



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Associations Incorporation Bill 2014

Signed:

Hon. Michael Mischin MLC
MINISTER FOR COMMERCE

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ASSOCIATIONS INCORPORATION BILL 2014

Overview of Bill

The Associations Incorporation Bill 2014 (the Bill) repeals and replaces the *Associations Incorporation Act 1997* (the Act). Its purpose is to provide a framework of regulation for not-for-profit organisations such as sport and recreation clubs, societies and community groups in Western Australia, but leave the internal management of associations largely to the members. It permits associations to incorporate and create a separate legal entity that can enter into contracts, hold property and sue or be sued when such circumstances arise.

Key reforms in the Bill include:

- a system of financial reporting and accountability that is designed to minimise the reporting burden on smaller associations, whilst recognising that larger associations should be accountable for the significant resources under their control;
- a flexible approach as to the contact information that a member must provide to their association, as well as limits on what can be done with that information, in recognition of the strong public interest in the protection of personal privacy;
- a more modern statement of the duties that are owed by committee members and officers which codifies the duties that already exist at law;
- a dispute resolution system that requires each association to have an internal dispute resolution process in its rules/constitution, and that any unresolved disputes between members of an incorporated association, and incorporated associations and their members can be heard by the State Administrative Tribunal (SAT);
- removal of the outdated restriction on an association trading, provided that all profits from such activities are used to further the association's objects or purposes and that individual members do not profit from such activities;
- a lengthy transition period of three years to allow associations to update their rules/constitution;
- a process for the appointment of a statutory manager to administer the affairs of an association when an association is not functioning effectively; and
- a simplified and streamlined process for associations to resolve their affairs and cancel their incorporation.

Work is also underway to update the draft Model Rules that were released for discussion as part of public consultation on the *Associations Incorporation Bill 2006* (the 'Green Bill') during late 2007 and early 2008. The Model Rules will be finalised after the Bill's passage through parliament, and associations will be provided with an opportunity to provide feedback on them.

PART ONE - PRELIMINARY

Clause 1 Short Title

This clause provides the short title of the *Associations Incorporation Act 2014* (Act).

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and the remainder of the Act on a day fixed by proclamation. Different days can be fixed for different provisions.

Clause 3 Terms used

Clause 3 sets out definitions for the purposes of the Bill. In particular, new definitions of “books”, “model rules” and “officer” have been inserted.

The new definition of “books” has been inserted for the purposes of Parts 6 and 8, which allow reviewers and auditors, and statutory managers, to access the books of an incorporated association for the purposes of undertaking their respective tasks.

The new definition of “officer” includes a member of the management committee, but also a person who makes or participates in making decisions that affect the whole, or a substantial part, of the operations of the association, a person who has the capacity to significantly affect the association’s financial standing and a person in accordance with whose instructions or wishes the management committee of the association is accustomed to act. This definition has been inserted for the purposes of the new provisions in Part 4 Division 3 “Duties of officers” so that the duties extend to persons other than committee members.

PART 2 – INCORPORATION OF ASSOCIATION

Division 1 – Eligibility

Clause 4 Associations eligible for incorporation

Clause 4 of the Bill provides that, in order for an association to be eligible for incorporation, it must be formed or carried on for one or more of the prescribed purposes listed in clause 4(a); it must have at least 6 members who under its rules have full voting rights (clause 4(b)); and it must not be excluded by section 5 or under regulations made for the purposes of section 6 (clause 4(c)).

The list of prescribed purposes in clause 4(a) is intended to provide guidance to both the associations sector and the Commissioner for Consumer Protection as to the nature of the associations that are eligible for incorporation under the Act.

The clause also clarifies that it is not intended to limit the capacity of the Commissioner for Consumer Protection to refuse incorporation of an association under clause 11(1).

Clause 5 Associations not eligible for incorporation

Subclause (1) of the Bill provides that, notwithstanding an association satisfying the requirements of clause 4, an association that is formed or carried on for the purpose of securing pecuniary profit for its members from its transactions will not be eligible to be incorporated under the Act.

The purpose of subclause (1) is to emphasise the essential not-for-profit characteristic of an incorporated association. The fact that associations do not secure pecuniary profit for individual members is essential to what distinguishes associations from other corporate forms, such as a corporations law company.

Subclause (2) lists the circumstances in which an association will be considered to be securing pecuniary profit for its members. For example, where it has capital that is divided into shares or stock held by its members.

Subclause (3) details a number of circumstances in which an association is not to be regarded as securing a pecuniary profit for its members. For example, the payment of a salary to a member who is an employee; the awarding of prizes as a result of member competitions; or where the association is established for the protection or regulation of some trade, business, industry or calling in which the members are engaged or interested.

Subclause (4) clarifies that, for the purposes of subclause (1), a pecuniary profit that by reason of a person's membership of the association is received by any other person is taken to be a pecuniary profit for the member by reason of the person's membership of that association.

Clause 6 Regulations may declare associations to be ineligible

Clause 6 provides that an association is not eligible to be incorporated under this Act if, according to a determination of the Commissioner, it is an association that:

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

Division 2 – Requirements for application for incorporation

Clause 7 Application to Commissioner

Subclause (1) provides that an application for the incorporation of an association must be lodged with the Commissioner in the approved form by a person duly authorised by the association to apply for incorporation.

Subclause (2) lists the requirements that an application for incorporation must address or include.

Subclause (3) provides that an application for the incorporation of an association must be accompanied by-

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

Subclause (4) details the information that is to be provided by an association that is proposing to adopt the model rules. For example, the name of the association and the objects or purposes of the association.

Subclause (5) requires an applicant to provide the Commissioner with such other information and documents as the Commissioner may in writing request.

Clause 8 Commissioner may require public notice of application for incorporation

Subclause (1) provides that the Commissioner may in writing require an applicant under clause 7 to give public notice of the application in some way that the Commissioner thinks appropriate.

Subclause (2) provides that for the purposes of clause 9, the applicant must include in the public notice a statement in wording approved by the Commissioner showing-

- (a) that a written request, including the reasons for the request, may be given to the Commissioner by any person under that clause; and

(b) the period within which any request must be received by the Commissioner.

Clause 9 Request for refusal of incorporation

Subclause (1) provides that where public notice is given under clause 8 in respect of an association, any person may, in accordance with the terms of the notice, request the Commissioner to decline to incorporate the association under this Act.

Subclause (2) requires a request under subclause (1) to include the reasons for the request.

Division 3 - Incorporation

Clause 10 Incorporation of association

Clause 10 provides that the Commissioner must, subject to clause 11, incorporate an association if its application has been duly made in accordance with Division 2 and the Commissioner is of the opinion that the matters listed in clause 10 have been satisfied.

Clause 11 Refusal of incorporation

Subclause (1) provides that the Commissioner must not incorporate an association under this Act if in the opinion of the Commissioner-

- (a) it is more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law; or
- (b) the incorporation of the association is against the public interest.

Subclause (1) largely replicates section 9(2) of the *Associations Incorporation Act 1987*, and is a change in form rather than substance.

Subclause (2) lists the grounds upon which the Commissioner may form the opinion that subclause (1)(a) or (b) applies. The grounds include, but are not limited to:

- (a) the likely scale or nature of the activities of the association; or
- (b) the likely value or nature of the property of the association; or
- (c) the extent or nature of the dealings which the association is likely to have with the public.

Subclause (3) provides that the Commissioner must not incorporate an association if, in the Commissioner's opinion, any ground for refusal of incorporation prescribed by the regulations applies to the association.

Clause 12 Restrictions as to names of associations

Clause 13 details the circumstances in which the Commissioner must refuse to incorporate an association by a particular name. For

example, where the Commissioner is of the opinion that the name is offensive or undesirable, or where the name is identical to or resembles the name of an existing incorporated association in a manner that is likely to mislead the public.

Clause 13 Effect of incorporation

Clause 13 is inserted to clarify the effect of incorporation of an association under the Act, including that the association becomes a body corporate with perpetual succession, and that it may sue or be sued in its corporate name.

Clause 14 Powers of incorporated association

Clause 14 replicates section 13 of the Associations Incorporation Act 1987.

Clause 14 details the type of activities that an incorporated association may do, subject to the Act and its rules, in carrying out its objects and purposes. For example, it may invest its money, enter into contracts, and acquire, hold, deal with, and dispose of any real or personal property.

Subclause (2) provides that an incorporated association, may, unless its rules otherwise provide, act as trustee and accept and hold real and personal property upon trust. However, the subclause clarifies this power by providing that an incorporated association does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene the Act or the rules of the association.

Clause 15 Manner in which contract may be made

Clause 15 replicates section 14 of the Associations Incorporation Act 1987, and is a change in form rather than substance.

Clause 15 sets out how contracts may be made by or on behalf of an incorporated association and specifically that an incorporated association can contract in the same manner as a natural person.

Clause 16 When contract affected by deficiency in association's legal capacity

Clause 16 replicates section 15 of the Associations Incorporation Act 1987, and is a change in form rather than substance.

Subclause (1) provides that a contract made with an incorporated association is not invalid by reason of any deficiency in the legal capacity of the association to enter into, or carry out, the contract unless the person contracting with the association has actual notice of the deficiency.

Subclause (2) clarifies subclause (1) by providing that an incorporated association that enters into a contract that would, but for the provisions of subclause (1), be invalid is empowered to carry out the contract.

Subclause (3) provides that clause 16 does not prejudice an action

by a member of an incorporated association to restrain the association from entering into a transaction that is beyond the powers of the association.

Clause 17 Requirements of section 4 continue after incorporation

Subclause (1) provides that after its incorporation an association-

- (a) must continue to be carried on for one or more purposes mentioned in clause 4(a); and
- (b) must at all times have at least 6 members who under its rules have full voting rights; and
- (c) must not, itself or as trustee secure pecuniary profit for its members.

The purpose of this subclause is to place a positive obligation on associations incorporated under the Act to continue to satisfy certain essential requirements in order to remain eligible for incorporation under the Act.

Subclause (2) clarifies that the application of subclause (1) extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this clause.

Clause 18 Certain property vests in incorporated association

Clause 18 replicates section 11 of the Associations Incorporation Act 1987, and is a change in form rather than substance.

Clause 18 provides that on the incorporation of an association under clause 10 all real and personal property held by any person for or on behalf of the association vests in the incorporated association. The clause also provides that the Registrar of Titles or the Registrar of Deeds and Transfers must record and register the vesting of that estate or interest in land in the association.

Clause 19 Liability of members of management committee, trustees and members

Clause 19 replicates section 12 of the Associations Incorporation Act 1987.

Subclause (1) provides that a member of the management committee, trustee or a member of an incorporated association is not by reason only of his being such a member of the management committee, trustee or member liable in respect of the liabilities of the association.

Subclause (2) clarifies that subclause (1) does not apply in respect of liabilities incurred by or on behalf of the association prior to incorporation.

Clause 20 Issue of replacement certificate

Clause 20 provides for the Commissioner to issue a replacement certificate of incorporation of an association if the incorporated association satisfies the Commissioner that the certificate has been

lost or destroyed.

Part 3 – Rules

Division 1 – Rules of incorporated association

Clause 21 Effect of rules

Subclause (1) provides that 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.

The purpose of this subclause is to give the rules of an association a legal status. The rules constitute the terms of a contract between the association and its members.

Clause 22 General requirements for content of rules

Subclause (1) provides that the rules of an incorporated association must specify-

- (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.

Subclause (2) provides that the rules of an 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 member of the association, except in good faith in the promotion of those objects or purposes.

The purpose of subclause (2) is to emphasise the essential not-for-profit characteristic of an incorporated association.

Subclause (3) provides that subject to the Commissioner granting an exemption under clause 23, the rules of an incorporated association must at all times-

- (a) address each of the matters set out in Schedule 1 Division 1; and
- (b) comply with any applicable requirement under Schedule 1 Division 2; and
- (c) be otherwise consistent with this Act.

Subclause (4) requires the rules of an incorporated association to include a reference to any exemption or approval under clause 23(1)

or 25(1) and the effect of the exemption or approval.

Subclause (5) provides that an incorporated association that adopts the model rules without modification as its rules and provides to the Commissioner the information referred to in clause 7(3)(b)(ii) or 29(5) is taken to have met the requirements of subclause (3).

Subclause (6) extends the application of clause 22 to an association that is, or is deemed to be, an incorporated association immediately before the commencement of clause 22.

Clause 23 Commissioner may exempt from requirement of section 22

Clause 23 provides for an incorporated association to apply to the Commissioner for an exemption from a provision in Schedule 1. However, subclause (5) provides that the Commissioner is only to grant an exemption if the Commissioner is satisfied-

- (a) that the special circumstances of the association justify the exemption; and
- (b) that the exemption will not affect the objects or purposes of the association; and
- (c) that the application of the provision to the association would cause undue hardship to its members; and
- (d) as to any other prescribed matter.

Clause 24 Restriction on distribution of surplus property

Clause 24 provides that there is to be implied in the rules of every incorporated association a provision that, on the cancellation of the incorporation or the winding up of the association, its surplus property can only be distributed to one or more of the entities listed in subclause (1). Examples include an incorporated association, a company limited by guarantee, or a non-distributing co-operative registered under the *Co-operatives Act 2009*.

The purpose of this clause is to restrict the distribution of surplus property to non-profit entities i.e. those that prevent the distribution of property to members.

Clause 25 Commissioner may approve variation of provision implied by section 24

Clause 25 provides for an incorporated association to apply to the Commissioner for approval of a variation of the provision implied by clause 24 so that it includes a reference to a particular body corporate or a particular body corporate that is to apply property for a particular charitable purpose approved by the Commissioner.

The purpose of this clause is to provide the Commissioner with scope to approve a variation of clause 24 so as to broaden the categories of bodies corporate which qualify to receive distribution of an incorporated association's surplus property.

Clause 26 Model rules

Clause 26 provides that Regulations are to be made prescribing model rules for incorporated associations.

It is intended that the model rules will be a statement of ‘best practice’, in that an incorporated association that adopts the model rules will be taken to have addressed and complied with the matters and requirements set out in Schedule 1, and those rules will be taken to be consistent with the Act.

Clause 27 Rules of associations existing at the commencement of section 185

Clause 27 is a transitional provision that allows for the rules of an association that was incorporated under a repealed Act and whose incorporation has effect immediately before the repeal of the *Associations Incorporation Act 1987*, to continue to have effect.

Clause 28 Rules of an incorporated association

Subclause (1) provides that on the registration of an incorporated association under this Act, the rules of the association are-

- (a) the rules that accompanied the application for the registration of the association; or
- (b) if the application was accompanied by a statement that the model rules have been approved as the rules of the proposed incorporated association - the model rules including the information provided under clause 7(3)(b)(ii) or 29(5).

Subclause (2) makes it clear that the model rules will apply as the rules of an association on its incorporation –

- (a) if the association does not have its own rules; or
- (b) if the association has its own rules, to the extent that they do not-
 - (i) address a matter referred to in Schedule 1 Division 1; or
 - (ii) comply with any applicable requirement under Schedule 1 Division 2.

The purpose of subclause (2) is to ensure that an incorporated association’s rules makes provision for those matters listed in Schedule 1 which are considered essential to the proper functioning of an association.

Clause 29 Adoption of model rules

Subclause (1) provides that an incorporated association may, by special resolution, approve the adoption of the model rules as the rules of the association at any time after its incorporation under this Act.

The purpose of subclause (1) is to allow incorporated associations to

adopt the model rules as their rules at any time during the period of their incorporation under the Act.

Subclause (2) provides that if an incorporated association approves the adoption of the model rules as its rules, it is taken to have adopted any subsequent amendment to the model rules as an alteration of its rules.

Subclause (3) provides that an alteration of the rules of an incorporated association referred to in subclause (2)-

- (a) takes effect on the day the relevant amendment to the model rules comes into operation; and
- (b) takes effect without the requirement of a special resolution of the association; and
- (c) does not require the approval of the Commissioner.

Subclause (4) provides that if an incorporated association that has approved the adoption of the model rules as its own rules alters those rules under clause 30, other than an alteration to its name, objects, purposes or financial year, the association is taken to have adopted its own rules and subclauses (2) and (3) do not apply to those rules.

Subclause (5) requires an association that adopts the model rules under clause 29 to notify the Commissioner and include in the notification the specified information in subclause (5).

Division 2 – Alteration of rules

Clause 30 Alteration of rules

Clause 30 details the requirements that must be met in order for an incorporated association to alter its rules. A special resolution must be passed by the association approving the alteration (subclause (1), and certain documents must also be lodged with the Commissioner (subclause (4)). An alteration of the rules of an incorporated association does not take effect until the required documents are lodged with the Commissioner (subclause (6)).

Clause 31 Change of name by alteration of rules

Clause 31 provides that an alteration of the rules of an incorporated association having effect to change the name of the association does not take effect until clause 30 is complied with and the approval of the Commissioner is given to the change of name.

Subclauses (2), (3), (4) and (5) detail the procedures and requirements in order for the proposed change of name to take effect. For example, the Commissioner must form the opinion that the proposed name is an appropriate name under which an association might be incorporated under this Act (subclause (3)).

Clause 32 Corporate identity and other matters not affected by change of name

Subclause (1) confirms that a change of name of an incorporated association does not affect-

- (a) the corporate identity of the incorporated association; or
- (b) its rights and obligations; or
- (c) any legal proceeding by or against it.

Subclause (2) provides that a legal proceeding that might have been commenced or continued by or against the incorporated association in its former name may be commenced or continued by or against it in its new name.

Clause 33 Certain other rule alterations to be approved by Commissioner

Clause 33 provides that an alteration of the rules of an association that have effect to alter either the objects or purposes of the association or the manner in which surplus property must be distributed or dealt with if the association is wound up or its incorporation cancelled, must be approved by the Commissioner.

Clause 34 Request for refusal of change of name or other rule alterations

Clause 34 provides that where a public notice is given under clauses 31(2) or 33(3), any person may request the Commissioner to decline to approve a change of name or a rule alteration to which clause 33 applies. The person must include the reasons for the request.

Division 3 – Provision of rules to members

Clause 35 Rules to be available to members

Clause 35 requires incorporated associations to keep and maintain an up-to-date copy of the rules of the association and make a copy of the rules available for inspection by members.

A fine of \$2 750 applies.

Clause 36 When member to receive copy of rules

Subclause (1) requires an incorporated association, at the request of a member, to give to the member a copy of the association's rules or any particular part of those rules. An incorporated association must also give to each person who becomes a member of the association a copy of the association's rules as in force when the membership commences.

A penalty of \$2 750 applies.

Subclause (2) prohibits an association from charging for taking this action.

Subclause (3) provides that the regulations may make provision for the manner in which a copy of the association's rules may be, or must be, given.

Clause 37 Further provision as to obligations under sections 35 and 36

Clause 37 clarifies that the obligations under clauses 35 and 36

include reference to both the association's own rules and the model rules if those rules are the rules of the association.

PART 4 – MANAGEMENT

Division 1 – Management committee

Clause 38 Management Committee

The management committee are the persons who under the rules of the incorporated association have the power to manage the affairs of the association.

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

Subject to clause 40, the following persons are prohibited from acting as a member of the management committee of the incorporated association without the leave of the Commissioner-

- (a) a person who is a bankrupt or whose affairs are under insolvency laws (as defined in section 13D of the *Interpretation Act 1984*);
- (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 (i.e. the duties of officers provisions) or section 127 (i.e. the duty with respect to the incurring of debt).

A fine of \$10 000 applies.

The purpose of this clause is to minimise the risk to associations of appointing inappropriate persons to the management committee. The prohibition applies to a very specific and limited set of individuals to ensure that the overall pool of suitable persons who can act as committee members is not unduly limited.

Clause 40 Limitation of period for which section 39 applies to certain persons

Clause 40 provides that the disqualification period for someone convicted of an offence detailed in clause 39(1)(b) is 5 years from the time of the person's conviction, or if the conviction results in a term of imprisonment, 5 years from the time of the person's release from custody.

Clause 41 Handing over documents and records when membership of management committee ceases

Clause 41 provides that where a member of the management committee dies or otherwise ceases to be a member of the management committee, as soon as is practicable after this occurs the person, or that person's personal representative, must deliver to a member of the committee all relevant documents and records, or a

copy of those documents and records if they are stored on a computer.

A fine of \$10 000 applies.

Division 2 – Matters of material personal interest

Clause 42 Disclosure of material personal interest

Clause 42 provides that a member of a management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as they become aware of the interest, disclose the nature and extent of the interest to the management committee at the next general meeting of the association.

A fine of \$10 000 applies.

The Associations Incorporation Act 1987 (section 21) only requires a committee member to disclose a “pecuniary interest” (i.e. financial interest) relating to a contract or proposed contract being considered by the management committee. However, conflicts of interest may also arise in numerous situations where the committee member has no financial interest in the matter e.g. where an applicant for employment is a relative of a committee member or where the committee member serves on the committees of two organisations that compete for the same tenders or grants.

Clause 42 requires that both pecuniary (financial) and non-pecuniary (non-financial) interests must be disclosed.

Clause 43 Voting on contract in which management committee member has a material personal interest

Subclause (1) provides that a member of a management committee who has a material personal interest in a matter being considered at a meeting of the management committee must not be present while the matter is being considered at the meeting or vote on the matter.

A penalty of \$10 000 applies.

Subclause (2) clarifies subclause (1) by providing that subclause (1) does not apply in respect of a material personal interest-

- (a) that exists only because the member belongs to a class of person for whose benefit the association is established; or
- (b) that the member has in common with all, or a substantial proportion of, the members of the association.

Subclause (3) provides for a matter to be referred to a general meeting where there are not enough management committee members to form a quorum because of subclause (1).

Division 3 – Duties of officers

Clause 44 Duty of care and diligence

Clause 44 codifies the existing requirement at general law that

requires company directors to exercise care, skill and diligence in the performance of their duties. The Supreme Court of WA has noted that it is probable that committee members owe in the same measure, the common law and equitable duties which law and equity have imposed on company directors. As such, clause 44 is based on section 180 of the Corporations Act.

For a committee member, discharging the duty may include being prepared for meetings (including reading any papers and financial statements), understanding in broad terms the association's financial position, following up on action items, keeping informed about the association's operations and activities and asking questions. It would also include ensuring compliance with relevant laws affecting the association, such as, but not limited to, occupational safety and health, environmental and employment legislation.

A penalty of \$10 000 applies.

Subclause (2) includes a business judgment rule defence (also based on section 180 of the Corporations Act) which would afford protection to committee members who may have made decisions that turned out to be "bad" but who otherwise were acting in good faith in exercising their judgment as an officer of the association.

Clause 45 Duty of good faith and proper purpose

Clause 45 provides that an officer of an incorporated association must exercise his or her powers and discharge his or her duties in good faith in the best interests of the incorporated association and for a proper purpose.

A penalty of \$10 000 applies.

The Supreme Court of WA has noted that it is probable that committee members owe in the same measure, the common law and equitable duties which law and equity have imposed on company directors. As such, clause 45 is based on section 181(1) of the Corporations Act which captures all three elements of the general law duty i.e. a director or officer is to exercise their powers and discharge their duties in "good faith" in the "best interests" of the corporation/association and for a "proper purpose".

For a committee member, discharging the duty would require them to use their powers only for the benefit of the association and not to secure a private advantage.

Clause 46 Use of position

Clause 46 provides that an officer or employee of an incorporated association must not improperly use their position to gain an advantage for the officer or another person or cause detriment to the association.

A penalty of \$10 000 applies.

The Supreme Court of WA has noted that it is probable that committee members owe in the same measure, the common law and equitable duties which law and equity have imposed on company

directors. As such, clause 46 is based on section 182 of the Corporations Act.

For a committee member, discharging the duty would require them not to make improper use of information or their position for personal profit or the profit of a third party.

Clause 47 Use of information

Clause 47 provides that a person who obtains information because the person is, or has been, an officer of an association must not improperly use the information to gain an advantage for the person or another person or cause detriment to the association.

A penalty of \$10 000 applies.

The Supreme Court of WA has noted that it is probable that committee members owe in the same measure, the common law and equitable duties which law and equity have imposed on company directors. As such, clause 47 is based on section 183 of the Corporations Act.

Clause 47 recognises that there are a number of situations which could create the opportunity for a committee member to misuse information to gain a personal advantage for themselves or another person, or to cause detriment to the association e.g. disclosing committee discussions about a government tender to another organisation, disclosing employee information, membership or client lists or financial information to third parties.

Clause 48 Interaction of sections 44 to 47 with other laws

Subclause (1) clarifies that clauses 44 to 47-

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office in relation to an incorporated association; and
- (b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

Subclause (2) clarifies that clause 48 does not apply to clause 44(2), (3) and (4) (duty of care and diligence and business judgment defence) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of clause 44(1).

Clause 49 Reliance on information or advice

Clause 49 provides a defence to a breach of duty under the Act or an equivalent duty at common law or in equity where the reasonableness of the reliance of an officer of an incorporated association on information or advice given to the officer arises.

The Supreme Court of WA has noted that it is probable that committee members owe in the same measure, the common law and equitable duties which law and equity have imposed on company

directors. As such, clause 49 is based on section 189 of the Corporations Act.

It is considered appropriate to include a defence to a breach of duty where an officer has reasonably relied on information or professional or expert advice from certain persons (e.g. an employee, professional advisor, another officer of the incorporated association or a sub-committee of the association) and the reliance was made in good faith and after making independent assessment of the information, given the officer's knowledge of the association and its structure and complexity.

Division 4 – Annual general meeting and special resolutions

Clause 50 Annual General Meeting

Clause 50 details the requirements for the holding of an annual general meeting. An incorporated association may hold its first annual general meeting at any time within 18 months after incorporation, and thereafter an annual general meeting must be held in each calendar year.

A fine of \$5 000 applies.

Clause 51 Requirements for special resolution

Clause 51 provides that a resolution is a special resolution if it-

- (a) is passed at a general meeting of the association; and
- (b) is passed by the votes of not less than three-fourths of the members of the association who cast a vote at the meeting.

Subclauses (2) to (5) set out the voting and notice requirements for a special resolution.

Clause 52 Evidence of passing of resolution

Clause 52 provides for how the passing of a special resolution or a poll is to be evidenced at a general meeting of an association.

Division 5 – Register of members

Clause 53 Register to be maintained

Clause 53 requires an incorporated association to maintain a register of its members, and subclause (2) provides that the register of members must include each members' name and-

- (a) residential address; or
- (b) postal address; or
- (c) email address; or
- (d) information, by means of which contact can be made with the member, that is prescribed for the purposes of this paragraph.

A fine of \$2 750 applies.

Subclause (2) recognises the need to protect the privacy of

association members by providing that a member need only give enough information in the register of members so as to enable contact to be made with them, and that the provision of an email address or post office box would be sufficient for this purpose.

Clause 54 Inspection of register by member

Subclause(1) provides that an incorporated association must, at the request of a member, make the register of members available for inspection by the member.

A fine of \$2 750 applies.

Subclause (2) provides that subject to any rules of the kind mentioned in subclause (3), a member inspecting the register of members may make a copy of, or take an extract from, the register but is not entitled to remove the register for that purpose.

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

Subclause (1) affirms a member's legal right to inspect or otherwise copy the register of members, as this is fundamental to the democratic operation of an incorporated association.

Subclause (3) provides flexibility to associations by not mandating the requirement for a member to provide a statutory declaration with their written application to copy the register of members. Rather, the rules of an incorporated association may require a member who wishes to copy the register of members to provide a statutory declaration setting out the purpose for which the application is made and declaring that it is connected with the affairs of the association.

To ensure there is no possibility that control over key information of the association could be improperly used or abused, the management committee will not have discretion as to whether to grant a request to copy the register of members. Instead, if a written application is made and a statutory declaration provided (if required by the association's Rules), then the management committee must provide a copy.

A statutory declaration (where required) confirms the 'good intentions' of an applicant member. Section 169(2) of the *Criminal Code 1913* (WA) provides that it is a crime for a person to knowingly make a statement that is false in a material particular in a statutory declaration. Such a person is liable to imprisonment for 5 years.

Clause 55 Commissioner may request copy of register

Clause 55 provides that the Commissioner may request an incorporated association to provide the Commissioner with a copy of the register of members and the association must comply with the

request within 14 days after it is made.

A fine of \$5 000 applies.

Clause 56 Member may request copy of register

Subclause (1) provides that a member of an incorporated association may in writing request the association to provide the member with a copy of the register of members.

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

Subclause (3) provides that subject to any rules of the kind mentioned in subclause (2), the association must comply with the request on payment of any amount required to be paid under subclause (4).

A fine of \$2 750 applies.

Subclause (4) provides that the management committee may-

- (a) determine a reasonable charge for the cost of complying with a request under subclause (1); and
- (b) require the person making the request to pay the charge to the association.

Subclause (5) provides that the regulations may make provision for-

- (a) the manner in which a copy of the register of members may be, or must be, provided to a member under subclause (3); and
- (b) the maximum amount, or a method of calculating the maximum amount, that may be charged under subclause (4).

Subclause (1) affirms the ability of members to inspect or otherwise copy the register of members as this is fundamental to the democratic operation of an incorporated association (especially during elections or where there may be management committee performance issues).

Subclause (2) provides flexibility to associations by not mandating the requirement for a member to provide a statutory declaration with their written application to copy the register of members. Rather, the rules of an incorporated association may require a member who wishes to copy the register of members to provide a statutory declaration setting out the purpose for which the application is made and declaring that it is connected with the affairs of the association.

To ensure there is no possibility that control over key information of the association could be improperly used or abused, subclause (3) does not provide the management committee with discretion as to whether to grant a request to copy the register of members. Instead, if a written application is made and a statutory declaration provided (if required by the association's Rules), then the management

committee must provide a copy.

A statutory declaration (where required) confirms the 'good intentions' of an applicant member. Section 169(2) of the Criminal Code 1913 (WA) provides that it is a crime for a person to knowingly make a statement that is false in a material particular in a statutory declaration. Such a person is liable to imprisonment for 5 years.

Clause 57 Improper use of information in register

Subclause (1) provides that a person must not use or disclose information in the register of members of an incorporated association except for a purpose-

- (a) that is directly connected with the affairs of the association; or
- (b) that is related to the administration of this Act.

A penalty of \$10 000 applies.

Subclause (1) has been included in recognition of the need to protect the privacy of association members.

Subclauses (2) and (3) provide further detail as to what constitutes a contravention of subclause (1). Subclause (4) clarifies subclause (2) by providing that subclause (2) does not apply if the use or disclosure of the information is approved by the incorporated association concerned.

Division 6 – Record of office holders

Clause 58 Record of office holders

Subclause (1) requires incorporated associations to maintain a record of the names and residential or business address, post office box address or email address of the persons who are members of the management committee or hold other offices of the association provided by its rules.

A fine of \$2 750 applies.

Subclause (2) requires this record to be available to members for inspection and copying.

A fine of \$5 000 applies.

A penalty of \$10 000 applies to a person who uses or discloses information in the record for a purpose other than one directly connected with the affairs of the association or is related to the administration of the Act.

Clause 59 Commissioner may ask apparent office holders to provide information

Clause 59 provides that the Commissioner may, by notice served on a person who appears to the Commissioner to be or may be the holder of an office provided for by the rules of an incorporated association, require that person to give to the Commissioner in writing particulars of their address; and a statement showing whether

or not the person holds or has held the office specified in the Commissioner's notice; and if the person has held the office, when the person ceased to hold it.

A penalty of \$5 000 applies.

Division 7 – Direction by Commissioner to convene general meeting

Clause 60 Commissioner may direct that general meeting be convened

Subclause (2) provides that clause 60 applies if the Commissioner is of the opinion that-

- (a) there is any dispute or matter affecting the proper conduct of the affairs of an incorporated association; and
- (b) the giving of a direction under this clause may assist in or towards the resolution of the dispute or matter.

The purpose of clause 60 is to enable the Commissioner to use the power to direct that a general meeting be convened as a means in which to help resolve a dispute or matter concerning an association.

An office holder to whom a direction is given must not, without reasonable excuse, fail to comply with the direction.

A penalty of \$5 000 applies to a failure to comply with the Commissioner's direction.

Clause 61 Rights of Commissioner or a delegate at meeting

Clause 61 provides that where a general meeting is convened pursuant to a direction under clause 60, an authorised person may attend a meeting and take part in the consideration and discussions of the dispute or matter in relation to which the direction was given. However, an authorised person cannot vote at a meeting and is not to be counted for the purposes of determining the existence of a quorum.

Part 5 – Financial records, reporting and accountability

Division 1 - Preliminary

Clause 62 Terms used

Clause 62 sets out definitions for the purposes of Part 5. In particular, new definitions for 'accounting standards', 'auditing standards', 'financial records', 'financial report' and 'financial statements' have been inserted.

For example, 'accounting standards' means the standards issued by the Australian Accounting Standards Board, as in force for the time being. The standards may be modified by the regulations.

'Auditing standards' means the standards issued by the Australian Auditing and Assurance Standards Board, as in force for the time being. The standards may be modified by the regulations.

There are separate definitions for both 'financial report' and 'financial

statements'. 'Financial statements' means the financial statements required under Division 3.

The definition of 'financial report' is only relevant for tier 2 and tier 3 associations and has the meaning given in clause 63.

Clause 63 Financial reports of tier 2 and tier 3 incorporated associations

Clause 63 specifies the content of a financial report for a tier 2 or tier 3 incorporated association consists of:

- (a) financial statements;
- (b) notes to the financial statements; and
- (c) the management committee's declaration about the statements and notes.

The financial statements are defined in clause 63 as the financial statements required under Division 3 i.e. financial statements that comply with the accounting standards. Pursuant to the accounting standards, the financial statements for tier 2 and tier 3 associations are to include: a statement of financial position as at the end of the period; a statement of profit or loss and other comprehensive income for the period; a statement of changes in equity for the period; and a statement of cash flows for the period.

Subclause (2) provides that the notes to the financial statements are:

- (a) the disclosures required by the regulations;
- (b) notes required by the accounting standards; and
- (c) any other information necessary to give a true and fair view of the financial position and performance of the association during the financial year.

Subclause (3) provides that the management committee's declaration is a declaration by the management committee stating-

- (a) whether, in the management committee's opinion, there are reasonable grounds to believe that the association will be able to pay its debts as and when they become due and payable (i.e. a declaration as to solvency); and
- (b) whether, in the management committee's opinion, the financial statements and notes are in accordance with Part 6.

Subclause (4) provides that the management committee's declaration must be made in accordance with a resolution of the management committee, specify the date on which the declaration is made and be signed by at least 2 members of the management committee.

Tier 1 associations are not required to prepare a management committee's declaration, because the declaration as to solvency can only be prepared by associations that prepare their financial statements using the accrual method of accounting. This is because the cash method of accounting (which may be used by tier 1 associations) does not fully report all asset and liabilities.

Clause 64 Tier 1, tier 2 and tier 3 associations

Clause 64 defines an incorporated association as being a tier 1, tier 2 or tier 3 association based on its revenue for a financial year. The revenue threshold may be prescribed by regulation (which allows for flexibility in amending the revenue threshold), or if no amount is prescribed, the thresholds are as follows-

- (a) tier 1: revenue less than \$250 000;
- (b) tier 2: revenue between \$250 000 and \$1 000 000; and
- (c) tier 3: revenue more than \$1 000 000.

The tiers have been set with a view to balancing the reporting burden on associations commensurate with their size and the need to be accountable to members.

Subclause (4) provides that revenue is to be calculated in accordance with the accounting standards issued by the Australian Accounting Standards Board.

Pursuant to those accounting standards, 'revenue' is income that arises in the course of the ordinary activities of an entity and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent.

Revenue excludes gains (e.g. from the sale of non-current assets and unrealised gains) and amounts collected on behalf of third parties.

Clause 65 Commissioner may declare association to be tier 1 or tier 2 association

Clause 65 enables an incorporated association, within three months of the end of a financial year, to apply to the Commissioner for a declaration that the association is a tier 1 or tier 2 associations for the purposes of a particular financial year.

The purpose of this clause is to permit the Commissioner to grant relief to an incorporated association from more stringent reporting requirements that result from unusual or non-recurring circumstances that cause an incorporated association's revenue to temporarily exceed the tier 1 or tier 2 thresholds. The declaration would enable that association to continue to report as a tier 1 association rather than a tier 2 association, or as a tier 2 association rather than a tier 3 association.

Division 2 – Financial records

Clause 66 Obligation to keep financial records

Clause 66 requires an incorporated association to keep financial records that correctly record and explain its transactions, financial position and performance, and enable true and fair financial statements to be prepared in accordance with Division 3.

A penalty of \$2 750 applies.

Clause 67 Retention of financial records

Clause 67 requires an incorporated association to retain its financial records for at least 7 years after the transactions covered by the records are completed.

A penalty of \$2 750 applies.

Division 3 – Financial Statements and reports

Subdivision 1 – Tier 1 associations

Clause 68 Obligation to prepare annual financial statements

Subclause (1) requires a tier 1 association to prepare financial statements that give a true and fair view of the financial position and performance of the association within 6 months after the end of each financial year.

A penalty of \$2,750 applies.

Subclause (2) provides that the financial statements of a tier 1 association may be prepared using either the cash or accrual bases of accounting. Where the cash basis of accounting is used, the financial statements comprise-

- (a) a statement of receipts and payments for the financial year;
- (b) a reconciled statement of bank account balances as at the end of the financial year; and
- (c) a statement of assets and liabilities as at the end of the financial year.

Where the accrual basis of accounting is used, the financial statements comprise:

- (a) a statement of income and expenditure for the financial year; and
- (b) a balance sheet.

Clause 69 Review or audit of financial statements

Clause 69 requires a tier 1 association to have its financial statements reviewed or audited (in accordance with Divisions 5, 6 and 7) if a majority of members present at a general meeting make a resolution to that effect, or if the association is directed by the Commissioner to do so.

A penalty of \$2,750 applies.

Clause 70 Financial reporting to annual general meeting and Commissioner

Clause 70 requires a tier 1 association to present its financial statements for its last financial year at the annual general meeting. Where a review or audit is required by either the members or as directed by the Commissioner under clause 69, the financial statements must be accompanied by a copy of the report of the

review or audit of the financial statements.

Where the Commissioner has directed the review or audit under clause 69, the Commissioner must also be provided with a copy of these documents.

A penalty of \$5 500 applies to each of subclauses (2), (3) & (4).

Subdivision 2 – Tier 2 associations

Clause 71 Obligation to prepare annual financial report

Subclause (1) requires a tier 2 association to prepare a financial report within 6 months after the end of each financial year. Pursuant to clause 63 a financial report of a tier 2 association consists of:

- (a) the financial statements for the year;
- (b) notes to the financial statements; and
- (c) the management committee's declaration about the statement and notes.

A penalty of \$2,750 applies.

Subclause (2) requires that the financial statements and notes to the financial statements that are included in the financial report must give a true and fair view of the financial position and performance of the association and comply with the accounting standards.

Clause 72 Review or audit of financial reports

Clause 72 requires a tier 2 association to have its financial report reviewed in accordance with Divisions 5, 6 & 7, unless an audit is required pursuant to a members' resolution or a direction from the Commissioner, in which case an audit must be undertaken in accordance with Divisions 5, 6 & 7.

A penalty of \$2,750 applies.

It is anticipated that the Commissioner would only direct an audit of a tier 2 association where something relevant has come to the Commissioner's attention. For example, where there may have been previous non-compliance by the association.

Clause 73 Financial reporting to annual general meeting and Commissioner

Clause 73 requires a tier 2 association to present its reviewed financial report for its last financial year, and copy of the report of the review, at the annual general meeting. Where an audit is required by either the members or as directed by the Commissioner under clause 72, the financial statements must be accompanied by a copy of the audit report.

Where the Commissioner has directed the audit of the financial report under clause 72, the Commissioner must also be provided with a copy of these documents.

A penalty of \$5 500 applies to each of subclauses (2), (3) & (4).

Subdivision 3 – Tier 3 associations

Clause 74 Obligation to prepare annual financial report

Subclause (1) requires a tier 3 association to prepare a financial report within 6 months after the end of each financial year.

A penalty of \$2,750 applies.

Subclause (2) provides that the financial statements and notes to the financial statements that are included in the financial report must give a true and fair view of the financial position and performance of the association and comply with the accounting standards.

Clause 75 Audit of financial report

Clause 75 requires a tier 3 association to have its financial report audited in accordance with Divisions 5, 6 & 7.

A penalty of \$2,750 applies.

Clause 76 Financial reporting to annual general meeting

Clause 76 requires a tier 3 association to present its audited financial report for its last financial year, and copy of the audit report, at the annual general meeting.

A penalty of \$5 500 applies.

Division 4 – Special audit

Clause 77 Commissioner may require special audit to be carried out

Clause 77 provides that the Commissioner may direct an audit of the whole or a specified part of an association's financial records, and that an auditor's report be lodged with the Commissioner within a specified time.

The Commissioner may make such a direction regardless of whether the financial records have been previously audited, and the association must ensure that the direction is complied with.

A fine of \$2 750 applies.

The auditor's report must state whether the association's financial records have been properly kept and give a true and fair view of the association's affairs.

Division 5 – Reviews and audits

Clause 78 Review or audit to be conducted in accordance with auditing standards

Clause 78 requires a review or audit under Part 5 to be conducted in accordance with the auditing standards, which are defined in clause 62 as the standards issued by the Auditing and Assurance Standards Board.

A penalty of \$5 500 applies.

Clause 79 Working papers to be retained for 7 years

A reviewer or auditor who conducted a review or audit under Part 5 must retain all working papers in relation to the review or audit for a period of at least 7 years after the date of the report of the review or audit.

A penalty of \$5 500 applies.

Clause 80 Reviewer's or auditor's independence declaration

Clause 80 requires a reviewer or auditor to provide a signed independence declaration, along with a copy of the report of the review or audit, to the management committee.

Subclause (1) provides that the independence declaration is a declaration that, to the best of the reviewer's or auditor's belief, there have been no contraventions of any applicable code of professional conduct in relation to the review or audit, or alternatively, that the only contraventions are those contraventions that are set out in the declaration.

A penalty of \$5 500 applies.

Subclause (3) provides that the reviewer or auditor is not excused from giving a declaration on the grounds that the declaration might tend to incriminate them or expose them to a penalty. However, subclause (4) provides that neither the information in the declaration, nor any information, document or thing obtained as a result of the information in the declaration, can be used in evidence against the reviewer or auditor in any criminal proceedings or in any proceedings that would expose them to a penalty.

The purpose of clause 80 is to ensure that a review or audit is prepared without bias, or could be subject to a conflict of interest or the undue influence of others. This will provide members of an association and the Commissioner with confidence that the review or audit has been undertaken objectively.

Clause 81 Reviewer's report on financial statements or financial report

The reviewer's report must contain a statement as to whether the reviewer became aware of any matter that causes the reviewer to believe that the financial statements do not, or the financial report does not satisfy the requirements of Division 3. Where there is such a matter or matters, these must be described in the reviewer's report, along with a statement as to why that matter(s) cause(s) the reviewer to so believe.

A penalty of \$5 500 applies.

Clause 82 Auditor's opinion and report on financial statements or financial report

Clause 82 requires an auditor to form an opinion and report to members on various matters such as whether the financial statements satisfy, or the financial report satisfies, the requirements

of Part 5. Where the auditor is of the opinion that Part 5 has not been complied with, the auditor must provide an explanation and where possible, quantify the effect of this non-compliance.

A fine of \$5 500 applies.

If the auditor forms an opinion that they have not been given all information and assistance necessary to conduct the audit, or that the association has not kept sufficient financial or other records required by Part 5, the auditor must also provide details of such matters in the audit report.

The audit report must also describe any defect or irregularity in the financial statements or financial report and include any statements or disclosures required by the auditing standards.

Clause 83 Reporting breaches of Act to Commissioner

Clause 83 requires a reviewer or auditor to report any significant or suspected contraventions of the Act to the Commissioner within 28 days of becoming aware of such contravention(s).

A penalty of \$5 500 applies.

Division 6 – Provisions relating to reviewers and auditors generally

Clause 84 Fees and expenses

Clause 84 provides that an association must pay the reasonable fees and expenses of a reviewer or auditor.

Clause 85 Information and assistance

An officer of an association is to allow a reviewer or auditor access to the books of the association and provide them with information, explanations or other assistance. The term “officer” is defined in clause 3 and is not confined to a committee member.

A penalty of \$2 750 applies.

Clause 86 Right to attend general meeting and be heard

A reviewer or auditor (or their agent) is entitled to receive all notices of, and other communications relating to, any general meeting of the association that a member is entitled to receive; and is also entitled to attend and be heard at any general meeting of the association.

A penalty of \$2 750 applies.

Division 7 – Appointment and removal of reviewers and auditors

Clause 87 Appointment of reviewer or auditor

Subclause (1) requires a reviewer or auditor to be appointed by members’ resolution.

Subclause (2) allows the management committee to appoint a reviewer or auditor where there is no appointment of effect under subclause (1). Subclause (4) provides that such a reviewer or

auditor holds office until the reviewer's report or auditor's report is presented at the annual general meeting.

Subclause (3) provides that a reviewer or auditor appointed at a general meeting holds office until the reviewer or auditor dies, becomes insolvent under administration, ceases to be qualified for appointment, is removed from office or resigns.

Subclause (5) provides that a reviewer or auditor may resign by notice in writing to the association.

Subclause (6) provides that the association must notify the Commissioner of the resignation within 14 days of being given notice of the resignation. A fine of \$1 000 applies.

Clause 88 Qualifications for appointment

The management committee of an association must only appoint a qualified person to be the reviewer or auditor. A person is qualified for appointment as a reviewer or auditor if they are a member of a professional accounting body and have a membership designation prescribed by the regulations, or if they are a registered company auditor or a person the Commissioner has approved based on their qualifications or experience.

Clause 89 Removal of reviewer or auditor by resolution

A reviewer or auditor may only be removed from office by resolution at a general meeting of the association. Written notice of an intention to move such a resolution must be given to members at least 2 months before the general meeting is held.

The management committee must give a copy of the notice to the reviewer or auditor and also lodge it with the Commissioner as soon as possible after being given the notice of the resolution. A fine of \$1 000 applies.

Clause 90 Reviewer or auditor may make representations

Subclause (1) provides that a reviewer or auditor who has been given notice of a resolution to remove the reviewer or auditor from office may within 30 days of receiving the notice make a written representation to the management committee.

Subclause (2) provides that, subject to clause 91, if the reviewer or auditor makes a representation under subclause (1), a resolution proposing the reviewer or auditor's removal is of no effect unless-

- (a) the management committee gives a copy of the representation to all members of the association at least 7 days before the meeting at which the resolution is to be considered; and
- (b) the reviewer or auditor is allowed to attend the meeting and address the members before the vote on the resolution.

Subclause (3) provides that a document required to be given to a member under this clause may be given personally, by post or by any other means authorised under the rules of the association. All

costs associated with giving a document to the members are to be borne by the association.

The purpose of this clause is to ensure that members are fully apprised of the circumstances surrounding a reviewer or auditor's proposed removal from office.

Clause 91 Exemption from section 90(2) requirements

An association may apply to the Commissioner for an order exempting the association from the requirements of clause 90(2). The application must be in writing, state the reasons for the exemption and be accompanied by the prescribed fee.

The Commissioner may make the order subject to any conditions the Commissioner considers appropriate.

Part 6 – Transfer of incorporation

Clause 92 Term used: prescribed body corporate

Clause 92 defines the term 'prescribed body corporate'.

Clause 92 replicates section 10A of the Associations Incorporation Act 1987, apart from the additional option of registration as a co-operative.

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

Clause 93 replicates 10B(1)-(3) of the Associations Incorporation Act 1987.

Clause 93 sets out how an incorporated association is to apply to the Commissioner for approval to register or incorporate as a prescribed body corporate. Subclause (1) requires the association's decision to apply for registration or incorporation to be passed by a special resolution of members; subclause (2) requires an incorporated association to apply to the Commissioner for approval to apply for registration or incorporation as a body corporate; and subclause (3) details the information and documentation that must be included in the application to the Commissioner.

Clause 94 Approval of Commissioner

Clause 94 largely replicates section 10B(4)-(5) of the Associations Incorporation Act 1987.

Subclause (1) provides that the Commissioner must approve an application for registration or incorporation being lodged if satisfied that the continued incorporation of the association under this Act would for any reason be inappropriate.

Subclauses (1)(a) and (b) detail the grounds, which are not exclusive, upon which the Commissioner may form the view that the continued incorporation of the association under this Act would be inappropriate. For example, on account of the incorporated association having, in the opinion of the Commissioner, ceased to be

eligible to be incorporated under this Act.

Subclause (2) provides that the Commissioner may approve an application for registration or incorporation being lodged if, in the opinion of the Commissioner, it would be more appropriate for the activities of the incorporated association that lodged the application to be carried on by a body corporate registered or incorporated under some other law.

Subclause (3) details the grounds, which are not exclusive, upon which the Commissioner may form an opinion for the purposes of subclause (2). For example, due to the scale or nature of the activities of the incorporated association.

Subclause (4) provides that an incorporated association must act in accordance with the terms and conditions of the Commissioner's approval.

Clause 95 Commissioner may direct incorporated association to apply for other registration or incorporation

Clause 95 largely replicates section 10D of the Associations Incorporation Act 1987.

Subclause (1)(a) provides that clause 95 applies if the Commissioner is satisfied that the continued incorporation of an association under this Act would for any reason be inappropriate.

Subclause (1)(a)(i) and (ii) detail the grounds, which are not exclusive, upon which the Commissioner may form the view that the continued incorporation of the association under this Act would be inappropriate.

Subclause 1(b) provides that clause 95 applies if the Commissioner is of the opinion that it would be more appropriate for the activities of the association that lodged the application to be carried on by a body corporate registered or incorporated under some other law.

Subclause (2) details the grounds, which are not exclusive, upon which the Commissioner may form an opinion for the purposes of subclause 1(b). For example, the scale or nature of the activities of the incorporated association.

Subclause (3) provides that the Commissioner may in writing direct the incorporated association to apply for, and do all things that are reasonably necessary to obtain, registration or incorporation as a prescribed body corporate.

Subclause (4) provides that the Commissioner's direction must specify the period within which the application must be made and may specify any terms and conditions that are to be observed in making the application for registration or incorporation or doing the things that are reasonably necessary to obtain it.

Subclause (5) permits the Commissioner to extend the time period referred to in subclause (4) or revoke or amend a direction given under subclause (3).

Clause 96 Commissioner must give notice of intention to give direction

Clause 96 replicates section 10E of the Associations Incorporation Act 1987.

Subclause (1) provides that before the Commissioner gives a direction to an incorporated association under clause 95(2) or notice of an amendment under clause 95(5)(b), the Commissioner must give notice in writing to the association. Subclause (1) also details what must be included in that notice.

Subclause (2) provides that a minimum period of 90 days must be provided to an incorporated association to make submissions to the Commissioner on the proposed direction.

Subclause (3) requires the Commissioner to have regard to any submissions made by the association before giving or amending a direction under clause 95.

Clause 97 SAT review of proposed direction or amendment

Clause 97 replicates section 10F of the Associations Incorporation Act 1987.

Subclause (1) entitles an incorporated association who has received a notice given under clause 96 to apply to the SAT for a review of the proposed direction or amendment.

Subclause (2) provides that the Commissioner cannot give the direction or make the amendment unless the application results in the Commissioner's proposed action being confirmed; or the application is dismissed or struck out.

Clause 98 Association must comply with section 95 direction

Clause 98 replicates section 10G of the Associations Incorporation Act 1987.

Subject to clause 97(2), subclause (1) requires an incorporated association to comply with a direction given to the association under clause 95(3) or a direction as amended under clause 95(5)(b).

Subclause (2) provides that a contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only of a failure by the association to comply with a direction or notice under clause 95.

Clause 99 Cancellation of incorporation under this Act

Clause 99 replicates 10H of the Associations Incorporation Act 1987.

Subclause (1) provides that the registration or incorporation of an incorporated association as a prescribed body corporate automatically cancels the incorporation of the association under this Act.

Subclause (2) provides that where an incorporated association becomes registered or incorporated as a prescribed body corporate, the body must notify the Commissioner in writing of the registration

or incorporation within 14 days after it occurs.

A penalty of \$5 000 applies.

Clause 100 Transition to incorporation under another law

Clause 100 replicates section 10I of the Associations Incorporation Act 1987.

Importantly, subclause (2) provides that the transfer of incorporation by an incorporated association does not affect-

- (a) the identity of the association, which is taken to be the same body before and after the transfer of incorporation; or
- (b) any act, matter or thing done or omitted to be done, or any circumstance subsisting, before the transfer to the extent that the act, matter, thing or omission or circumstance has any relevance to the association after the transfer.

Subclause (3) provides that without limiting subclause (2)-

- (a) proceedings by or against an incorporated association subsisting immediately before the transfer of incorporation may be continued by or against the body corporate in the name of the incorporated association; and
- (b) proceedings that might have been brought by or against an incorporated association immediately before the transfer of incorporation may be commenced by or against the body corporate.

Subclause (4) provides that without limiting subclause (2), a transfer of incorporation does not affect-

- (a) any obligation or liability incurred under this Act; or
- (b) any penalty or forfeiture incurred in respect of any offence committed against this Act; or
- (c) any investigation, proceeding or remedy in respect of any such obligation, liability, penalty or forfeiture.

Subclause (5) provides that any such investigation, proceeding or remedy may be instituted, continued or enforced, and any such penalty or forfeiture may be imposed, as if clause 99 had not been enacted.

Subclause (6) provides that this clause has effect in relation to a matter concerning an incorporated association that is registered as a company under the Corporations Act only to the extent that the matter is not dealt with by that Act.

Part 7 – Amalgamation

Clause 101 Term used: new body

Clause 101 provides that the term 'new body' has the meaning given in clause 102(1).

Clause 102 Application for incorporation of body formed by amalgamation

Subclause (1) provides that an application may be lodged with the Commissioner for the incorporation of an association (the 'new body') that is an amalgamation of 2 or more existing incorporated associations.

Subclause (3) provides that an application cannot be made if the proposed amalgamation is inconsistent with the rules of any of the existing associations.

Subclause (4) provides that 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.

Clause 103 What must be included in application

Clause 103 details what must be included in an application under clause 102. For example, it must include copies of the special resolutions referred to in clause 102(4); the same information in relation to the new body as is required to be provided in relation to an association under clause 7; and also a copy of the rules of the new body and a certificate given by the applicant that the rules comply with clause 22.

Subclause (3) also applies clauses 23 ('Commissioner may exempt from requirement of section 22'), 24 ('Restriction on distribution of surplus property') and 25 ('Commissioner may approve variation of provision implied by section 24') to a new body, and any reference in those sections to an application for incorporation includes a reference to an application under clause 102.

Clause 104 Commissioner may require public notice of application

Subclause (1) provides that the Commissioner may in writing require an applicant under clause 102 to give public notification of the application.

Subclause (2) provides that if a public statement is required, the wording of that statement must be approved by the Commissioner. Furthermore, subclause (2) requires the statement to set out that a written request, including the reasons for the request, may be given to the Commissioner by any person under clause 105, and the period within which any request must be received by the Commissioner.

Clause 105 Request for refusal of incorporation of new body

Clause 105 provides that where public notice is given under clause 104, any person may, in accordance with the terms of the notice, request the Commissioner to decline to incorporate the new body

under clause 106. The request must include the reasons for the request.

Clause 106 Incorporation of new body

Subclause (1) provides that if the Commissioner is satisfied that the requirements set out in subclause (2) have been met, the Commissioner must, subject to subclause (4) and clause 107, incorporate the new body by the issue to it of a certificate of incorporation in the approved form.

Subclause (2) lists the requirements that must be met. For example, the new body must be eligible to be incorporated under this Act and the name of the new body must be appropriate.

Subclause (3) provides that the issue of a certificate of incorporation to the new body automatically cancels the incorporation of an incorporated association that is a party to the amalgamation.

Subclause (4) requires each certificate of incorporation of an incorporated association that is a party to the amalgamation to have been returned to the Commissioner before the Commissioner can issue a certificate of incorporation to the new body.

Clause 107 Time to be allowed for operation of section 105

Subclause (1) does not permit the Commissioner to incorporate the new body until the time for making such a request has expired and any request made under that section has been finally refused.

Subclause (2) provides clarification as to the circumstances in which a request under clause 105 has been finally refused.

Clause 108 Vesting of property and liabilities in new body

Clause 108 confirms that Schedule 2 has effect in relation to the new body on its incorporation.

Part 8 – Statutory management of incorporated association

Clause 109 Application by Commissioner to appoint statutory manager

Clause 109 enables the Commissioner to apply to the State Administrative Tribunal for the appointment of a statutory manager to administer the affairs of an incorporated association.

Part 8 has been inserted in order to provide a mechanism for intervention as a last resort. It is anticipated that the Commissioner would only exercise these powers if all other avenues had been exhausted, including the exercise of the Commissioner's powers under the Act.

A primary objective of these provisions is to enable the Commissioner to take some action, on behalf of members of an association, as early as possible. The intention would be to temporarily replace the management committee of the association where the committee has become dysfunctional and/or has significant negative working relationship with the association's

members.

Clause 110 State Administrative Tribunal may appoint statutory manager

Subclause (1) provides that the State Administrative Tribunal may, on application by the Commissioner, make an order appointing a statutory manager to administer the affairs of an incorporated association subject to terms and conditions determined by the Tribunal.

Subclause (2) provides that 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 the Act; and
- (b) the appointment of a statutory manager is-
 - (i) likely to improve the functioning of the incorporated association; and
 - (ii) is in the best interests of the association.

The grounds are drafted broadly to give the Commissioner maximum flexibility in deciding whether to apply for the appointment of a statutory manager, with the focus on improving the functioning of the association.

Clause 111 Effect of appointment of statutory manager

Clause 111 provides that upon the appointment of a statutory manager, the members of the management committee are suspended from office and the statutory manager has the functions of the management committee, including the committee's powers of delegation. This means that the statutory manager can do anything that the management committee was authorised to do. This includes, among other things, having access to the books of the incorporated association.

The suspension of management committee members allows those committee members who are appropriate to carry on in office after the revocation of the statutory manager's appointment to carry on without having to be re-elected.

Except as provided by clause 114, a member of the management committee cannot be appointed or elected so long as a statutory manager is in office in respect of the association.

Clause 112 Variation and revocation of order

The State Administrative Tribunal may, on application by the Commissioner, the incorporated association or the statutory manager under this clause, vary or revoke an order appointing a statutory manager under clause 110.

Clause 113 Duration of appointment

Clause 113 provides that an appointment of a statutory manager continues in force until it is revoked by the State Administrative

Tribunal or by operation of subclause (2).

Subclause (2) provides that the appointment of a statutory manager is automatically revoked if any of the following occurs:

- (a) a voluntary administrator is appointed;
- (b) a liquidator is appointed;
- (c) the incorporation of the association is cancelled under clause 99(1) or 106(3);
- (d) the Commissioner cancels the incorporation of the association under Part 10.

Clause 114 Prerequisites of revocation of appointment

Subclause (1) provides that before revoking the appointment of a statutory manager, the State Administrative Tribunal must-

- (a) appoint another statutory manager;
- (b) be satisfied that the committee members who were suspended under clause 111(1)(a) are able to continue in office;
- (c) be satisfied that members of the management committee have been elected in accordance with the rules of the association at a meeting convened by the statutory manager in accordance with those rules; or
- (d) be satisfied that the Commissioner has appointed members to the management committee under subclause (2).

Subclause (2) provides that the Commissioner may appoint the management committee members of an incorporated association for which a statutory manager is appointed.

Subclause (3) provides that members of the management committee elected or appointed in accordance with this clause-

- (a) take office on the revocation of the statutory manager's appointment; and
- (b) in the case of members appointed by the Commissioner, hold office until the next annual general meeting of the association after the revocation of appointment, subject to clause 118.

Clause 115 Statutory manager to report to Commissioner

Subclause (1) requires the statutory manager to report to the Commissioner on the affairs of the association as directed by the Commissioner and at any time on the statutory manager's own initiative.

The penalty applicable to subclause (1)(a) is a fine of \$10 000.

Subclause (2) provides that, after the revocation of a statutory manager's appointment, the person who held the office must make a final report to the Commissioner and give a copy of the final report to the incorporated association.

The penalty applicable to subclause (2)(a) is a fine of \$10 000.

Subclause (3) provides that the Commissioner may, after considering a report under subclause (2), refer any matter back to the person for further consideration and report to the Commissioner.

Subclause (4) provides that for the purposes of subclauses (2) and (3) the person who held the office has access to the books of the association whenever necessary.

Subclause (5) provides that the person must report to the Commissioner as required under subclause (3).

The penalty applicable to subclause (5) is a fine of \$10 000.

Clause 116 Expenses of statutory management

Subclause (1) provides that the expenses of and incidental to the conduct of an incorporated association's affairs by a statutory manager are payable from the association's funds.

Subclause (2) provides that if the statutory manager is a person appointed or employed under the *Public Sector Management Act 1994* the amount of remuneration is the amount that the Commissioner certifies should be paid to the State as repayment of the statutory manager's remuneration. Under subclause (3), this amount is recoverable from the incorporated association by the Commissioner in a court of competent jurisdiction as a debt due to the State. There is a right of appeal to the State Administrative Tribunal.

If the statutory manager is not a person appointed or employed under the *Public Sector Management Act 1994*, the remuneration of the statutory manager is a rate approved by the State Administrative Tribunal.

Subclause (4) provides that a statutory manager has, in relation to the expenses mentioned in subclause (1), the same priority on the winding up of an incorporated association as a liquidator of the association.

Clause 117 Protection from liability

Subclause (1) provides that except as provided in subclause (4), a statutory manager, or a person acting at their direction, is not liable for any loss incurred by an incorporated association during the period of the statutory manager's appointment.

Subclause (2) provides that the Commissioner or the State is not liable for-

- (a) any loss incurred by an incorporated association in respect of the period of a statutory manager's appointment; or
- (b) any act or omission of a statutory manager or a person acting at the direction of a statutory manager.

Subclause (4) provides that a statutory manager is liable for a loss incurred by the incorporated association in respect of the period of

the statutory manager's appointment because of the statutory manager's-

- (a) fraud or dishonesty; or
- (b) negligence; or
- (c) wilful failure to comply with this Act or the rules of the association.

Clause 118 Additional powers of Commissioner

Subclause (1) provides that if the Commissioner appoints members of the management committee of an incorporated association under clause 114, the Commissioner may specify-

- (a) a period during which this clause is to apply in relation to the association; and
- (b) the terms and conditions on which all or any of the members of the management committee hold office; and
- (c) the rules that are to be the rules of the association.

Subclause (2) provides that while this clause applies to an incorporated association, the Commissioner may-

- (a) from time to time remove or appoint members of the management committee; and
- (b) from time to time alter the terms and conditions or the rules specified under subclause (1).

Subclause (4) provides that while this clause applies to an incorporated association, rules specified by the Commissioner under this clause for the association-

- (a) are not to be altered or revoked except under this clause; and
- (b) if they are inconsistent with any other rule of the association, prevail over that other rule.

Clause 119 Proceedings against association stayed

Clause 119 provides that a person cannot begin or continue a court proceeding against an incorporated association during the appointment of a statutory manager without leave of the Supreme Court and in accordance with the terms and conditions imposed by the Court if leave is granted.

A person intending to apply to the Supreme Court for leave must give the Commissioner not less than 10 days' notice of that intention. A fine of \$5 000 applies. On the hearing of an application, the Commissioner may be represented and may oppose the granting of the application.

Part 9 – Administration and winding up

Division 1 – Voluntary administration and winding up

Clause 120 Administration under Corporations Act

Clause 120 enables an incorporated association to enter into voluntary administration by applying Part 5.3A of the Corporations Act.

Voluntary administration provides an alternative to winding up for associations that are otherwise economically sound, to resolve temporary insolvency or financial difficulties.

Clause 121 Voluntary winding up under Corporations Act

Clause 121 provides for an incorporated association to resolve to be wound up voluntarily if it has surplus property to be distributed on a winding up. A voluntary winding up will involve the application of Parts 5.5 and 5.6 of the Corporations Act.

A voluntary winding up under the Corporations Act provides a more formal winding up process for those associations that have more complicated affairs. In these cases, a liquidator will provide for a structured and orderly finalisation of the association's affairs, including the realisation of assets and satisfaction of debts and liabilities.

Clause 122 Further application of Corporations Act

Clause 122 also applies Part 5.9 Division 3 of the Corporations Act to any matter declared under clauses 120 or 121 to be an applied Corporations legislation matter.

Division 2 – Winding up by Supreme Court

Clause 123 Grounds upon which winding up may be ordered

Clause 123 provides that an incorporated association may be wound up by the Supreme Court on application made on any ground specified in Schedule 4.

Clause 124 By whom application may be made

Clause 124 details who may make an application to the Supreme Court for the winding up of an incorporated association. This may include a member of an incorporated association, or a creditor in the case of an application based on the ground specified in Schedule 4 Item 5 (that the incorporated association is unable to pay its debts as and then they become due and payable).

Clause 125 Application of Corporations Act

Subclause (1) provides that a winding up by the Supreme Court is an applied Corporations legislation matter in relation to Part 5.7 of the Corporations Act.

Subclause (2) also applies Part 5.9 Division 3 of the Corporations Act to any matter declared under clause 125 to be an applied Corporations legislation matter.

Clause 126 Cancellation of incorporation upon winding up by Supreme Court

Subclause (1) obliges the Commissioner to cancel the incorporation of an association in writing once the Commissioner is satisfied that the winding up of an incorporated association under Division 2 has been completed. The cancellation of incorporation of an association is to take effect on and from a day that the Commissioner considers appropriate and specifies.

Subclause (2) provides that the Commissioner may cause notice of a cancellation under subclause (1) to be published in the Gazette if the Commissioner considers that public notification of the cancellation is desirable.

Division 3 – Offence related to incurring of debt

Clause 127 Duties of management committee members with respect to incurring of debt

Subclause (1) provides that if an incorporated association incurs a debt and-

- (a) the association is insolvent at the time the debt is incurred or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- (b) immediately before the debt is incurred-
 - (i) there are reasonable grounds to expect that the association is insolvent; or
 - (ii) there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent,

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

A fine of \$5 000 applies.

Subclause (2) provides that in any proceedings against a person under subclause (1) it is a defence if the accused proves that, at the time the debt was incurred, the accused had reasonable grounds to expect, and did expect, that the association was solvent at that it would remain solvent even if it incurred that debt and any other debts that it incurred at that time.

Subclause (3) provides that without limiting subclause (2), it is a defence if the accused proves that, at the time the debt was incurred, the accused-

- (a) had reasonable grounds to believe and did believe-
 - (i) that a competent and reliable person (the other person) was responsible for providing to the accused adequate information about whether the association was solvent;
 - (ii) the other person was fulfilling that responsibility;and
- (b) expected, on the basis of information provided to the accused by the other person, that the incorporated association was

solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.

Subclause (4) provides a further defence to proceedings under subclause (1) if the accused proves that, at the time the debt was incurred, because of illness or for some other good reason, the accused did not take part at that time in the management of the incorporated association.

Subclause (5) provides a further defence to proceedings under subclause (1) if the accused proves that the accused took all reasonable steps to prevent the incorporated association incurring the debt.

Subclause (6) clarifies the operation of subclause (5) by providing certain matters to which regard must be had in determining whether a defence under subclause (5) has been proved. The matters include, but are not limited to any action the accused took with a view to appointing an administrator for the association; when that action was taken; and the results of that action.

Part 10 – Cancellation of Incorporation

Division 1 – Voluntary cancellation where there is property to be distributed

Clause 128 Term used: distribution plan

Clause 128 defines the term ‘distribution plan’ to mean a statement showing the intended recipients of surplus property of the incorporated association concerned, and an estimate of the amount or value of the property that each intended recipient is to receive.

Clause 129 Initiation of cancellation of incorporation under this Division

Clause 129 details the three pre-conditions that must be satisfied before the incorporation of an incorporated association may be cancelled under Division 1. The management committee must examine the affairs of the association and by resolution declare that in its opinion the association is able to pay or meet its debts and liabilities; the association must then pass special resolutions that the incorporation of the association be cancelled and approving a distribution plan that complies with clauses 133 and 134; and the distribution plan must then be approved by the Commissioner.

Clause 130 Application for approval of distribution plan and cancellation

Subclause (1) requires an association that has passed the special resolutions referred to in clause 129(b) to apply to the Commissioner for approval of the distribution plan and cancellation of incorporation.

A penalty of \$1 000 applies.

Subclauses (2) and (3) set out the information and supporting material that an application must contain.

Subclause (4) requires the application must be lodged within 28 days

after the passing of the special resolutions or within such longer period as the Commissioner may allow.

Clause 131 Commissioner may require public notice of application

Clause 131 provides that the Commissioner may require an applicant under clause 130 to give public notice of the application and the distribution plan. The applicant must include in the public notice a statement showing that a written request, including the reasons for the request, may be given to the Commissioner by any person under clause 132, and the period within which any request must be received by the Commissioner.

Clause 132 Request for refusal to approve or cancel

Clause 132 provides that where public notice is given under clause 131, any person may request the Commissioner to decline to approve the distribution plan or cancel the incorporation of the association. A request must include the reason for the request.

Clause 133 Content and operation of distribution plan

Subclause (1) provides that a distribution plan must provide for the distribution of surplus property in accordance with the rules of the association, being rules that-

- (a) make provision of the kind mentioned in Schedule 1 Division 1 item 20; and
- (b) are consistent with the provision implied by clause 24.

Subclause (2) clarifies that surplus property distributed under a distribution plan is subject to any trust affecting the property or any part of it.

Clause 134 Position where conditions attached to grant

Subclause (1) defines certain terms used in clause 134, including 'body', 'public authority' and 'relevant contract'.

Subclause (2) provides that where property has been provided to an association by any body, its distribution plan is to give effect to any relevant contract that has been made between the association and the body.

Subclause (3) clarifies the operation of subclause (2) by providing that subclause (2) only applies to the extent that the contract is binding on the association, and does not apply if the body concerned agrees otherwise.

Subclause (4) provides that subject to subclause (2), property of the association consisting of property supplied by a public authority must be returned to-

- (a) the public authority that supplied the property; or
- (b) a body nominated by that public authority.

Clause 135 Approval of distribution plan

Subclause (1) provides that a distribution plan lodged under clause 130 does not have effect unless it is approved by the Commissioner.

Subclause (2) prevents the Commissioner from approving a distribution plan until a request made under clause 132 is either finally refused or the time during which any request might be made has expired.

Subclause (3) clarifies the operation of subclause (2) by providing that a request is finally refused if the request is refused by the Commissioner and either the time for applying for a review under clause 170 has expired or an application under 170 has been dismissed or struck out.

Clause 136 Refusal to approve distribution plan

Subclause (1) provides that the Commissioner may refuse to approve a distribution plan if the Commissioner is of the opinion that-

- (a) the distribution plan does not comply with clause 133; or
- (b) the incorporated association should be wound up.

Subclause (2) details the grounds on which the Commissioner may form an opinion for the purposes of subclause (1)(b). For example, due to the scale or nature of the activities of the incorporated association.

Clause 137 Time limit for implementation of plan

Clause 137 requires the Commissioner to fix a period within which the implementation of the plan must be completed, and may from time to time extend the period so fixed.

Clause 138 Duty of association

Clause 138 provides that where a distribution plan is approved, an association must ensure that distribution of assets is completed in accordance with the plan within the time fixed under clause 137.

Clause 139 Reporting to Commissioner

Subclause (1) allows the Commissioner to require an association to provide such information or documents for the Commissioner on the implementation of a distribution plan. It also provides that as soon as is practicable after the implementation of a distribution plan has been completed, the association must prepare a certificate that the surplus property has been distributed in accordance with the plan.

Subclause (2) provides that an association prepares a certificate when the association, or the management committee, determines by resolution the content of the certificate.

Subclause (3) requires the association to lodge the certificate with the Commissioner as soon as is practicable after it is prepared.

Clause 140 Cancellation of incorporation under this Division

Subclause (1) provides that the Commissioner must, in writing,

cancel the incorporation of an incorporated association with effect on and from a day that the Commissioner considers appropriate and specifies if-

- (a) the Commissioner is satisfied that the requirements of Division 2 have been complied with; and
- (b) the association has lodged the certificate referred to in clause 139(1)(b).

Subclause (2) allows the Commissioner to publish the notice of cancellation in the Gazette if the Commissioner considers that public notification of the cancellation is desirable.

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

Clause 141 Application for cancellation under this Division

Clause 141 permits an incorporated association with no debts or surplus property to apply to the Commissioner to have the incorporation of the association cancelled.

The pre-requisites for an application being made are that the management committee of the association and has resolved that in its opinion the debts and liabilities of the association have been satisfied and there is no surplus property to be distributed, and the association has approved, by special resolution, the making of the application.

Clause 142 Content of application

Clause 142 sets out what an application for cancellation of incorporation must contain. For example, it must contain copies of the resolutions referred to in clause 141.

Clause 143 Commissioner may grant application

Subclause (1) provides that the Commissioner may, in writing, cancel the incorporation of the association concerned if the Commissioner is satisfied that-

- (a) the special resolution referred to in clause 141(2)(b) was passed in Accordance with the Act; and
- (b) the debts and liabilities of the association have been satisfied and there is no surplus property remaining; and
- (c) all of the requirements of this Act in respect of the association have been met.

Subclause (2) provides that the cancellation of the association's incorporation has effect on and from a day that the Commissioner specifies in writing.

Subclause (3) provides for the Commissioner to publish the notice of cancellation in the Gazette if the Commissioner considers that public notification of the cancellation is desirable.

Division 3 – Cancellation of incorporation by Commissioner on

certain grounds

Clause 144 Grounds on which Commissioner may act

Clause 144 provides that the Commissioner may give an association a notice to show cause under clause 145 if the Commissioner has reasonable cause to believe that one or more of the grounds listed in clause 144 have been satisfied. Examples of the grounds include that the association was not at the time of incorporation eligible for incorporation under the Act; that the association has suspended its operations, or has in effect been dormant, for a whole year or more; and that the association has resolved to wind up but no person is prepared to act as liquidator.

Clause 145 Commissioner may require association to show cause

Where clause 145 applies, the Commissioner may give to the incorporated association a notice-

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

Subclause (2) provides that the Commissioner may also have the notice published in a manner the Commissioner considers appropriate.

Subclause (3) provides that the allowed period under subclause (1)(c) is either 60 days after the day on which the notice is given, or if subclause (2) applies, 60 days after the notice is published.

Clause 146 How association may show cause

Clause 146 provides that an association shows cause if it satisfies the Commissioner that the ground or grounds stated in the notice does or do not apply to the incorporated association.

Clause 147 Cancellation of incorporation where cause not shown

Subclause (1) provides that if the incorporated association does not show cause within the allowed period, the Commissioner may, by order published in the *Gazette*, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in the order.

Subclause (2) provides that before the Commissioner makes an order under subclause (1), the Commissioner must give notice in writing to the incorporated association stating that the Commissioner proposes to make the order after the expiration of 28 days from the day on which the notice is given.

Subclause (3) enables an association who has received a notice

under subclause (2) to apply to the State Administrative Tribunal for a review of the Commissioner's proposal.

Subclause (4) provides that where an application under subclause (3) is made, the Commissioner cannot make the order unless the State Administrative Tribunal substantially confirms the Commissioner's proposal or the application is dismissed or struck out.

Clause 148 Powers of Commissioner in respect of property

Subclause (1) provides that on the making of an order under clause 147 cancelling the incorporation of an association-

- (a) the property held by the association immediately before the cancellation vests in the State; and
- (b) the Commissioner acting on behalf of, and in the name of, the State has power to realise such property, pay the debts and liabilities of the association, distribute its surplus property and wind up its affairs.

Subclause (2) clarifies the operation of clause 148 by providing that nothing in clause 148 imposes an obligation or liability on the Commissioner or the State to do any act or thing required by law to be done by the owner or occupier of the property other than the satisfaction or payment of the charge, claim or liability out of the property of the incorporated association so far as it is, in the opinion of the Commissioner, properly available for and applicable to the payment.

Subclause (3) details what the Commissioner may do in winding up an association's affairs. For example, the Commissioner may appoint a person to investigate the affairs of the association and exercise any power on behalf of the Commissioner.

Subclause (4) provides that the reasonable costs, charges and expenses of the Commissioner or the State and a person appointed under subclause (3)(b) are to be paid out of the property of the association.

Clause 149 Property vested in the State

Clause 149 provides that property vested in the State under clause 148(1)(a)-

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

Division 4 - General

Clause 150 Liabilities not affected by cancellation of incorporation

Clause 150 ensures that any liability of a member of the management committee or member of an association is not affected by the cancellation of the incorporation of the association, and may be enforced as if the incorporation of the association had not been cancelled.

Clause 151 Reinstatement of incorporation

Clause 151 provides that if the Commissioner is satisfied that the incorporation of an association should not have been cancelled and the association has not become incorporated under another law, the Commissioner may reinstate its incorporation under the Act according to the provisions of clause 151.

Part 11 – Exclusion from Corporations legislation

Clause 152 Excluded matters for Corporations Act section 5F

Subclause (1) provides that an incorporated association is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the entire Corporations legislation other than to the extent referred to in subclause (2).

Part 12 – Administration

Division 1 - General

Clause 153 Commissioner

Clause 153 provides for the Minister to designate a person who is an executive officer of the Department of Commerce as the Commissioner. The Commissioner is not an independent statutory officer.

Clause 154 General functions of Commissioner

Clause 154 details the functions of the Commissioner under the Act. For example, the Commissioner is to promote and encourage compliance with this Act and to conduct compliance and educational activities in relation to matters concerning incorporated associations.

Clause 155 Delegation by Commissioner

Clause 155 permits the Commissioner to delegate to any other person employed in the Department any power or duty of the Commissioner under any provision of the Act. The Commissioner may also perform a function through an officer or agent.

Clause 156 Regulations for the provision of information to the Commissioner

Clause 156 provides that the regulations may require an incorporated association or a member of its management committee to provide the Commissioner with prescribed information that is in respect of an association and is relevant to the operation of the Act.

This prescribed information may include the lodgment of periodical returns for a prescribed period, and may also require that the information be verified by a statutory declaration.

This clause has been included to provide a means by which the Commissioner can enquire as to an incorporated association's compliance with the Act. It is also intended to provide a mechanism by which the Commissioner can monitor whether associations are continuing to operate and maintain current contact details for regulated entities.

Clause 157 Commissioner may require documents relating to financial affairs to be produced

Clause 157 introduces a further compliance mechanism by enabling the Commissioner to require an incorporated association to produce a specified relevant document relating to the financial affairs of the incorporated association.

A fine of \$2 750 applies.

Clause 158 Application of *Fair Trading Act 2010* sections 61, 112 and 113

Clause 158 applies certain sections of the *Fair Trading Act 2010* regarding the administration of the Act. The sections of the Fair Trading Act that apply include section 61 ('Judicial notice of Commissioner's signature etc.');

section 112 (Personal information obtained officially, when may be divulged etc.); and section 113 ('Information obtained officially may be used for certain other purposes and legislation').

Clause 159 Protection from liability

Clause 159 replicates section 39D of the Associations Incorporation Act 1987.

Clause 159 provides that a person is not liable for anything that the person has, in good faith, done in the performance of purported performance of a function under this Act or a repealed Act.

Clause 160 Evidentiary provisions

Clause 160 is an evidentiary provision which provides that a certificate of the Commissioner to the effect of the matters listed in that clause is evidence of the matter or matters set out in the certificate. For example, a certificate that on a specified day a specified association was or was not an incorporated association; or a certificate that on a specified day no incorporated association was incorporated under the Act by a specified name.

Division 2 – Information and documents kept by Commissioner

Clause 161 Commissioner must keep register of incorporated associations and other documents

Clause 161 requires the Commissioner to keep-

- (a) a register of incorporated associations; and

- (b) a copy of the following-
 - (i) the rules of each incorporated association;
 - (ii) any alteration to the rules of an incorporated association;
 - (iii) every other document required by the Act to be lodged with the Commissioner.

The register and documents may be kept in the manner the Commissioner thinks fit.

Clause 162 Inspection of register or documents

Subclause (1) entitles a person, on payment of the prescribed fee to-

- (a) inspect the register kept under clause 161(1)(a);
- (b) inspect any document lodged with the Commissioner for the purposes of this Act; or
- (c) obtain from the Commissioner a certified copy, or extract from, the register or any document lodged with the Commissioner under this Act.

Subclause (3) provides that a person may, on payment of the prescribed fee, obtain from the Commissioner a copy, or a certified copy, of the duplicate held by the Commissioner of an incorporated association's certificate of incorporation.

Subclause (4) provides for the Commissioner to withhold a person's personal information from a document to be inspected or copied, or an extract from a document, in circumstances prescribed by the regulations.

Clause 163 Certification of document

Clause 163 provides that where a document is certified by the Commissioner to be a true copy or extract, that copy or extract is admissible in evidence and of equal validity with the original document.

Clause 164 Destruction of documents by Commissioner

Clause 164 permits the Commissioner to destroy or dispose of any document, and any copy or transparency of a document, lodged in respect of an incorporated association that for not less than 15 years has been dissolved.

Clause 165 Lodgment of documents

Clause 165 sets out the requirements that must be satisfied in order for a document to be lodged under the Act-

- (a) all information required to be provided in or with the document is provided; and
- (b) the fee, if any, prescribed by the regulations is paid.

Clause 166 Documents may be lodged by facsimile or electronic transmission

Clause 166 permits documents to be lodged by facsimile or electronic transmission.

The purpose of this clause is to facilitate the use of the Department's electronic lodgment system – *Associationsonline*.

Clause 167 Commissioner may refuse lodgment of document

Clause 167 permits the Commissioner to refuse the lodgment of a document if one or more of the matters specified in the clause exist. For example, the Commissioner may consider that the document may not have been prepared in good faith or that the document does not comply with the requirements of the Act.

Where the Commissioner refuses lodgment of a document, clause 167 permits the Commissioner to request the association to do a number of things. For example, the Commissioner can request that the document be amended or re-lodged.

Clause 168 No constructive notice of contents of documents

Clause 168 clarifies that a person is not taken to have knowledge of the association's objects or purposes, the rules, the document or any particulars by reason only that they are lodged with the Commissioner or is or are referred to in any other document that is so lodged.

Part 13 – Review

Clause 169 Reviewable decisions of Commissioner

Clause 169 sets out those decisions of the Commissioner that are defined as 'reviewable decisions', and also provides for who is the 'affected person' in relation to a reviewable decision. For example, the Commissioner's refusal to incorporate an association under clause 11(1) or (3) is a reviewable decision for the purposes of clause 169, and the affected person is the applicant for incorporation.

Clause 170 Review by SAT of reviewable decisions

Clause 170 provides that an affected person may apply to the State Administrative Tribunal for a review of a reviewable decision.

Part 14 – Investigation and Enforcement

Clause 171 Term used: authorised person

Clause 171 defines 'authorised person' for the purposes of Part 14.

Clause 172 Application of *Fair Trading Act 2010* Part 6

Clause 172 applies Part 6 (other than Division 4A) of the *Fair Trading act 2010*, with such modifications as are necessary, to and in relation to investigations and enforcement under this Act as if it

were a part of this Act.

It is not necessary to apply Division 4A ('Specific powers for enforcement of licensing and regulatory provisions') as it relates to licensing and regulatory provisions which do not concern incorporated associations.

Clause 173 Infringement notices and the *Criminal Procedure Act 2004*

Clause 173 provides that the service of an infringement notice under Part 2 of the Criminal Procedure Act 2004 must be served within 21 days after the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence, and 6 months after the alleged offence is believed to have been committed.

Part 15 - Miscellaneous

Clause 174 Lodging notice of address for service

Clause 174 requires an incorporated association to lodge with the Commissioner notice of an address or postal address for service of any process, notice or other document on the association.

A fine of \$1 000 applies.

Clause 175 Change of address

Clause 175 details when an incorporated association must give notice to the Commissioner of the change of its address. For example, the address of the association accompanying an application for incorporation.

Clause 176 Service on incorporated association

Clause 176 details how service of any process, notice or other document may be effected upon an incorporated association.

Clause 177 False or misleading statements in documents: offence

Clause 177 provides that a person must not in a document required by or for the purposes of this Act or lodged with or submitted to the Commissioner or in a document submitted to a meeting of members of an incorporated association-

- (a) make or authorise the making of a statement that to the person's knowledge is false or misleading in any material particular; or
- (b) omit or authorise the omission of any matter or thing without which the document is to the person's knowledge misleading in any material respect.

A penalty of \$5 000 applies.

Clause 178 Commissioner may require statutory declaration

Clause 178 provides that the Commissioner may require any document or information provided to the Commissioner or an office of the Department for the purposes of this Act to be verified by

statutory declaration.

Clause 179 Use of “Incorporated” restricted

Clause 179 prohibits a person from carrying on business or entering into a contract under any name or title of which “Incorporated” or any abbreviation of that word is the final word or abbreviation unless the person is incorporated under this Act or some other law.

A fine of \$2 000 applies.

Clause 180 Time limit for commencing proceedings

Clause 180 stipulates that a prosecution for an offence against the Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

Clause 181 Commissioner or authorised person may commence prosecution

Clause 181 enables the Commissioner or a person authorised in writing by the Commissioner, to commence a prosecution for an offence against this Act.

Clause 182 Jurisdiction of SAT in respect of disputes

Subclause (1) provides that if a dispute cannot be resolved under the procedure provided for as required by Schedule 1 Division 1 Item 19-

- (a) the incorporated association concerned; or
- (b) a member of the association involved in the dispute,

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

The purpose of subclause (1) is to introduce a further dispute resolution process to apply where a dispute cannot be settled through an application of the association’s own dispute resolution process.

Subclause (2) confirms the State Administrative Tribunal’s power to refer a matter to mediation.

Subclause (3) provides for the State Administrative Tribunal to make orders giving such relief as the Tribunal considers appropriate, including one or more of the orders listed in subclause (3). For example, the Tribunal may make an order giving directions for the observance of the rules of the incorporated association by any person who has an obligation to observe those rules.

Clause 183 Regulations

Clause 183 confers a general regulation making power on the Governor. Clause 183 also provides that different fees may be prescribed in respect of the lodging of a document according to the method by which the document is lodged. This is to encourage associations to use the Department’s electronic lodgment system *Associationsonline*.

Clause 184 Review of Act

Clause 184 requires the Minister to carry out a review of the operation and effectiveness of this Act at the end of 5 years beginning on the day on which clause 184 commences. Clause 184 also provides that any further reviews of the operation and effectiveness of this Act will require the Minister to prepare a report based on the review, and as soon as is practicable after the preparation of the report cause it to be laid before each House of Parliament.

Part 16 – Repeal of *Associations Incorporation Act 1987* and transitional provisions

Division 1 – Repeal

Clause 185 *Associations Incorporation Act 1987* repealed

Clause 185 provides for the repeal of the *Associations Incorporation Act 1987* on commencement of this Act

Division 2 – Transitional provisions

Subdivision 1 - Preliminary

Clause 186 Terms used

Clause 186 defines terms used in this part, specifically “commencement day” which is the day on which the *Associations Incorporation Act 1987* is repealed and this Act comes into effect, and “existing incorporated association” which is an association which was incorporated under the *Associations Incorporation Act 1987* on the repeal of that legislation.

Clause 187 Saving

Clause 187 provides that the transitional provisions operate in addition to the provisions of the *Interpretation Act 1984* and do not affect the operation of those provisions unless clearly intended to do so.

Subdivision 2 – Existing incorporated associations

Clause 188 Incorporation continued

Clause 188 provides that an association incorporated under the repealed Act is taken to be incorporated under this Act.

Clause 189 Committee of existing incorporated association

Clause 189 provides that the committee of an association incorporated under the repealed Act is taken to be the management committee for the purposes of clause 38 (which describes the role of the management committee)

Subdivision 3 – Continuation of certain matters in progress

Clause 190 Existing applications for incorporation

Clause 190 provides that where, at the commencement of the Act, an application for incorporation had been lodged under the repealed Act and had not been refused, the application is to be dealt with in accordance with the provisions of the repealed Act.

Subclause (2) preserves the right for an applicant to appeal to SAT under section 9(3) of the repealed Act where the application is refused.

Subclause (3) provides that when an application has been accepted and the association incorporated, the association will be taken to be incorporated under this Act.

Clause 191 Rule alteration in progress

Clause 191 provides that where an association has passed a special resolution to alter its rules prior to commencement of the Act, but has not provided notification of the resolution, it may alter its rules in accordance with the provisions of the repealed Act by lodging notification with the Commissioner within one month after the commencement of the Act (or such further time as the Commissioner may allow)

Clause 192 Applications under repealed section 18 or 19 in progress

Sections 18 and 19 of the repealed Act deal with approval for changes of name and changes of objects by the Commissioner. Clause 192 provides that, where applications for approval have been lodged before commencement day the applications will be dealt with in accordance with the provisions of the repealed Act.

The Clause preserves the right for an applicant to appeal to the SAT in accordance with the provisions of the repealed Act if the application is refused.

Clause 193 Applications for extension of time under repealed section 23(1)

Clause 193 provides that where an application has been made under the repealed Act for an extension of time to hold an annual general meeting, and the application has not been dealt with prior to commencement day, the application may be completed in accordance with the provisions of the repealed Act.

Clause 194 Certain applications for review made but not determined

Clause 194 provides that applications made to the SAT before the commencement day for review of a determination by the Commissioner under the repealed Act in relation to the following:

- refusal to approve other purposes;
- refusal of application to decline to incorporate an association;
- refusal to approve name;
- refusal of an application for incorporation;
- refusal to approve a change of name; and

- refusal to approve an alteration of objects and purposes, are to be dealt with by the SAT as if the Act had not been repealed.

Clause 195 Voluntary winding up in progress

Clause 195 provides that where an association has passed a special resolution to be wound up voluntarily prior to commencement day, but dissolution has not taken effect in accordance with the provisions of the repealed Act, the provisions of the repealed Act apply to the winding up.

Subclause (3) provides that if an association is dissolved under clause 30(3) of the repealed Act, the Commissioner must, in writing, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in writing.

Subclause (4) provides that the Commissioner may publish notice of the cancellation in the Gazette.

Clause 196 Notice given under repealed section 34(1)

Clause 196 provides that where the Commissioner has given notice to an association under section 34(1) of the repealed Act that its undertaking should be transferred to a different body corporate, and the notice period has not expired prior to commencement day, the matter is to be dealt with and determined in accordance with the provisions of the repealed Act.

Clause 197 Notice given under repealed section 35

Clause 197 provides that where the Commissioner has given notice to an association under section 35(1) of the repealed Act of the intention to cancel its incorporation prior to commencement day the matter is to be dealt with and determined in accordance with the provisions of the repealed Act.

Section 36 of the repealed Act, which vests the property of the cancelled association in the Commissioner, will continue to apply to the distribution of property.

Subdivision 4 – Alteration of rules by existing incorporated associations and section 190 incorporated associations

Clause 198 Alteration of rules

Clause 198 provides that existing incorporated associations have three years from the commencement day (or such longer period as the Commissioner may allow on application) to amend their rules so that the rules comply with the requirements of clause 22.

In the case of associations incorporated under the repealed act after commencement day as a result of the transitional provision at clause 190, the association will have three years from the date of incorporation.

Clause 199 Rules of existing incorporated associations to which repealed Schedule 2 clause 4 applied

Clause 199 provides that those associations which were previously exempt from requirements in relation to content of rules under the repealed Act (by virtue of prior incorporation under the *Associations Incorporation Act 1895*) have three years from the commencement day (or such longer period as the Commissioner may allow on application) to amend their rules so that the rules comply with the requirements of clause 22.

Clause 200 Rule alterations may be made by management committee

Clause 200 provides that, in the 3 years after commencement day, the management committee of an association may make changes to the rules of an association in order to ensure that the rules comply with the requirements of clause 22.

Subclause (3) provides that alterations must be approved by the Commissioner.

Subclause (4) provides that application for approval must be lodged within 28 days of the passing of the resolution by the management committee. A penalty of \$1 000 applies.

Clause 201 Model rules apply if rules are not made compliant

Clause 201 provides that, if after the transition period, the rules of an incorporated association do not comply with clause 22, the model rules will apply as the rules of the association to the extent that the association's rules do not address a matter referred to in Schedule 1 Division 1, or comply with any applicable requirement under Schedule 1 Division 2.

Clause 202 Act modifications pending alteration of rules

Clause 202 applies where, on the commencement day, the rules of an existing incorporated association or an association to which clause 190 applies, require alteration to include the provisions required by Schedule 1 Division 1 Item 20.

In that case, clause 133(1) is to apply in respect of an association referred to in subclause (1) as if clause 133(1)(a) were omitted.

Subdivision 5 – Other things to be done by existing incorporated associations and section 190 incorporated associations

Clause 203 Notification of addresses

Clause 203 requires an existing association to lodge a notice of address with the Commissioner within 90 days after commencement of the Act.

In the case of associations incorporated under the repealed Act after the commencement day as a result of the transitional provision at clause 190, the association will have 90 days from the date of

incorporation.

Subdivision 6 – Other provisions

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

Clause 204 provides that section 50(1) of the Act, which provides that an association must hold its annual general meeting within 6 months of the end of its financial year, applies to existing associations – extending the time for holding of an annual general meeting from 4 months under the repealed Act to six months in cases where the four months period under the repealed Act has begun to run.

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

Subclause (1) of clause 205 defines “new accounting and financial reporting requirements” for the purposes of this clause on the basis of the sections of Part 5 that include the requirements.

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

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

Subclause (4) provides that those clauses in Part 5 of the Bill which are not covered in the definition at subclause (1), being clauses that relate to obligations to obtain an audit on direction and general obligations of an association with regard to its auditor, will apply to existing associations from commencement day.

Clause 206 Auditor’s appointments

Clause 206 provides that a person who was the auditor of an existing incorporated association on commencement day is regarded as having been appointed under the Act.

Clause 207 Property vested under section 36 of repealed Act

Clause 207 provides that, where prior to commencement day, property has vested in the Commissioner under section 36 of the repealed Act as a result of cancellation of an association, the section of the repealed Act will continue to apply to the management and distribution of that property by the Commissioner.

Clause 208 Constructive notice under section 168 of this Act

Clause 168 of the Act provides that there is no constructive notice of the contents of documents by reason of their lodgement with the Commissioner. Clause 208 limits the operation of clause 168 to

acts, omissions and circumstances arising after commencement day.

Clause 209 Time limit under section 180 of this Act

Clause 209 provides that the time limit under clause 180 for commencement of proceedings under the Act (3 years) does not apply to offences against the repealed Act.

Clause 210 References in written laws

Clause 210 provides that a reference to an incorporated association in any law includes an existing incorporated association.

Subdivision 7 – Further provision may be made

Clause 211 Regulations

Clause 211 provides that regulations may make provision for additional transitional matters and empowers the Minister to make regulations that modify a transitional provision or make a new transitional provision where an anomaly arises in implementation.

Subclause (3) provides that any such regulation must come into effect within 2 years of commencement day.

Subclause (4) provides that any such regulation may provide that a provision of the Act is not to apply or is to apply with modifications.

Subclause (5) provides that any such regulation may provide that a state of affairs existed or did not exist earlier than the day on which the regulations are published, but not earlier than commencement day.

Subclause (6) provides that subclause (5) does not operate to prejudice the rights of, or impose liabilities on, any person in respect of any state of affairs existing or anything done before the day of publication.

Part 17 – Consequential amendments

Clause 212 *Cremation Act 1929* amended

The definition of association in the *Cremation Act 1929* is amended.

Clause 213 *Criminal Procedure Act 2004* amended

The *Criminal Procedure Act 2004* is amended by updating the title of the WA associations legislation.

Clause 214 *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* amended

The *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* is amended by updating the title of the WA Associations legislation and correcting the terminology used for the management committee.

Clause 215 *Electricity Corporations Act 2005* amended

The *Electricity Corporations Act 2005* is amended by correcting the terminology used for the management committee.

Clause 216 *Gaming and Wagering Commission Act 1987* amended

The *Gaming and Wagering Commission Act 1987* is amended by updating the title of the WA associations legislation.

Clause 217 *Hale School Act 1876* amended

The *Hale School Act 1876* is amended by updating the title of the WA associations legislation.

Clause 218 *Insurance Commission of Western Australia Act 1986* amended

The *Insurance Commission of Western Australia Act 1986* is amended by updating the title of the WA associations legislation.

Clause 219 *Law Society Public Purposes Trust Act 1985* amended

The *Law Society Public Purposes Trust Act 1985* is amended by updating the title of the WA associations legislation.

Clause 220 *Legal Aid Commission Act 1976* amended

The *Legal Aid Commission Act 1976* is amended by updating the title of the WA associations legislation.

Clause 221 *Local Government Act 1995* amended

The *Local Government Act 1995* is amended by updating the title of the WA associations legislation.

Clause 222 *Members of Parliament (Financial Interests) Act 1992* amended

The *Members of Parliament (Financial Interests) Act 1992* is amended by updating the title of the WA associations legislation.

Clause 223 *Pharmacy Act 2010* amended

The *Pharmacy Act 2010* is amended by updating the title of the WA associations legislation.

Clause 224 *Planning and Development Act 2005* amended

The *Planning and Development Act 2005* is amended by updating the title of the WA associations legislation.

Clause 225 *Racing and Wagering Western Australia Act 2003* amended

The *Racing and Wagering Western Australia Act 2003* is amended by correcting the terminology used for the management committee.

Clause 226 *School Education Act 1999* amended

The *School Education Act 1999* is amended by inserting a definition of incorporated association consistent with the Act and by correcting reference to sections of the repealed Act.

Clause 227 *Taxation Administration Act 2003* amended

The *Taxation Administration Act 2003* is amended by updating the title of the WA associations legislation.

Clause 228 *Volunteers and Food and other Donors (Protection from Liability) Act 2002* amended

The *Volunteers and Food and other Donors (Protection from Liability) Act 2002* is amended by correcting the definition of 'community work' to more closely reflect the contents of the new Act with regard to purposes for which an association may be established.

Clause 229 *Water Corporation Act 1995* amended

The *Water Corporation Act 1995* is amended by correcting the terminology used for the management committee.

Clause 230 References to “1987” amended to “2014” in various Acts

The following Acts are amended to update reference:

Child Care Services Act 2007

Co-operatives Act 2009

Equal Opportunity Act 1984

Fish Resources Management Act 1994

Housing Act 1980

Liquor Control Act 1988

Volunteers and Food and Other Donors (Protection from Liability Act 2002

Western Australian Treasury Corporation Act 1986

Schedule 1 Matters to be provided for in rules of an incorporated association

Division 1 – Matters to be addressed

Division 1 of Schedule 1 includes 20 items that must be included in the rules of an association in order to meet the requirements of clause 22 subclause (3). A brief description of each of the items is as follows:

Clause 1 – The name of the association

Clause 2 - The objects or purposes of the association. These must satisfy the requirements of clause 4 of the Act.

Clause 3 – The qualifications for membership of the association.

Clause 4 - The register of members. The register must comply with the requirements of clause 53 of the Act.

Clause 5 - Provision for a member whose request for a copy of the register of members has been refused to have a remedy or right of appeal.

Clause 6 – Any fees, subscriptions or other charges that must be paid by members of the association.

Clause 7 – Details with regard to the way in which the management committee is constituted. Specifically, provision must be made for:

Election or appointment of members of the management committee;

The terms of office of members of the management committee;

Removal of members of the management committee;

The filling of casual vacancies;

The quorum and procedure for management committee meetings;

How records of management committee meetings are to be made and kept;

The circumstances in which payments may be made to members of the management committee. This does not include reimbursement of out-of-pocket expenses, but does include payment of sessional fees for attendance at meetings;

Clause 8 – The quorum at general meetings of the association and the procedure to be followed at those meetings;

Clause 9 – The requirement for members to be notified of general meetings, and the right of members to attend and vote at meetings;

Clause 10 – The requirements for notice of general meetings and notice of motions to be put to the members at the meeting, and how the notice should be provided;

Clause 11 – The percentage of members required to requisition a general meeting of the association;

Clause 12 – the way in which the funds of the association are to be managed and controlled;

Clause 13 – The financial year of the association;

Clause 14 – How often general meetings of the association will be held, and how they will be called;

Clause 15 – The way in which rules may be amended. The process must comply with the requirements of clause 30 of the Act;

Clause 16 – Whether the association will have a common seal, and if so how it will be kept and used;

Clause 17 – How books and securities of the association will be kept;

Clause 18 – What arrangements will be made for members to inspect the books and records of the association;

Clause 19 – The procedure for dealing with internal disputes;

Clause 20 – How the surplus property of the association will be distributed if the association is wound up or cancelled. This provision must comply with the requirements of clause 24 of the Act.

Division 2 – Particular requirements for certain rules

Division 2 of Schedule 1 provides additional details with regard to

four of the matters listed in Division 1 that must be included in the rules. It is intended to provide guidance to associations that elect to use their own rules as to the minimum requirements in relation to those items:

Clause 1 – The clause relates to the provision made in the rules regarding payments to members of the management committee. The provision must provide for payments (apart from reimbursement of out of pocket expenses incurred in the performance of the member’s functions) to be authorised by a resolution of members.

Clause 2 – The clause relates to the provision made in the rules for notification of and attendance at general meetings. That provision must provide for all members of the association to receive notice of, and attend at, general meetings of the association.

Clause 3 – The clause relates to the provision made for the calling of a meeting at the request of members. Where a percentage or number of members is prescribed, that provision must not require the percentage or number of members to be greater than the percentage or number as prescribed.

Clause 4 – This clause relates to the provision made by an association incorporated on or after commencement day for the day of commencement of its financial year. It provides that the nominated day must be not more than 15 months after the date of incorporation, and that subsequent financial years will be at 12 month intervals.

Subclause (4) provides that the association may subsequently amend its financial year, and a period of more or less than 12 months will be allowed in such circumstances to facilitate the transfer.

Clause 5 – This clause relates to the provision made by an existing incorporated association for the commencement of its financial year. It provides that the commencement date will be the date nominated in its rules at the day of commencement of the Act.

Subclause (4) provides that the association may subsequently amend its financial year.

Subclause (5) provides that a period of more or less than 12 months will be allowed in such circumstances to facilitate the transfer.

Schedule 2 Vesting of property and liabilities on amalgamation

Schedule 2 contains provisions which clarify the way in which rights and liabilities (including title to property) are transferred on the amalgamation of associations under Part 7. Specifically:

Clause 1 – Defines the terms “former association” as an association that is party to the amalgamation and “incorporated association” as the new body formed as a result of the amalgamation for the purposes of the Schedule.

Clause 2 – Provides for the transfer of property and liabilities as follows:

Subclause (a) – property of a former association vests in the incorporated association;

Subclause (b) – rights and liabilities of a former association become rights and liabilities of the incorporated association;

Subclause (c) – proceedings by or against a former association and subsisting on amalgamation may be continued by or against the incorporated association;

Subclause (d) – proceedings that might have been brought by or against a former association prior to amalgamation may be brought by or against the incorporated association;

Subclause (e) – any act, matter or thing done before incorporation by or with regard to a former association is taken to have been done by or with regard to the incorporated association;

Subclause (f) – any reference in an agreement or instrument to a former association is to be read as a reference to the incorporated association.

Clause 3 – Trusts etc. The clause provides that any property vested in the incorporated association as a result of the operation of clause 2 is vested subject to any trust, restriction or obligation which applied to the property before the vesting.

Clause 4 – Notation of Registers. The clause requires relevant officials to register the transfer of title to property vested in an incorporated association by operation of clause 2 on application by the incorporated association and production of production of required documentation.

Schedule 3 Modifications to text of Corporations Act

Schedule 3 describes 14 modifications to the text of the *Corporations Act* which will apply when that legislation is applied to an incorporated association matter by operation of a provision of the Act.

Clause 1 – Reference to a company or body is a reference to an incorporated association;

Clause 2 – Reference in Part 5.7 to a Part 5.7 body is a reference to an incorporated association

Clause 3 – Reference to the board is a reference to the management committee;

Clause 4 – Reference to the directors is a reference to members of the management committee;

Clause 5 – Reference to the secretary of a company is a reference to the person carrying out that role in the association;

Clause 6 – Reference to an officer of a company is a reference to an officer of the association;

Clause 7 – Reference to the principal place of business of a company is a reference to the address provided by an association to

the Commissioner;

Clause 8 – Reference to a company carrying on business is a reference to an association carrying out its purposes or objects;

Clause 9 – Reference to ASIC is a reference to the Commissioner;

Clause 10 – Reference to the Court is a reference to the Supreme Court;

Clause 11 – Reference to deregistration of a company is a reference to the cancellation of incorporation of an association;

Clause 12 – Reference to a special resolution is read as a resolution passed as a special resolution in accordance with the requirements of the Act;

Clause 13 – Reference to a contributory of a company is a reference to a member of an association;

Clause 14 – Reference to a registered company auditor is a reference to an auditor approved in accordance with the requirements of the Act.

Schedule 4 Grounds for winding up by Supreme Court

Schedule 4 provides a description of 10 situations in which the Supreme Court may make an order for winding up of an incorporated association on application by the association, a member, the Commissioner, the Minister or a creditor of the association (in the case of a creditor, only clause 5 applies);

Clause 1 – The association was not eligible for incorporation at the time of incorporation;

Clause 2 – Incorporation was obtained as a result of fraud or mistake;

Clause 3 – The association is not being carried on for an eligible purpose, does not have at least 6 members, or is providing pecuniary benefit for members in contravention of the requirements at clause 17 if the Act;

Clause 4 – The association has been inoperative for at least 1 year;

Clause 5 – The association is unable to pay its debts;

Clause 6 – The association is not operating in accordance with its objects and purposes;

Clause 7 – The management committee has acted oppressively towards members;

Clause 8 – The association has failed to remedy a contravention of the Act;

Clause 9 – The association has resolved by special resolution to apply to be wound up by the Court;

Clause 10 – The Court is of the opinion that the wind up is just and equitable.

