22 (c) a reference to the Department in that Part were a
23 reference to the Department as defined in section 3;
- 24 (d) a reference to “this Act” in that Part were a reference to
25 this Act;
- 26 (e) a reference to “this Part” in that Part were a reference to
27 this Part;
- 28 (f) each reference in that Part to “or another Act” or “or any
29 other Act” were omitted;
- 30 (g) the reference to “section 112” in section 87(1) of that
31 Act were a reference to section 158 of this Act;

- 1 (h) the reference to “or 4A” in section 88(1) of that Act
2 were omitted;
- 3 (i) section 89(2A) of that Act were omitted;
- 4 (j) the reference to “or 88E” in section 89(2) of that Act
5 were omitted.

6 **173. Infringement notices and the *Criminal Procedure Act 2004***

- 7 (1) If this Act is a prescribed Act for the purposes of the *Criminal*
8 *Procedure Act 2004* Part 2, this section applies in relation to the
9 service of an infringement notice under that Part by an
10 authorised officer in relation to an alleged offence under this
11 Act.
- 12 (2) The infringement notice must be served within —
- 13 (a) 21 days after the authorised officer forms the opinion
14 that there is sufficient evidence to support the allegation
15 of the offence; and
- 16 (b) 6 months after the alleged offence is believed to have
17 been committed.
- 18 (3) The *Criminal Procedure Act 2004* Part 2 is modified to the
19 extent necessary to give effect to this section.

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Part 15 — Miscellaneous

174. Lodging notice of address for service

(1) An incorporated association must lodge with the Commissioner notice of an address or postal address for service of any process, notice or other document on the association.

Penalty: a fine of \$1 000.

(2) A statutory manager appointed under Part 8 may lodge with the Commissioner notice of an address or postal address for service of any process, notice or other document on the association during the period of the statutory manager’s appointment.

175. Change of address

(1) An incorporated association must give notice to the Commissioner of the change of its address —

- (a) as specified under section 7(2)(a) or 103(1); or
- (b) as notified under section 174 or 203; or
- (c) as previously notified under this section.

Penalty: a fine of \$1 000.

(2) The notice must be given within 28 days after the change occurs.

176. Service on incorporated association

Service of any process, notice or other document may be effected upon an incorporated association —

- (a) by serving the process, notice or other document personally or by post on a member of the management committee of the association; or
- (b) by leaving the process, notice or other document at, or by sending it by post to, the address for service (if any) last notified to the Commissioner under section 174; or

- 1 (c) by leaving the process, notice or other document at the
2 address of a member of the management committee of
3 the association with any person apparently over the age
4 of 16 years.

5 **177. False or misleading statements in documents: offence**

- 6 (1) A person must not in a document required by or for the
7 purposes of this Act or lodged with or submitted to the
8 Commissioner or in a document submitted to a meeting of
9 members of an incorporated association —
10 (a) make or authorise the making of a statement that to the
11 person’s knowledge is false or misleading in any
12 material particular; or
13 (b) omit or authorise the omission of any matter or thing
14 without which the document is to the person’s
15 knowledge misleading in any material respect.

16 Penalty: a fine of \$5 000.

- 17 (2) This section does not limit or affect the operation of section 172
18 insofar as it applies to the *Fair Trading Act 2010* section 88.

19 **178. Commissioner may require statutory declaration**

20 The Commissioner may require any document or information
21 provided to the Commissioner or an officer of the Department
22 for the purposes of this Act to be verified by statutory
23 declaration.

24 **179. Use of “Incorporated” restricted**

25 A person must not carry on business or enter into a contract
26 under any name or title of which “Incorporated” or any
27 abbreviation of that word is the final word or abbreviation
28 unless the person is incorporated under this Act or some other
29 law.

30 Penalty: a fine of \$2 000.

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1 **180. Time limit for commencing proceedings**

2 A prosecution for an offence against this Act must be
3 commenced within 3 years after the day on which the offence is
4 alleged to have been committed.

5 **181. Commissioner or authorised person may commence**
6 **prosecution**

7 (1) A prosecution for an offence against this Act may be
8 commenced by the Commissioner or by a person authorised in
9 writing by the Commissioner to do so.

10 (2) Subsection (1) does not limit the ability of a person to
11 commence a prosecution for an offence if the person has
12 authority at law to do so.

13 (3) In proceedings for an offence against this Act, unless evidence
14 is given to the contrary, proof is not required —

15 (a) that the prosecutor is authorised to commence the
16 prosecution; or

17 (b) that a signature on a prosecution notice is the signature
18 of a person authorised to commence the prosecution.

19 **182. Jurisdiction of SAT in respect of disputes**

20 (1) If a dispute cannot be resolved under the procedure provided for
21 as required by Schedule 1 Division 1 item 18 —

22 (a) the incorporated association concerned; or

23 (b) a member of the association involved in the dispute,

24 may make an application to the State Administrative Tribunal to
25 have the dispute determined by that Tribunal.

26 (2) Nothing in subsection (1) prevents the State Administrative
27 Tribunal from exercising its powers to refer the dispute, or any
28 aspect of it, for mediation.

29 (3) In a proceeding under subsection (1), the State Administrative
30 Tribunal may make orders giving such relief as the Tribunal

- 1 considers appropriate, including one or more of the following
2 orders —
- 3 (a) an order giving directions for the observance of the rules
4 of the incorporated association by any person who has
5 an obligation to observe those rules;
- 6 (b) an order declaring and enforcing the rights and
7 obligations of members of the incorporated association
8 between themselves;
- 9 (c) an order declaring and enforcing the rights and
10 obligations between the incorporated association and
11 any member or members of the association.

12 **183. Regulations**

- 13 (1) The Governor may make regulations prescribing all matters and
14 things that by this Act are required or permitted to be prescribed
15 or that are necessary or convenient to be prescribed for giving
16 effect to this Act and in particular for and with respect to
17 prescribing and providing for the payment of fees.
- 18 (2) Different fees may be prescribed in respect of the lodging of a
19 document according to the method by which the document is
20 lodged.

21 **184. Review of Act**

- 22 (1) The Minister —
- 23 (a) must carry out a review of the operation and
24 effectiveness of this Act as soon as is practicable after
25 the end of the period of 5 years beginning on the day on
26 which this section commences; and
- 27 (b) may carry out a further review of the operation and
28 effectiveness of this Act at any time after the period
29 referred to in paragraph (a).
- 30 (2) The Minister must —
- 31 (a) prepare a report based on the review; and

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- 1 (b) as soon as is practicable after the preparation of the
2 report cause it to be laid before each House of
3 Parliament.

1 **Part 16 — Repeal of *Associations Incorporation***
2 ***Act 1987* and transitional provisions**

3 **Division 1 — Repeal**

4 **185. *Associations Incorporation Act 1987* repealed**

5 The *Associations Incorporation Act 1987* is repealed.

6 **Division 2 — Transitional provisions**

7 **Subdivision 1 — Preliminary**

8 **186. Terms used**

9 In this Part —

10 ***commencement day*** means the day on which section 185 comes
11 into operation;

12 ***existing incorporated association*** means an association —

13 (a) that was an incorporated association under a repealed
14 Act; and

15 (b) whose incorporation has effect immediately before the
16 commencement day.

17 **187. Saving**

18 This Division is in addition to the provisions of the
19 *Interpretation Act 1984* and, unless the contrary intention
20 appears, does not limit or otherwise affect the operation of those
21 provisions.

22 **Subdivision 2 — Existing incorporated associations**

23 **188. Incorporation continued**

24 An existing incorporated association is taken to be an
25 association incorporated under this Act.

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Part 16 Repeal of Associations Incorporation Act 1987 and transitional provisions

Division 2 Transitional provisions

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1 **189. Committee of existing incorporated association**

2 A committee of an existing incorporated association, or other
3 body having the management of the affairs of an existing
4 incorporated association, is taken to be a management
5 committee for the purposes of section 38.

6 **Subdivision 3 — Continuation of certain matters in progress**

7 **190. Existing applications for incorporation**

8 (1) If before the commencement day —

9 (a) an application for the incorporation of an association
10 was made under the repealed Act; but

11 (b) the association was not incorporated or the application
12 was not refused, and the applicant wishes to continue
13 with the application,

14 the application is to be dealt with and completed under the
15 repealed Act as if it had not been repealed.

16 (2) If an association to which subsection (1) applies is refused
17 incorporation as mentioned in section 9(3) of the repealed Act,
18 that provision applies as if it had not been repealed.

19 (3) If an association to which subsection (1) applies is
20 incorporated —

21 (a) the rules of the association are the rules accepted for the
22 purposes of incorporation; and

23 (b) the association is taken to be an association incorporated
24 under this Act.

25 **191. Rule alteration in progress**

26 (1) This section applies if before the commencement day —

27 (a) an incorporated association had, for the purposes of
28 section 17(1) of the repealed Act, passed a special
29 resolution altering its rules; but

1 (b) the association had not complied with section 17(2) of
2 the repealed Act in respect of the alteration.

3 (2) The association, if it wishes to continue with the alteration, is
4 required to comply with section 17(2) of the repealed Act within
5 one month after the commencement day, or such further time as
6 the Commissioner may allow, and for that purpose section 17(2)
7 of the repealed Act is to apply as if it had not been repealed.

8 **192. Applications under repealed section 18 or 19 in progress**

9 (1) This section applies if before the commencement day —

10 (a) an application was made for an approval under
11 section 18 or 19 of the repealed Act; but

12 (b) the application was not determined by the
13 Commissioner or was so determined but the time
14 allowed for an application to be made under that section
15 for a review of the determination has not expired.

16 (2) If the association wishes to continue with the application, it is to
17 be dealt with and completed, and an application for review may
18 be made as if section 18 or 19 of the repealed Act, as the case
19 may be, had not been repealed.

20 **193. Applications for extension of time under repealed**
21 **section 23(1)**

22 If on the commencement day an application for an extension of
23 time under section 23(1) of the repealed Act has been made but
24 has not been determined by the Commissioner, the application
25 may be dealt with and completed as if that section had not been
26 repealed.

27 **194. Certain applications for review made but not determined**

28 (1) In this section —

29 *repealed provision* means section 4(6), 7(2), 8(2), 9(3), 18(4) or
30 19(3) of the repealed Act.

Associations Incorporation Bill 2014

Part 16 Repeal of Associations Incorporation Act 1987 and transitional provisions

Division 2 Transitional provisions

s. 195

1 (2) An application to the State Administrative Tribunal for a review
2 of a decision of the Commissioner under a repealed provision
3 that has been made but not finally determined before the
4 commencement day is to be heard and determined as if that
5 provision had not been repealed.

6 **195. Voluntary winding up in progress**

7 (1) This section applies if before the commencement day —
8 (a) a special resolution was duly passed under section 30(1)
9 of the repealed Act for the voluntary winding up of an
10 incorporated association; but
11 (b) dissolution of the association had not taken effect under
12 section 30(3) of the repealed Act.

13 (2) Part VI of the repealed Act applies, as if it had not been
14 repealed, to the winding up of the incorporated association and
15 its dissolution.

16 (3) If an association is dissolved under section 30(3) of the repealed
17 Act, the Commissioner must, in writing, cancel the
18 incorporation of the association with effect on and from a day
19 that the Commissioner considers appropriate and specifies in
20 writing.

21 (4) The Commissioner may cause notice of a cancellation under
22 subsection (3) to be published in the *Gazette* if the
23 Commissioner considers that public notification of the
24 cancellation is desirable.

25 **196. Notice given under repealed section 34(1)**

26 If before the commencement day —

27 (a) a notice was given to an incorporated association under
28 section 34(1) of the repealed Act; and

1 (b) the period of 3 months mentioned in section 34(2) of the
2 repealed Act has not expired,
3 the incorporated association may make a request to the
4 Commissioner under section 34(2) of the repealed Act, and the
5 Commissioner may make an order under that section which is to
6 apply as if it had not been repealed.

7 **197. Notice given under repealed section 35**

8 If before the commencement day a notice was given to an
9 incorporated association under section 35(1) of the repealed Act
10 but the Commissioner's powers under that section were not
11 exercised —

12 (a) the Commissioner may exercise the powers conferred by
13 that section, but subject to section 35(2)(b) of the
14 repealed Act; and

15 (b) section 36 of the repealed Act has effect,
16 in relation to the association as if the repealed Act had not been
17 repealed.

18 **Subdivision 4 — Alteration of rules by existing incorporated**
19 **associations and section 190 incorporated associations**

20 **198. Alteration of rules**

21 (1) In this section —
22 *new requirement* means a requirement of section 22.

23 (2) To allow time for an existing incorporated association to ensure
24 that its rules comply with a new requirement, the requirement
25 does not apply to an existing incorporated association until the
26 expiry of —

27 (a) 3 years after the commencement day; or

28 (b) such longer period as the Commissioner may, on
29 application made by the association, from time to time
30 allow in writing.

Associations Incorporation Bill 2014

Part 16 Repeal of Associations Incorporation Act 1987 and transitional provisions

Division 2 Transitional provisions

s. 199

- 1 (3) To allow time for an incorporated association to which
2 section 190 applies to ensure that its rules comply with a new
3 requirement, the requirement does not apply to the association
4 until —
5 (a) the expiry of 3 years after the incorporation of the
6 association or the commencement of section 22,
7 whichever is the later; or
8 (b) such longer period as the Commissioner may, on
9 application made by the association, from time to time
10 allow in writing.

11 **199. Rules of existing incorporated associations to which**
12 **repealed Schedule 2 clause 4 applied**

- 13 (1) In this section —
14 *exempted association* means an incorporated association which
15 immediately before the commencement day had the benefit of
16 the exemption in Schedule 2 clause 4 of the repealed Act.
17 (2) To allow time for an exempted association to ensure that its
18 rules comply with section 22, the requirements of that section
19 do not apply to the association until the expiry of —
20 (a) 3 years after the commencement day; or
21 (b) such longer period as the Commissioner may, on
22 application made by the association, from time to time
23 allow in writing.

24 **200. Rule alterations may be made by management committee**

- 25 (1) This section has effect despite the provisions of section 30(1).
26 (2) The management committee of an incorporated association
27 may, by resolution made not later than 3 years after the
28 commencement day, make any alteration to the rules of the
29 association that —
30 (a) is required to ensure that the rules comply with
31 section 22; and

- 1 (b) does no more than give effect to a requirement,
2 restriction or prohibition imposed under the authority of
3 this Act.
- 4 (3) An alteration referred to in subsection (2) does not take effect
5 unless it is approved by the Commissioner.
- 6 (4) The incorporated association, within 28 days after the
7 management committee passes a resolution under subsection (2)
8 to alter the rules of the association, must lodge the required
9 documents with the Commissioner.
10 Penalty: a fine of \$1 000.
- 11 (5) Section 30(4) and (5) apply with all necessary changes for the
12 purposes of subsection (4) and in particular apply as if all
13 references to “special” were deleted.
- 14 (6) If the alteration is approved, the incorporated association must
15 give notice of the alteration to its members with notice of the
16 next annual general meeting of the association after the approval
17 is given.
- 18 **201. Model rules apply if rules are not made compliant**
- 19 (1) In this section —
20 *transition period*, in relation to an incorporated association,
21 means the period allowed by or under section 198 or 199 for the
22 association to ensure that its rules comply with section 22.
- 23 (2) If, at the end of the transition period in relation to an
24 incorporated association, the rules of the association do not
25 comply with section 22, the model rules apply as the rules of the
26 association to the extent that the association’s rules do not —
- 27 (a) address a matter referred to in Schedule 1 Division 1; or
28 (b) comply with any applicable requirement under
29 Schedule 1 Division 2.

Associations Incorporation Bill 2014

Part 16 Repeal of Associations Incorporation Act 1987 and transitional provisions

Division 2 Transitional provisions

s. 202

1 **202. Act modifications pending alteration of rules**

2 (1) This section is to apply where, on the commencement day, the
3 rules of —

4 (a) an existing incorporated association; or

5 (b) an association to which section 190 applies,

6 require alteration to include the provisions required by
7 Schedule 1 Division 1 item 19, and is to so apply pending the
8 alteration being made within the time allowed by this
9 Subdivision.

10 (2) Section 133(1) is to apply in respect of an association referred to
11 in subsection (1) as if section 133(1)(a) were omitted.

12 **Subdivision 5 — Other things to be done by existing incorporated**
13 **associations and section 190 incorporated associations**

14 **203. Notification of addresses**

15 (1) An existing incorporated association must, not later than
16 90 days after the commencement day, lodge with the
17 Commissioner —

18 (a) a notice in writing of the address of the association; and

19 (b) a notice in writing of an address or postal address for
20 service of any process, notice or other document on the
21 association.

22 (2) An incorporated association to which section 190 applies must,
23 not later than 90 days after the association is incorporated, lodge
24 with the Commissioner —

25 (a) a notice in writing of the address of the association; and

26 (b) a notice in writing of an address or postal address for
27 service of any process, notice or other document on the
28 association.

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Subdivision 6 — Other provisions

204. New section 50 applies where time is already running under section 23 of repealed Act

The application of section 50(1) extends to an incorporated association in respect of which the period of 4 months mentioned in section 23 of the repealed Act was running immediately before the commencement of that section.

205. When accounting and financial reporting provisions start to apply to existing incorporated associations

(1) In this section —

new accounting and financial reporting requirements means Part 5 Divisions 1, 2 (except section 67), 3 and 5.

(2) The new accounting and financial reporting requirements apply in respect of each financial year of an existing incorporated association that commences on or after 1 July 2016.

(3) In respect of a financial year of an existing incorporated association commencing before 1 July 2016, sections 25 and 26 of the repealed Act apply to the association as if they had not been repealed.

(4) Except as provided in subsections (2) and (3), Part 5 is to apply to an existing incorporated association on and after the commencement day.

206. Auditor's appointments

A person who was an auditor of an existing incorporated association immediately before the commencement day is to be regarded as having been appointed by the incorporated association under Part 5 Division 7.

Associations Incorporation Bill 2014

Part 16 Repeal of Associations Incorporation Act 1987 and transitional provisions

Division 2 Transitional provisions

s. 207

1 **207. Property vested under section 36 of repealed Act**

2 If immediately before the commencement day property of an
3 incorporated association is vested in the Commissioner under
4 section 36 of the repealed Act —

5 (a) the Commissioner may perform the functions conferred
6 by that section in respect of the association and its
7 property; and

8 (b) section 36(2) and (3) of the repealed Act are to apply,
9 as if that section had not been repealed.

10 **208. Constructive notice under section 168 of this Act**

11 The rights, liabilities and remedies of persons in respect of acts,
12 omissions, circumstances and things that occurred before the
13 commencement of section 168 are to be determined as if that
14 section had not been enacted.

15 **209. Time limit under section 180 of this Act**

16 Section 180 does not apply to an offence committed against the
17 repealed Act.

18 **210. References in written laws**

19 A reference in a written law to an association incorporated
20 under this Act includes a reference to an existing incorporated
21 association that is taken by section 188 to be incorporated under
22 this Act.

23 **Subdivision 7 — Further provision may be made**

24 **211. Regulations**

25 (1) The regulations may make provision for a transitional matter if
26 there is no sufficient provision made in this Division for the
27 matter.

- 1 (2) If in the opinion of the Minister an anomaly arises in the
2 carrying out of any provision of this Division, the regulations
3 may —
4 (a) modify that provision to remove the anomaly; and
5 (b) make such provision as is necessary or expedient to
6 carry out the intention of that provision.
- 7 (3) No regulation may be made under this section to come into
8 operation more than 2 years after the commencement day.
- 9 (4) Regulations made for the purposes of this section may provide
10 that a specific provision of this Act —
11 (a) is not to apply; or
12 (b) is to apply with any specific modification,
13 to or in relation to a matter.
- 14 (5) Regulations made for the purposes of this section may provide
15 that a state of affairs is taken to have existed, or not to have
16 existed, on and from a day that is —
17 (a) earlier than the day on which the regulations are
18 published in the *Gazette*; but
19 (b) not earlier than the day on which this Act came into
20 operation.
- 21 (6) A provision referred to in subsection (5) does not operate so
22 as —
23 (a) to affect in a manner prejudicial to any person (other
24 than the State) the rights of that person existing before
25 the day on which the regulations are published in the
26 *Gazette*; or
27 (b) to impose liabilities on any person (other than the State)
28 in respect of anything done or omitted to be done before
29 that day.

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Part 17 — Consequential amendments

212. *Child Care Services Act 2007* amended

- (1) This section amends the *Child Care Services Act 2007*.
- (2) In section 3 in the definition of **managerial officer** paragraph (a) delete “*Associations Incorporation Act 1987* section 3(1),” and insert:

Associations Incorporation Act 2014 section 3,

213. *Cremation Act 1929* amended

- (1) This section amends the *Cremation Act 1929*.
- (2) Before section 4(1) insert:

(1A) In subsection (1)(b) —
association means an association incorporated, or taken to be incorporated, under the *Associations Incorporation Act 2014*.

- (3) In section 4(1)(b) delete “incorporated under the *Associations Incorporation Act 1895*,”.

214. *Criminal Procedure Act 2004* amended

- (1) This section amends the *Criminal Procedure Act 2004*.
- (2) In Schedule 2 clause 4(2)(c) delete “1987 section 41” and insert:

2014 section 176

1 **215. *Education Service Providers (Full Fee Overseas Students)***
2 ***Registration Act 1991* amended**

3 (1) This section amends the *Education Service Providers (Full Fee*
4 *Overseas Students) Registration Act 1991*.

5 (2) In section 11(a)(ii):

6 (a) delete “1987” and insert:

7
8 2014

9
10 (b) after “members of the” insert:

11
12 management

13
14 **216. *Electricity Corporations Act 2005* amended**

15 (1) This section amends the *Electricity Corporations Act 2005*.

16 (2) In section 65(3)(a) after “member of the” insert:

17
18 management

19
20 **217. *Gaming and Wagering Commission Act 1987* amended**

21 (1) This section amends the *Gaming and Wagering Commission*
22 *Act 1987*.

23 (2) In section 38(b) delete “incorporated under the *Associations*
24 *Incorporation Act 1987*,” and insert:

25
26 incorporated, or taken to be incorporated, under the
27 *Associations Incorporation Act 2014*,

28

s. 218

1 **218. *Hale School Act 1876* amended**

2 (1) This section amends the *Hale School Act 1876*.

3 (2) In section 1A in the definition of **Association** delete
4 “incorporated under the *Associations Incorporation Act 1987*,”
5 and insert:

6
7 taken to be incorporated under the *Associations Incorporation*
8 *Act 2014*,

9
10 (3) In section 9 delete “1987,” and insert:

11
12 *2014*,

13

14 **219. *Insurance Commission of Western Australia Act 1986***
15 **amended**

16 (1) This section amends the *Insurance Commission of Western*
17 *Australia Act 1986*.

18 (2) In section 3 in the definition of **community organisation**
19 paragraph (a) delete “incorporated under the *Associations*
20 *Incorporation Act 1987*; or” and insert:

21
22 incorporated, or taken to be incorporated, under the
23 *Associations Incorporation Act 2014*; or

24

25 **220. *Law Society Public Purposes Trust Act 1985* amended**

26 (1) This section amends the *Law Society Public Purposes Trust*
27 *Act 1985*.

1 (2) In section 2(1) in the definition of **Law Society** delete
2 “established under the *Associations Incorporation Act 1895*;
3 and insert:

4
5 taken to be incorporated under the *Associations Incorporation*
6 *Act 2014*;

7
8 **221. *Legal Aid Commission Act 1976* amended**

9 (1) This section amends the *Legal Aid Commission Act 1976*.

10 (2) In section 4(1) in the definition of **Law Society** delete
11 “incorporated under the *Associations Incorporation Act 1895*;
12 and insert:

13
14 taken to be incorporated under the *Associations Incorporation*
15 *Act 2014*;

16
17 **222. *Liquor Control Act 1988* amended**

18 (1) This section amends the *Liquor Control Act 1988*.

19 (2) In section 37(2A) delete “incorporated under the *Associations*
20 *Incorporation Act 1987*” and insert:

21
22 incorporated, or taken to be incorporated, under the
23 *Associations Incorporation Act 2014*

24
25 **223. *Local Government Act 1995* amended**

26 (1) This section amends the *Local Government Act 1995*.

s. 224

1 (2) In section 5.74 in the definition of **corporation** paragraph (e)
2 delete “incorporated under the *Associations Incorporation*
3 *Act 1987;*” and insert:

4
5 incorporated, or taken to be incorporated, under the
6 *Associations Incorporation Act 2014;*
7

8 **224. *Members of Parliament (Financial Interests) Act 1992***
9 **amended**

10 (1) This section amends the *Members of Parliament (Financial*
11 *Interests) Act 1992.*

12 (2) In section 3(1) in the definition of **corporation** paragraph (e)
13 delete “incorporated under the *Associations Incorporation*
14 *Act 1987;*” and insert:

15
16 incorporated, or taken to be incorporated, under the
17 *Associations Incorporation Act 2014;*
18

19 **225. *Pharmacy Act 2010* amended**

20 (1) This section amends the *Pharmacy Act 2010.*

21 (2) In section 3(1) in the definition of **preserved company** delete
22 “association incorporated under the *Associations Incorporation*
23 *Act 1987;*” and insert:

24
25 association taken to be incorporated under the *Associations*
26 *Incorporation Act 2014;*
27

28 **226. *Planning and Development Act 2005* amended**

29 (1) This section amends the *Planning and Development Act 2005.*

- 1 (2) In section 182(2)(b) delete “Australia and incorporated under
2 the *Associations Incorporation Act 1987*.” and insert:

3

4 Australia, an incorporated association under the *Associations*
5 *Incorporation Act 2014*.

6

7 **227. *Racing and Wagering Western Australia Act 2003* amended**

- 8 (1) This section amends the *Racing and Wagering Western*
9 *Australia Act 2003*.

- 10 (2) In section 32(5)(a) after “member of the” insert:

11

12 management

13

14 **228. *School Education Act 1999* amended**

- 15 (1) This section amends the *School Education Act 1999*.

- 16 (2) In section 124 insert in alphabetical order:

17

18 *incorporated association* has the same meaning as in
19 the *Associations Incorporation Act 2014* section 3;

20

21 Note: The heading to amended section 124 is to read:

22 **Terms used**

- 23 (3) In section 137(2) delete “under the *Associations Incorporation*
24 *Act 1987*”.

- 25 (4) In section 138(1) delete “association under the *Associations*
26 *Incorporation Act 1987*.” and insert:

27

28 association.

29

s. 229

1 (5) In section 139(1) delete “under the *Associations Incorporation*
2 *Act 1987*”.

3 (6) In sections 139(2) and 148(2)(b) delete “section 31 of” and
4 insert:

5

6 Schedule 4 to

7

8 (7) In the provisions listed in the Table delete “1987” and insert:

9

10 *2014*

11

12

Table

s. 130(3)(a)(ii)	s. 139(2) and (3)
s. 141 def. of <i>incorporated association</i>	s. 145(3)
s. 148(2) and (3)	s. 195(1)(a)

13 **229. *Taxation Administration Act 2003* amended**

14 (1) This section amends the *Taxation Administration Act 2003*.

15 (2) Delete section 67(11)(b) and insert:

16

17 (b) a director of a body that is incorporated or
18 taken to be incorporated under the *Associations*
19 *Incorporation Act 2014*.

20

21 **230. *Volunteers and Food and Other Donors (Protection from***
22 ***Liability) Act 2002* amended**

23 (1) This section amends the *Volunteers and Food and Other*
24 *Donors (Protection from Liability) Act 2002*.

- 1 (2) In section 3(1) in the definition of *community work*:
2 (a) delete paragraph (j);
3 (b) after each of paragraphs (a) to (i) insert:
4
5 or
6

7 **231. *Water Corporations Act 1995* amended**

- 8 (1) This section amends the *Water Corporations Act 1995*.
9 (2) In section 31(5)(a) after “member of the” insert:
10
11 management
12

13 **232. References to “1987” amended to “2014” in various Acts**

- 14 (1) This section amends the Acts listed in the Table.
15 (2) In the provisions listed in the Table delete “1987” and insert:
16
17 2014
18

19 **Table**

<i>Co-operatives Act 2009</i>	s. 305(1)(b)
<i>Equal Opportunity Act 1984</i>	s. 4(1) def. of <i>incorporated association</i>
<i>Fish Resources Management Act 1994</i>	s. 4(1) def. of <i>Aboriginal body corporate</i> par. (b)
<i>Housing Act 1980</i>	s. 62A def. of <i>Aboriginal entity</i> par. (d)

s. 232

<i>Liquor Control Act 1988</i>	s. 49(1)(a)(i) and (6), Sch. 2 Div. 1 cl. 1 def. of League , Sch. 2 Div. 2 cl. 1 def. of Association
<i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i>	s. 3(1) def. of community organisation par. (b)
<i>Western Australian Treasury Corporation Act 1986</i>	Sch. 1 it. 1

1 **Schedule 1 — Matters to be provided for in rules of an**
2 **incorporated association**

3 [s. 3, 22, 23, 26, 28, 133, 182 and 202]

4 **Division 1 — Matters to be addressed**

- 5 1. The name of the incorporated association.
- 6 2. The objects or purposes of the incorporated association.
- 7 3. The qualifications (if any) for membership of the incorporated
8 association and provision for when membership commences and
9 when it ceases.
- 10 4. The register of members of the incorporated association.
- 11 5. The entrance fees, subscriptions and other amounts (if any) to be paid
12 by members of the incorporated association.
- 13 6. The name, constitution, membership and powers of the management
14 committee or other body having the management of the incorporated
15 association (in this clause referred to as the committee) and provision
16 for the following —
- 17 (a) the election or appointment of members of the committee;
- 18 (b) the terms of office of members of the committee;
- 19 (c) the grounds on which, or reasons for which, the office of a
20 member of the committee shall become vacant;
- 21 (d) the filling of casual vacancies occurring on the committee;
- 22 (e) the quorum and procedure at meetings of the committee;
- 23 (f) the making and keeping of records of the proceedings at
24 meetings of the committee;
- 25 (g) subject to Division 2 clause 1, the circumstances (if any) in
26 which payment may be made to a member of the committee
27 out of the funds of the association.
- 28 7. The quorum and procedure at general meetings of members of the
29 incorporated association.

Associations Incorporation Bill 2014

Schedule 1 Matters to be provided for in rules of an incorporated association

Division 1 Matters to be addressed

- 1 8. The notification of members or classes of members of general
2 meetings of the incorporated association and their rights to attend and
3 vote at those meetings.
- 4 9. The time within which, and manner in which, notices of general
5 meetings and notices of motion are to be given, published or
6 circulated.
- 7 10. Subject to Division 2 clause 3, the number of members, expressed as a
8 percentage of membership, who may at any time require that a general
9 meeting of the incorporated association be convened.
- 10 11. The manner in which the funds of the association are to be controlled.
- 11 12. Subject to Division 2 clauses 4 and 5, the day in each year on which
12 the financial year of the incorporated association commences.
- 13 13. The intervals between general meetings of members of the
14 incorporated association and the manner of calling general meetings.
- 15 14. The manner of altering and rescinding the rules and of making
16 additional rules of the incorporated association.
- 17 15. Provisions for the custody and use of the common seal of the
18 incorporated association, if it has one.
- 19 16. The custody of books and securities of the incorporated association.
- 20 17. The inspection by members of the incorporated association of records
21 and documents of the incorporated association.
- 22 18. A procedure for dealing with any dispute under or relating to the
23 rules —
- 24 (a) between members; or
- 25 (b) between members and the incorporated association.
- 26 19. Subject to section 24, the manner in which surplus property of the
27 incorporated association must be distributed or dealt with if the
28 association is wound up or its incorporation is cancelled.

1 **Division 2 — Particular requirements for certain rules**

2 **1. Payment to members of management committee**

3 (1) Any rules made as mentioned in Division 1 item 6(g) are to provide
4 for payment to be made to a member of the management committee of
5 an incorporated association out of the funds of the association only if
6 the payment is authorised by resolution of the association.

7 (2) Subclause (1) does not apply to payment to a member of the
8 management committee for out-of-pocket expenses for travel and
9 accommodation in connection with the performance of the member’s
10 functions.

11 **2. Entitlement of members in respect of general meetings**

12 The rules made as mentioned in Division 1 item 8 must provide for all
13 members of the incorporated association to be entitled to receive
14 notice of and to attend any general meeting of the association.

15 **3. Number of members who may call a general meeting**

16 The rules made for the purpose of Division 1 item 10 cannot specify
17 greater than the prescribed percentage of members as the number of
18 members who may at any time require that a general meeting be
19 convened in accordance with the rules of the incorporated association.

20 **4. Financial year of associations incorporated under this Act**

21 (1) In this clause —
22 *rules* means rules made for the purposes of Division 1 item 12.

23 (2) This clause applies to an association that is incorporated on or after
24 the day on which section 4 comes into operation, other than an
25 incorporated association to which section 190(3) applies.

26 (3) The first financial year of an incorporated association after its
27 incorporation is to be a period fixed by its rules, but not exceeding
28 15 months commencing on the day of incorporation.

29 (4) Subsequent financial years of an incorporated association are to be the
30 period of 12 months commencing at the termination of the first
31 financial year or the anniversary of that termination.

Associations Incorporation Bill 2014

Schedule 1 Matters to be provided for in rules of an incorporated association

Division 2 Particular requirements for certain rules

cl. 5

1 (5) Subclause (4) does not limit the power of an incorporated association
2 to amend its rules so that its financial year is some other period of
3 12 months and, if it does so, an initial period of more or less than
4 12 months may be determined to be the financial year so far as is
5 necessary for the transition from one period to another.

6 **5. Transitional provisions as to financial year of associations**
7 **incorporated under the repealed Act**

8 (1) In this clause —
9 *rules* means rules as to the day in each year on which the financial
10 year of the incorporated association commences.

11 (2) This clause applies to —
12 (a) an association that is an incorporated association immediately
13 before section 4 comes into operation; and
14 (b) an incorporated association to which section 191 applies.

15 (3) Subject to section 199, the financial year of an incorporated
16 association to which this clause applies is to be a period of 12 months
17 fixed by its rules.

18 (4) Subclause (3) does not limit the power of an incorporated association
19 to alter the provision in its rules that fixes its financial year.

20 (5) If —
21 (a) the period fixed by an incorporated association for the
22 purposes of subclause (3) is different from the period
23 previously applicable to the association; or
24 (b) an incorporated association alters its rules as mentioned in
25 subclause (4),

26 an initial period of more or less than 12 months may be determined to
27 be the financial year so far as is necessary for the transition from one
28 period to another.

29 (6) Until an incorporated association to which this clause applies amends
30 its rules for the purposes of Division 1 item 12 —

31 (a) the financial year of the association continues to be that
32 applicable immediately before section 4 came into operation;
33 and

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(b) the definition of *financial year* in section 3 is taken to
provide accordingly.

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**Schedule 2 — Vesting of property and liabilities
on amalgamation**

[s. 108]

1. Terms used

In this Schedule, unless the contrary intention appears —

former association means an incorporated association that is a party to an amalgamation under Part 7;

incorporated association means a new body that is incorporated under section 106.

2. Transfer of property and liabilities and related provisions

On the incorporation of an association under section 106 —

- (a) the property of a former association vests, by virtue of this clause, in the incorporated association; and
- (b) the rights and liabilities of a former association become, by virtue of this clause, the rights and liabilities of the incorporated association; and
- (c) proceedings by or against a former association subsisting immediately before the incorporation may be continued by or against the incorporated association; and
- (d) proceedings that might have been brought by or against a former association immediately before the incorporation may be commenced by or against the incorporated association; and
- (e) any act, matter or thing done or omitted to be done before the incorporation by, to or in respect of a former association is, to the extent to which the act, matter or thing has any force or effect, taken to have been done or omitted by, to or in respect of the incorporated association; and
- (f) a reference in an agreement or instrument to a former association is unless —
 - (i) the context otherwise requires; or

1 (ii) the regulations otherwise provide,
2 to be read as, or as including, a reference to the incorporated
3 association.

4 **3. Trusts etc. not affected**

5 Any property vested in an incorporated association by clause 2 is
6 vested subject to any trust, restriction or obligation to which the
7 property was subject immediately before it became so vested.

8 **4. Notation of registers**

9 On —

- 10 (a) the application of an incorporated association in which any
11 estate or interest in land has been vested by clause 2; and
12 (b) the production of such duplicate instruments of title and other
13 documents as the Registrar of Titles or the Registrar of Deeds
14 and Transfers may require,

15 the relevant official is to record and register the vesting in the
16 appropriate manner.

Schedule 3 — Modifications to text of Corporations Act

[s. 120, 121, 122 and 125]

- 1 1. A reference to a company or body is to be read as a reference to an
2 incorporated association.
- 3 2. A reference in Part 5.7 to a Part 5.7 body is to be read as a reference
4 to an incorporated association.
- 5 3. A reference to the board of a body corporate is to be read as a
6 reference to the management committee of an incorporated
7 association.
- 8 4. A reference to the directors of a company is to be read as a reference
9 to the members of the management committee of an incorporated
10 association.
- 11 5. A reference to the secretary of a company is to be read as a reference
12 to the secretary of an incorporated association or the person carrying
13 out the functions ordinarily carried out by the secretary of an
14 incorporated association.
- 15 6. A reference to an officer of a company is to be read as a reference to
16 an officer of an incorporated association.
- 17 7. A reference to the principal place of business of a company is to be
18 read as a reference to the address of an incorporated association given
19 to the Commissioner under section 7(2)(a), 103(1), 175 or 203, as the
20 case may be.
- 21 8. A reference to a company carrying on business is to be read as a
22 reference to an incorporated association pursuing its objects or
23 purposes.
- 24 9. A reference to ASIC is to be read as a reference to the Commissioner.
- 25 10. A reference to the Court is to be read as a reference to the Supreme
26 Court.
- 27 11. A reference to the deregistration of a company is to be read as a
28 reference to the cancellation of the incorporation of an association.
- 29 12. A reference to a special resolution is to be read as a reference to a
30 special resolution within the meaning of this Act.
- 31 13. A reference to a contributory of a company is to be read as a reference
32 to a member of an incorporated association.
- 33
34

- 1 14. A reference to a registered company auditor or an auditor is to be read
2 as a reference to a person, firm or company authorised to audit the
3 financial statements of an incorporated association under this Act.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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body corporate	100(1)
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Commissioner	3
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new requirement	198(1)
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