

Western Australia

## **Associations Incorporation Act 1987**

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## Associations Incorporation Act 1987

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Western Australia

## **Associations Incorporation Act 1987**

**An Act to provide for the incorporation of associations, for the regulation of the affairs of incorporated associations, to repeal the *Associations Incorporation Act 1895* and for connected purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Associations Incorporation Act 1987*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

- (1) In this Act, unless the contrary intention appears —
- “**association**” includes society, club, institution or body;
- “**Commissioner**” has the same meaning as it has in the *Consumer Affairs Act 1971*;
- “**financial year**”, in relation to an incorporated association, means —

- (a) a period not exceeding 15 months fixed by the committee of the association being a period commencing on the date of incorporation of the association; and
- (b) each period of 12 months, or such other period fixed by the committee of the association (after having regard to the requirements of section 23 as to the holding of an annual general meeting), commencing at the expiration of the previous financial year of the association;

“**incorporated association**” means an association incorporated under this Act;

“**officer**”, in relation to an association, means a member of the committee;

“**repealed Act**” means the *Associations Incorporation Act 1895* repealed by section 47;

**“special resolution”** means a resolution of an association passed in accordance with section 24.

- (2) A reference in this Act to the alteration of rules includes the making of additional rules.

*[Section 3 amended by No. 10 of 1998 s. 18.]*

**3A. Incorporated associations excluded from Corporations legislation**

- (1) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies, other than the provisions specified in subsection (2) —
- (a) an incorporated association;
  - (b) any act or omission of any person, body or other entity in relation to an incorporated association.
- (2) The provisions referred to in subsection (1) are —
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations legislation;
  - (b) provisions that relate to the role of an incorporated association in the formation of a company;
  - (c) provisions that relate to substantial holdings, by or involving an incorporated association, in a company;
  - (d) provisions that confer or impose functions on an incorporated association as a member, or former member, of a corporation;
  - (e) provisions that relate to dealings by an incorporated association in securities of a body corporate, other than securities of the incorporated association itself;
  - (f) provisions that confer or impose functions on an incorporated association in its dealings with a

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- corporation, not being dealings in securities of the incorporated association;
- (g) provisions that relate to securities of an incorporated association, other than debentures of or deposits with an incorporated association;
  - (h) provisions relating to the futures industry;
  - (i) provisions relating to participants in the securities industry;
  - (j) provisions relating to the conduct of securities business;
  - (k) provisions relating to dealers' accounts and audit;
  - (l) provisions relating to money and scrip of dealers' clients; or
  - (m) provisions relating to registers of interests in securities.
- (3) The provisions specified in subsection (2) only apply to an incorporated association to the extent to which an incorporated association may engage in the activities covered by those provisions.

*[Section 3A inserted by No. 10 of 2001 s. 10.]*

## **Part II — Application for incorporation**

### **4. Eligibility for incorporation**

- (1) Subject to this Act, an association is eligible to be incorporated under this Act if it has more than 5 members and is formed —
  - (a) for a religious, educational, charitable or benevolent purpose;
  - (b) for the purpose of promoting or encouraging literature, science or the arts;
  - (c) for the purpose of sport, recreation or amusement;
  - (d) for the purpose of establishing, carrying on, or improving a community, social or cultural centre, or promoting the interests of a local community;
  - (e) for political purposes; or
  - (f) for any other purpose approved by the Commissioner.
- (2) Notwithstanding subsection (1), an association for the purpose of trading or securing pecuniary profit to the members from the transactions of the association is not eligible to be incorporated under this Act.
- [(3) repealed]*
- (4) An association shall not be regarded for the purposes of this Act as being for the purpose of trading or securing pecuniary profit to the members from the transactions of the association by reason only of any one or more of the following circumstances —
  - (a) that the association itself is empowered to make a pecuniary profit, unless that profit or some part of it is divided among or received by the members or some of them;
  - (b) that the association is established for the protection or regulation of some trade, business, industry or calling in which the members are engaged or interested, if the

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association itself does not engage or take part in any such trade, business, industry or calling, or any part or branch thereof;

- (c) that any member of the association derives pecuniary profit from the association by way of salary as an employee or officer of the association;
  - (d) that any member of the association derives from the association any pecuniary profit to which he would be equally entitled if he were not a member of the association;
  - (e) that the members of the association compete with each other for trophies or prizes other than money prizes;
  - (f) that the association itself may or does make a profit from subscriptions, donations, sponsorship or the sale of any broadcasting rights;
  - (g) that the association provides facilities or services for its members;
  - (h) that the association trades or may trade with its members or with the public, provided that —
    - (i) the trading is ancillary to the principal purpose of the association; and
    - (ii) any trading with the public is not substantial in volume in relation to the other activities of the association;
  - (i) that the association charges admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organized for the promotion of the objects of the association.
- (5) For the purposes of establishing whether an association is formed for the purpose of trading or securing pecuniary profit to the members from the transactions of the association, any pecuniary profit that by reason of a person's membership of the association is received by any other person shall be deemed to

be a pecuniary profit to the member by reason of his membership.

- (6) If the Commissioner refuses to approve a purpose of an association under subsection (1)(f), the applicant may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[Section 4 amended by No. 79 of 1995 s. 67(3); No. 55 of 2004 s. 57.]*

## **5. Application for incorporation**

- (1) An application for the incorporation of an association must be made to the Commissioner in the prescribed manner and form by a person duly authorised by the association to apply for incorporation.
- (2) An application for incorporation must be accompanied by —
- (a) a copy of the rules of the association conforming to the requirements of this Act; and
  - (b) a certificate given by the applicant —
    - (i) certifying that he is authorised by the association to apply for registration;
    - (ii) verifying the particulars contained in the application;
    - (iii) confirming that the requirements of section 6 have been complied with;
    - (iv) verifying that the copy of the rules of the association accompanying the application is a true copy and that the rules include provisions as to the matters set out in Schedule 1; and
    - (v) verifying that the association has more than 5 members.

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**6. Advertisement of intended application**

- (1) An applicant for incorporation must cause an advertisement in the prescribed form to be published once in a newspaper circulating in the area where the association is situated or conducts its affairs.
- (2) The advertisement required by subsection (1) must be published not less than one month nor more than 3 months before the application for incorporation is made to the Commissioner.

**7. Request for refusal of incorporation**

- (1) Any person may, within one month after the publication of the advertisement referred to in section 6, request the Commissioner to decline to incorporate the association under this Act and such a request must include the reasons for the request.
- (2) If the Commissioner refuses a request made under subsection (1), the person who made the request may, within 14 days of receiving notice of the refusal, apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[Section 7 amended by No. 55 of 2004 s. 58.]*

**8. Name of association**

- (1) The Commissioner shall not incorporate an association under this Act by a name that in the opinion of the Commissioner is —
  - (a) offensive or undesirable;
  - (b) likely to mislead the public as to the object or purpose of the association;
  - (c) identical with the name by which an association in existence is already incorporated under this Act or the repealed Act or which resembles any such name in a manner likely to mislead the public; or

- (d) identical with or likely to be confused with the name of any other body corporate or any registered business name.
- (2) If the Commissioner refuses to incorporate an association under this Act by a name that in his opinion is not appropriate having regard to subsection (1), the applicant for incorporation may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[Section 8 amended by No. 55 of 2004 s. 59.]*

## **9. Incorporation of association**

- (1) If upon an application duly made in accordance with this Part the Commissioner is of the opinion —
  - (a) that the association is eligible to be incorporated under this Act;
  - (b) that the rules of the association lodged with the Commissioner conform to the requirements of this Act;
  - (c) that the name of the association is appropriate having regard to section 8; and
  - (d) that the time during which any request might be made under section 7 has expired and any request made under that section has been finally refused,

the Commissioner shall, subject to subsection (2), incorporate the association by the issue to the association of a certificate of incorporation.

- (2) The Commissioner shall not incorporate an association under this Act if in his opinion —
  - (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.

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- (3) If the Commissioner refuses an application for incorporation under subsection (2), the applicant for incorporation may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[Section 9 amended by No. 55 of 2004 s. 60.]*

## **Part III — Consequences of incorporation**

### **10. Effect of incorporation**

Upon incorporation of an association under this Act —

- (a) the association becomes a body corporate with perpetual succession and a common seal;
- (b) the corporate name of the association is the name of the association as stated in the certificate of incorporation, concluding with the word “Incorporated” or the abbreviation “Inc.”;
- (c) all rights and liabilities (whether certain or contingent) exercisable against members or officers of the association in their capacity as such immediately before the incorporation of the association become rights and liabilities of and exercisable against the incorporated association, but this paragraph shall not be construed so as to relieve or release any person in respect of liabilities incurred by or on behalf of the association prior to incorporation; and
- (d) the association may sue or be sued in its corporate name.

### **11. Vesting of property in incorporated associations**

- (1) Upon incorporation of an association under this Act all real and personal property held by any person for or on behalf of the association shall be vested in and held by the incorporated association subject to any trusts that may affect that property.
- (2) The Registrar of Titles shall —
  - (a) upon the application of an incorporated association in which any estate or interest in land has been vested by virtue of this section; and

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- (b) upon production of such duplicate instruments of title and other documents as the Registrar of Titles may require,

register the vesting of that estate or interest in land in the association.

**12. Liability of officers, trustees and members**

- (1) An officer, trustee or a member of an incorporated association is not by reason only of his being such an officer, trustee or member liable in respect of the liabilities of the association.
- (2) Subsection (1) does not apply in respect of liabilities incurred by or on behalf of the association prior to incorporation.

**13. Powers of an incorporated association**

- (1) Subject to this Act and to its rules, an incorporated association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may —
  - (a) acquire, hold, deal with, and dispose of any real or personal property;
  - (b) open and operate bank accounts;
  - (c) invest its money —
    - (i) as trust funds may be invested under Part III of the *Trustees Act 1962*; or
    - (ii) in any other manner authorised by the rules of the association;
  - (d) borrow money upon such terms and conditions as the association thinks fit;
  - (e) give such security for the discharge of liabilities incurred by the association as the association thinks fit;
  - (f) appoint agents to transact any business of the association on its behalf; and
  - (g) enter into any other contract it considers necessary or desirable.

- (2) An incorporated association may, unless its rules otherwise provide, act as trustee and accept and hold real and personal property upon trust, but 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 this Act or the rules of the association.

*[Section 13 amended by No. 1 of 1997 s. 18.]*

**14. Manner in which contracts may be made**

- (1) Contracts may be made by or on behalf of an incorporated association as follows —
- (a) a contract which, if made between natural persons, would be required to be in writing under seal may be made by the incorporated association under its common seal;
  - (b) a contract which, if made between natural persons, would be required to be in writing signed by the parties may be made on behalf of the association in writing by any person acting under its express or implied authority; and
  - (c) a contract which, if made between natural persons, would be valid although not in writing signed by the parties may be made orally on behalf of the association by any person acting under its express or implied authority.
- (2) A contract may be varied or rescinded by or on behalf of an incorporated association in the same manner as it is authorised to be made.

**15. Limitation of doctrine of *ultra vires***

- (1) 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.

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- (2) An incorporated association that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.
- (3) This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into a transaction that lies beyond the powers conferred on the association by this Act or its rules.

## **Part IV — Rules of incorporated associations**

### **16. Rules of association**

The rules of an association do not conform to the requirements of this Act unless they include provision in respect of each of the matters that are specified in Schedule 1 and the rules are otherwise consistent with this Act.

### **17. Addition and alteration of rules**

- (1) Subject to sections 18 and 19, an incorporated association may alter its rules by special resolution but not otherwise.
- (2) Within one month of the passing of a special resolution altering its rules, or such further time as the Commissioner may in a particular case allow, an incorporated association shall lodge with the Commissioner notice of the special resolution setting out particulars of the alteration together with a certificate given by a member of the committee certifying that the resolution was duly passed as a special resolution and that the rules of the association as so altered conform to the requirements of this Act.
- (3) An alteration of the rules of an incorporated association does not take effect until subsection (2) is complied with.

### **18. Change of name of incorporated association**

- (1) An alteration of the rules of an incorporated association having effect to change the name of the association does not take effect until section 17 is complied with and the approval of the Commissioner is given to the change of name.
- (2) The Commissioner may direct that notice of a proposed change of name of an incorporated association be published in accordance with his directions as a pre-requisite to his approval of the change.
- (3) The Commissioner shall not approve a name under this section unless he is of the opinion that the proposed name is an appropriate name under which an association might be incorporated under this Act.

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(4) If the Commissioner refuses to approve a name under this section, the association may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[(5) repealed]*

(6) Where the Commissioner approves a change of name of an incorporated association he shall issue a new certificate to be known as a certificate of incorporation on change of name.

(7) A change of name of an incorporated association shall not affect the identity of the body corporate or any right or obligation of the association and shall not render defective any legal proceeding by or against the association and any legal proceeding that might have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

*[Section 18 amended by No. 55 of 2004 s. 61.]*

**19. Alteration of objects of incorporated association**

(1) An alteration of the rules of an incorporated association having effect to alter the objects or purposes of the association does not take effect until section 17 is complied with and the approval of the Commissioner is given to the alteration of the objects or purposes.

(2) The Commissioner may direct that notice of a proposed change of the objects or purposes of an incorporated association be published in accordance with his directions as a pre-requisite to his approval of the change.

(3) If the Commissioner refuses to approve an alteration of the objects and purposes of an incorporated association under subsection (1), the incorporated association may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

*[Section 19 amended by No. 55 of 2004 s. 62.]*

## **Part V — Management of affairs of incorporated associations**

### **20. Management of incorporated association**

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

### **21. Disclosure of interest**

- (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee shall, as soon as he becomes aware of his interest, disclose the nature and extent of his interest to the committee.  
Penalty: \$500.
- (2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact —
  - (a) that the member of the committee is an employee of the incorporated association; or
  - (b) that the member of the committee is a member of a class of persons for whose benefit the association is established.
- (3) Where a member of the committee of an incorporated association discloses a pecuniary interest in a contract or proposed contract in accordance with this section, or his interest is not such as need be disclosed under this section —
  - (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the incorporated association; and
  - (b) the member is not liable to account for profits derived from the contract.

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- (4) An association shall cause every disclosure made under this section by a member of the committee to be recorded in the minutes of the meeting of the committee at which it is made.

**22. Voting on a contract in which a committee member has an interest**

- (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee, shall not take part in any deliberations or decision of the committee with respect to that contract.

Penalty: \$500.

- (2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established.

**23. Annual general meeting**

- (1) Subject to subsection (2), an incorporated association shall hold an annual general meeting in every calendar year within 4 months after the end of the association's financial year or such longer period as may in a particular case be allowed by the Commissioner.
- (2) An incorporated association may hold its first annual general meeting at any time within 18 months after incorporation.

**24. Special resolution**

- (1) For the purposes of this Act, a resolution is a special resolution if it is passed by a majority of not less than three-fourths of the members of the association who are entitled under the rules of the association to vote and vote in person or, where proxies or postal votes are allowed by the rules of the association by proxy or postal vote, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.

- (2) At a meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person presiding that the resolution has been passed as a special resolution shall be evidence of the fact unless, during the meeting at which the resolution is submitted, a poll is demanded in accordance with the rules of the association or, if the rules do not make provision as to the manner in which a poll may be demanded, by at least 3 members of the association present in person or, where proxies are allowed, by proxy.
- (3) A declaration by the person presiding as to the result of a poll taken under subsection (2) is evidence of the matter so declared.

**25. Accounting records to be kept**

An incorporated association shall —

- (a) keep such accounting records as correctly record and explain the financial transactions and financial position of the association;
- (b) keep its accounting records in such manner as will enable true and fair accounts of the association to be prepared from time to time; and
- (c) keep its accounting records in such manner as will enable true and fair accounts of the association to be conveniently and properly audited.

**26. Annual accounts to be prepared**

An incorporated association shall submit to its members at the annual general meeting of the association accounts of the association showing the financial position of the association at the end of the immediately preceding financial year.

**27. Register of members**

An incorporated association shall keep and maintain in an up to date condition a register of the members of the association and their postal or residential addresses and, upon the request of a member of the association, shall make the register available for

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the inspection of the member and the member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.

**28. Rules to be available to members**

An incorporated association shall keep and maintain in an up to date condition the rules of the association and, upon the request of a member of the association, shall make available those rules for the inspection of the member and the member may make a copy of or take an extract from the rules but shall have no right to remove the rules for that purpose.

**29. Record of office holders**

An incorporated association shall maintain a record of —

- (a) the names and residential or postal addresses of the persons who hold the offices of the association provided for by the rules of the association, including all offices held by the persons who constitute the committee of the association and persons who are authorised to use the common seal of the association; and
- (b) the names and residential or postal addresses of any persons who are appointed or act as trustees on behalf of the association,

and the incorporated association shall, upon the request of a member of the association, make available the record for the inspection of the member and the member may make a copy of or take an extract from the record but shall have no right to remove the record for that purpose.

## Part VI — Winding up and cancellation of incorporation

### 30. Voluntary winding up

- (1) An incorporated association may be wound up voluntarily if the association is solvent and resolves by special resolution that it be wound up voluntarily.
- (2) The incorporated association shall cause a copy of a special resolution passed under subsection (1) to be lodged with the Commissioner within 14 days after the passing of the resolution.
- (3) Dissolution pursuant to the voluntary winding up of an incorporated association shall take effect —
  - (a) 7 days after the distribution of the surplus property is completed; or
  - (b) if there is no surplus property, 14 days after a copy of the resolution is lodged with the Commissioner.
- (4) The regulations may declare the winding up of an incorporated association under this section to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to one or more of Parts 5.4 to 5.8 (winding up) of the *Corporations Act 2001* of the Commonwealth, with any modifications that are specified in the declaration.

*[Section 30 amended by No. 10 of 2001 s. 11(1); No. 20 of 2003 s. 4.]*

### 31. Winding up by Court

- (1) An incorporated association may be wound up by the Supreme Court if —
  - (a) the incorporated association was not at the time of incorporation eligible for incorporation under this Act;
  - (b) the incorporation of the association was obtained by fraud or mistake;

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- (c) the incorporated association has fewer than 6 members;
  - (d) the incorporated association has been inoperative for not less than 12 months;
  - (e) the incorporated association is unable to pay its debts;
  - (f) the incorporated association has engaged in activities outside the scope of its purposes as specified in its rules or has ceased to pursue those purposes;
  - (g) the committee of the incorporated association has acted oppressively in relation to members;
  - (h) the incorporated association has refused or failed to remedy a contravention of this Act or the regulations within a reasonable period after notice of that contravention has been given to the association by the Commissioner;
  - (i) the incorporated association has, itself or as a trustee, traded or secured pecuniary profit for the members of the association;
  - (j) the incorporated association has by special resolution resolved that it be wound up by the Supreme Court; or
  - (k) the Supreme Court is of the opinion that it is just and equitable that the incorporated association should be wound up.
- (2) An application to the Supreme Court for the winding up of an incorporated association shall be by petition presented by the incorporated association, a member of the incorporated association, the Commissioner, the Minister or, in the case of a petition based on subsection (1)(e), a creditor.
- (3) The winding up of an incorporated association by the Supreme Court (other than a voluntary winding up) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 (Winding up bodies other than companies) of the *Corporations Act 2001* of the Commonwealth.

*[Section 31 amended by No. 10 of 2001 s. 12.]*

**32. Modifications of applied text of Corporations Act**

The following modifications to the text of Parts 5.4 to 5.8 of the *Corporations Act 2001* of the Commonwealth apply for the purposes of sections 30 and 31 —

- (a) a reference to a company is to be read as a reference to an incorporated association;
- (b) a reference in Part 5.7 to a Part 5.7 body is to be read as a reference to an incorporated association;
- (c) a reference to the directors of a company is to be read as a reference to the members of the committee of an incorporated association;
- (d) a reference to the secretary of a company is to be read as a reference to the secretary of an incorporated association or the person carrying out the functions ordinarily carried out by a secretary of an association;
- (e) a reference to the principal place of business of a company is to be read as a reference to the place where the secretary of an incorporated association resides;
- (f) a reference to ASIC is to be read as a reference to the Commissioner;
- (g) a reference to the Court is to be read as a reference to the Supreme Court.

*[Section 32 inserted by No. 10 of 2001 s. 13; amended by No. 20 of 2003 s. 5.]*

**33. Distribution of surplus property**

- (1) In this section a reference to the surplus property of an incorporated association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.
- (2) Notwithstanding any Act or law to the contrary, it shall not be lawful for any part of the surplus property of an incorporated

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association to be distributed on the winding up of the association —

- (a) among the members or former members of the association; or
  - (b) otherwise than to an incorporated association or for charitable purposes.
- (3) Prior to the winding up of an incorporated association, the association may by resolution of the members authorise and direct the committee to prepare a distribution plan for the distribution of the surplus property of the association.
- (4) A distribution plan shall be prepared in accordance with the provisions of the rules of the association relating to the distribution of surplus property upon a winding up (if any) or in accordance with such variation of those provisions as the Commissioner may approve in writing.
- (5) If there are no provisions in the rules of the incorporated association relating to the distribution of surplus property or those provisions are impractical in the circumstances, the committee shall prepare a distribution plan in accordance with any directions given by resolution of the members of the incorporated association or, if there is no such direction, as the committee considers just and equitable having regard to the objects or purposes of the association.
- (6) The committee shall lodge a distribution plan with the Commissioner and the Commissioner may give the committee directions as to the publication of notice of the distribution plan.
- (7) The committee —
- (a) shall not implement a distribution plan until one month after the day the plan is lodged with the Commissioner, or such longer period as in a particular case the Commissioner may direct; and
  - (b) shall implement a distribution plan within one month after the expiry of the period applicable in the particular case under paragraph (a).

- (8) If the committee refuses or fails to implement a distribution plan within the period provided for by subsection (7), the Commissioner shall, unless he considers it unreasonable or impractical to do so, implement the distribution plan.
- (9) If the Commissioner considers that the implementation of the distribution plan would be unreasonable or impractical, the Commissioner shall so inform the committee and the committee may within one month lodge a revised distribution plan with the Commissioner.
- (10) If the Commissioner considers that the implementation of a revised distribution plan would be unreasonable or impractical or if the committee has failed to lodge a revised distribution plan with the Commissioner within one month of being informed of the Commissioner's opinion under subsection (9) or if the committee has failed to lodge a distribution plan with the Commissioner in accordance with subsection (6), the Commissioner shall so declare in writing and, subject to subsection (12) and section 36, shall after one month cause the surplus property to be credited to the Consolidated Fund.
- (11) The Commissioner may appoint a person to act on his behalf for the purposes of implementing a distribution plan under subsection (8) or causing the surplus property to be credited to the Consolidated Fund under subsection (10) and a person, so appointed, is entitled to be paid out of the property of the incorporated association his reasonable costs incurred in the exercise of his functions under this subsection.
- (12) A person who is aggrieved by a declaration made by the Commissioner under subsection (10) may apply to the Supreme Court for a review of the Commissioner's declaration and the Supreme Court may make such order as to the distribution of the surplus property of the association as the Court thinks just.

*[Section 33 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]*

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**34. Power of Commissioner to require transfer of activities**

- (1) Where the Commissioner is of the opinion —
- (a) that an incorporated association has ceased to be an association eligible to be incorporated under this Act; or
  - (b) that the undertaking or operations of an incorporated association are being carried on by a body corporate incorporated under some other Act, or would more appropriately be carried on by such a body corporate,
- the Commissioner may give notice to the association under this section.
- (2) If, within 3 months of the date of a notice under subsection (1), the incorporated association requests the Commissioner to transfer its undertaking to a body corporate specified in the request, the Commissioner may, by order published in the *Gazette*, order that the undertaking of the association be transferred accordingly.
- (3) On the publication of an order under subsection (2) —
- (a) the incorporated association is dissolved;
  - (b) the property of the association becomes the property of the body corporate referred to in the order; and
  - (c) the rights and liabilities of the association (whether certain or contingent) become rights and liabilities of the body corporate referred to in the order.
- (4) The Registrar of Titles, the Registrar of Deeds, the Commissioner, and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, may take cognizance of an order made under this section and is empowered to record and register in the appropriate manner such matters as are necessary to give effect to such an order.

*[Section 34 amended by No. 31 of 1997 s. 9.]*

**35. Cancellation of incorporation by Commissioner**

- (1) Where the Commissioner has reasonable cause to believe that an incorporated association —
- (a) has been inoperative for the preceding 12 months;
  - (b) has fewer than 6 members;
  - (c) has no assets and the members have resolved to discontinue the activities of the association;
  - (d) has resolved to wind up but no person is prepared to act as liquidator; or
  - (e) has not, within 3 months of notice being given to it by the Commissioner under section 34, requested the Commissioner to transfer its undertaking to another body corporate,

the Commissioner may send, by certified post addressed to the association at the address which appears to the Commissioner to be the address of the association, and may, if he considers advertisement to be desirable, cause to be published in a newspaper circulating generally in the State, a notice stating the ground or grounds on which it is proposed to cancel the incorporation of the association and stating that, if a reply showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later, the incorporation of the association will be cancelled by the Commissioner under this section.

- (2) Unless —
- (a) the Commissioner is satisfied, within 2 months after the date of sending or publishing a notice under subsection (1), whichever is the later, that cause has been shown to the effect that the incorporated association —
    - (i) is operative;
    - (ii) has more than 5 members; or
    - (iii) does not fall within subsection (1)(c), (d) or (e);

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or

- (b) the Supreme Court, on the application of an aggrieved person, otherwise orders,

the Commissioner may cancel the incorporation of the association.

- (3) Where the Commissioner cancels the incorporation of an incorporated association under subsection (2), the Commissioner shall publish in the *Gazette* and send to the association notice of the cancellation.
- (4) If the Commissioner is satisfied that the incorporation of an incorporated association was cancelled as the result of an error on his part, the Commissioner may reinstate the incorporation of the association in which case the association shall be deemed to have continued in existence as if its incorporation had not been cancelled and the Commissioner shall publish in the *Gazette* notice of the reinstatement.
- (5) Where, before the Commissioner cancels the incorporation of an association under subsection (2), the incorporated association has commenced to be wound up under section 30 or 31 —
  - (a) the Commissioner may cancel the incorporation notwithstanding the commencement of the winding up; and
  - (b) the cancellation of the incorporation does not affect the winding up.

**36. Vesting of property on failure to implement a distribution plan or cancellation**

- (1) Where the committee of an incorporated association fails to implement a distribution plan when required to do so under section 33(7)(b) or the Commissioner has made a declaration under section 33(10) or the incorporation of an incorporated association (not being an incorporated association the winding up of which commenced before the cancellation) is cancelled under section 35 —

- (a) the property of the association vests in the Commissioner; and
  - (b) subject to subsection (3), the Commissioner may give such directions as he thinks just for or with respect to the payment of the debts and liabilities of the association, the distribution of its property and the winding up of its affairs and —
    - (i) may appoint a person for the purpose of investigating the affairs of the association and attending to the realization of its property, payment of its debts, discharge of its liabilities, distribution of its property and winding up of its affairs; and
    - (ii) may do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of the Commissioner's powers under this section.
- (2) The Commissioner and a person appointed under subsection (1)(b)(i) are entitled to be paid out of the property of an incorporated association the reasonable costs incurred by the Commissioner and such a person in the exercise of their powers under this section in relation to the association.
- (3) Section 33 applies to and in respect of the vesting under this section of property of an incorporated association remaining after satisfaction of the debts and liabilities of the association and the payment of any amount under subsection (2) in the same way as that section applies to and in respect of the vesting of that property in a winding up of an incorporated association.

## **Part VII — Administration**

### **37. Lodging of documents with Commissioner**

- (1) The Commissioner shall in such manner as the Commissioner thinks fit keep a copy of the rules of each incorporated association, every alteration of the rules and every other document required by this Act to be lodged with the Commissioner.
- (2) A person may, on payment of the prescribed fee —
  - (a) inspect any document lodged with the Commissioner for the purposes of this Act, not being a document that has been destroyed or otherwise disposed of; or
  - (b) obtain from the Commissioner a certified copy of, or extract from, any document lodged with the Commissioner under this Act.
- (3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled under subsection (2) to require the production of the original.
- (4) A copy of or extract from any document lodged with the Commissioner for the purposes of this Act that is certified by the Commissioner to be a true copy or extract is in any proceedings admissible in evidence as of equal validity with the original document.
- (5) The Commissioner may, if in his opinion it is no longer necessary or desirable to retain it, destroy or dispose of any document, and any copy or transparency of such a document, lodged in respect of an incorporated association that for not less than 15 years has been dissolved.

### **38. Evidentiary provision**

- (1) A certificate of the Commissioner to the effect —
  - (a) that on a date specified in the certificate, a specified association was or was not an incorporated association;

- (b) that on a date specified in the certificate no incorporated association was incorporated under this Act by a name specified in the certificate;
- (c) that a requirement of this Act specified in the certificate —
  - (i) had or had not been complied with at a date or within a period so specified; or
  - (ii) had been complied with at a date so specified but not before that date;
- (d) that a copy of the rules of an incorporated association specified in the certificate is a true copy of those rules as lodged with the Commissioner at a date specified in the certificate,

is evidence of the matter or matters so specified.

- (2) A certificate of incorporation of an association issued under this Act is conclusive evidence of the incorporation of the association under this Act on the date specified in the certificate as the date of incorporation.

### **39. Investigation and audit**

- (1) In this section, “**records**” includes —
  - (a) any document, and other record of information; and
  - (b) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up, however compiled, recorded or stored.
- (2) The powers of the Commissioner under subsection (3) or (4) shall not be exercised except in circumstances that relate to a matter that constitutes or may constitute —
  - (a) a contravention of, or failure to comply with, a provision of this Act or the regulations; or

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- (b) an offence relating to an incorporated association that involves fraud or dishonesty or concerns the management of the affairs of the association.
- (3) The Commissioner may at any time, by notice in writing, give a direction to an incorporated association or a person who is or has been a member of the committee of, or an agent, banker, solicitor, auditor, trustee or other person acting in any capacity for or on behalf of an incorporated association (including an incorporated association that is in the course of being wound up or has been dissolved), requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the association as are specified in the direction.
- (4) The Commissioner may, at any time by notice in writing, give a direction to an incorporated association or to a person who is or has been a member of the committee of an incorporated association requiring the production and delivery to the Commissioner, within such period as is specified in the direction, of a statement of the financial position of the association as at the end of the last preceding financial year, or as at some other date specified in the direction, audited by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (5) An incorporated association or other person shall not when required under subsection (3) to produce a record —
  - (a) refuse or neglect to produce the record; or
  - (b) produce a record that contains information that to the person's knowledge is false or misleading in a material particular, unless the person discloses that fact when producing the record.

Penalty: \$500.

- (6) It is a defence to any prosecution for refusal or neglect to produce a record required to be produced under subsection (3) if the person charged proves that the record has been destroyed or

disposed of in accordance with the provisions of this Act or the regulations.

- (7) An incorporated association or other person shall not when directed under subsection (4) to produce and deliver to the Commissioner an audited statement of the financial position of the incorporated association refuse or neglect without reasonable excuse to produce and deliver such a statement in accordance with the Commissioner's direction.

Penalty: \$500.

*[Section 39 amended by No. 10 of 2001 s. 14.]*

## **Part VIII — Miscellaneous**

### **40. Lodging notice of address for service**

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

### **41. Service on incorporated association**

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

- (a) by serving the process, notice or other document personally or by post on a member of the committee of the association;
- (b) by leaving the process, notice or other document at, or by sending it by post to, the address for service (if any) last notified to the Commissioner under section 40; or
- (c) by leaving the process, notice or other document at the address of a member of the committee of the association with any person apparently over the age of 16 years.

### **42. Responsibility of committee members**

If a member of the committee of an incorporated association fails to take all reasonable steps to secure compliance by the association with its obligations under this Act, the member commits an offence and is liable to a fine of \$500.

### **43. False or misleading statements**

Where 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 person —

- (a) makes or authorises the making of a statement that to the person's knowledge is false or misleading in any material particular; or

- (b) omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in any material respect,

the person commits an offence and is liable to a fine of \$500.

**44. Restriction on use of “Incorporated”**

If a person carries on business or enters into a contract under any name or title of which “Incorporated” or any abbreviation of that word is the final word or abbreviation, the person is, unless incorporated under this Act or any other law, guilty of an offence.

Penalty: \$200.

**45. Payment of fees on lodging documents**

Where a fee is payable to the Commissioner in respect of the lodging of a document with the Commissioner and the document is submitted for lodging without payment of the fee, the document shall be deemed not to have been lodged until the fee is paid.

**46. Regulations**

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and in particular for and with respect to —

- (a) prescribing and providing for the payment of fees; and
- (b) prescribing forms under this Act and the respective purposes for which those forms are to be used.

**47. Repeal**

The *Associations Incorporation Act 1895* is repealed.

**48. Savings and transitional**

Schedule 2 has effect.

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[49.     *Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Schedule 1

[Section 16]

### Matters to be provided for in rules of an incorporated association

1. The name of the incorporated association.
2. The objects or purposes of the incorporated association, including a provision in, or substantially in, the following terms —

The property and income of the association shall 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 members of the association, except in good faith in the promotion of those objects or purposes.
3. The qualifications (if any) for membership of the incorporated association.
4. The register of members of the incorporated association.
5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
6. The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this clause referred to as “**the committee**”) and provision for —
  - (a) the election or appointment of members of the committee;
  - (b) the terms of office of members of the committee;
  - (c) the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;
  - (d) the filling of casual vacancies occurring on the committee;
  - (e) the quorum and procedure at meetings of the committee.
7. The quorum and procedure at general meetings of members of the incorporated association.

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

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8. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
9. The manner in which the funds of the association are to be controlled.
10. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
11. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.
12. Provisions for the custody and use of the common seal of the incorporated association.
13. The custody of records, books, documents and securities of the incorporated association.
14. The inspection by members of the incorporated association of records and documents of the incorporated association.

## **Schedule 2**

[Section 48]

### **Savings and transitional provisions**

1. Every association that was, immediately before the commencement of this Act, an association incorporated under the repealed Act, shall, upon the commencement of this Act, be deemed to be an association incorporated under this Act, and the rules of the association shall, subject to alteration under this Act, be the rules of the association as registered at the commencement of this Act.
  
2. Where an application for the incorporation of an association was made under the repealed Act, but the association had not, as at the commencement of this Act, been incorporated, the proceedings for incorporation of the association may be continued and completed under the repealed Act as if this Act had not been enacted.
  
3. The statement of objects of an association incorporated under the repealed Act filed with the Commissioner shall upon the commencement of this Act be deemed to form part of the rules of the association as registered at the commencement of this Act.
  
4. Section 16 (which specifies matters to be provided for in the rules of an incorporated association) does not apply to any association that was immediately before the commencement of this Act incorporated under the repealed Act.

## Notes

- <sup>1</sup> This is a compilation of the *Associations Incorporation Act 1987* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Associations Incorporation Act 1987</i>	59 of 1987	9 Nov 1987	25 Jul 1988 (see s. 2 and <i>Gazette</i> 24 Jun 1988 p. 1995)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 67(3)	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 7	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 18	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the <i>Associations Incorporation Act 1987</i> as at 20 Aug 1999</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 4 <sup>2</sup>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 2	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2</i> Div. 10 <sup>3</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<b>Reprint 2: The Associations Incorporation Act 1987 as at 28 Oct 2005</b> (includes amendments listed above)			

<sup>2</sup> The *Corporations (Consequential Amendments) Act 2001* s. 11(2) reads as follows:

“

- (2) Regulations (the “**old regulations**”) made under section 30(4) (the “**old provision**”) of the *Associations Incorporation Act 1987* as in force immediately before the commencement of subsection (1) of this section continue in force, despite the repeal of the old provision, until regulations are made under section 30(4) of the *Associations Incorporation Act 1987* as in force immediately after the commencement of subsection (1) of this section, and any winding up commenced under the old regulations is to be dealt with under the provisions applied by those old regulations.

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<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5*, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.