

Associations Incorporation Act 1984 No 143

[1984-143]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

Authorisation

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Associations Incorporation Act 1984 No 143



New South Wales

An Act to make provision with respect to the incorporation of certain associations and the regulation of those associations after incorporation; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Associations Incorporation Act 1984*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

agent includes attorney.

approved, in relation to a form, means approved by the Commissioner.

association includes:

- (a) a society, club, institution or other body, and
- (b) an incorporated association.

Commissioner means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

committee, in relation to an association, means the body which governs or has the management of the association.

Court means the Supreme Court of New South Wales.

date of incorporation, in relation to an incorporated association, means the date of incorporation of the association under this Act.

financial year, in relation to an incorporated association, means:

- (a) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of the association) resolves, commencing on the date of incorporation of the association, and
- (b) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of the association) resolves, commencing at the expiration of the previous financial year of the incorporated association.

incorporated association means an association or other body incorporated under this Act.

member, in relation to an association, means a person, body or organisation that is, under the rules of the association, a member of the association or, where the rules do not provide for membership of the association, a person, body or organisation that is a member of the committee of the association.

model rules means the model rules prescribed under section 73.

officer, in relation to an association, includes:

- (a) a member of the committee of the association,
- (b) the public officer of the association,
- (c) a secretary, treasurer, executive officer or employee of the association, and
- (d) a person occupying or acting in any of those positions, whether or not validly appointed to occupy or duly authorised to act in the position,

but does not include a patron or the holder of some other honorary office that confers no right to participate in the administration of the affairs of the association nor any member of the association that is not an individual.

property includes real and personal property, any estate or interest in any property, real or personal, any debt, any thing in action, and any other right or interest, whether in possession or not.

public officer, in relation to an incorporated association, means the person who is for the time being the public officer of the association under this Act.

regulation means a regulation made under this Act.

rules, in relation to an association, includes the constitution, regulations and by-laws, if any, of the association.

3A Notes

Notes included in this Act do not form part of this Act.

4 Association trading or securing pecuniary gain

For the purposes of this Act, an association shall not be deemed to trade or secure pecuniary gain for its members or to be formed or carried on for the object of trading or securing pecuniary gain for its members by reason only that:

- (a) the association itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the members of the association or any of them,
- (b) the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal object of the association and, where the transactions are with the public, the transactions:
 - (i) are not substantial in number or value in relation to the other activities of the association, or
 - (ii) consist of admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organised for the promotion of the objects of the association,
- (c) the association is established for the protection of a trade, business, industry or calling in which the members of the association are engaged or interested, and the association itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling,
- (d) members of the association derive pecuniary gain through enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes,
- (e) any member of the association derives pecuniary gain from the association by way of bona fide payment of remuneration,
- (f) any member of the association derives from it pecuniary gain to which the member would be entitled if the member were not a member of the association,
- (g) members of the association compete for trophies or prizes in contests directly related to the objects of the association, or
- (h) the association:
 - (i) engages in trade which is, or

- (ii) secures for its members pecuniary gain which is,
of a class prescribed for the purposes of this section.

5 Special resolution

- (1) For the purposes of this Act, a resolution of an association is a special resolution if:
 - (a) it is passed by a majority which comprises not less than three-quarters of such members of the association as, being entitled under the rules of the association so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules, or
 - (b) where it is made to appear to the Commissioner that it is not possible or practicable for the resolution to be passed in the manner specified in paragraph (a)—the resolution is passed in a manner specified by the Commissioner.
- (2) At any meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person chairing the meeting that the resolution has been carried as a special resolution shall be prima facie evidence of the fact unless, during the meeting at which the resolution is submitted, a poll is demanded:
 - (a) except where paragraph (b) applies, by at least 3 members of the association present in person or, where proxies are allowed, by proxy, or
 - (b) where the rules of the association make provision for the manner in which the poll may be demanded—in accordance with those rules.
- (3) A declaration by the person chairing the meeting as to the result of a poll taken pursuant to a demand as referred to in subsection (2) is prima facie evidence of the matter so declared.

6 Commonwealth Corporations legislation excluded from applying to incorporated associations

- (1) An incorporated association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation the whole of the Corporations legislation other than to the extent referred to in subsection (2).
- (2) Subsection (1) does not apply:
 - (a) to the extent specified by section 49 (1), and
 - (b) to the extent necessary for an association that is a company under the *Corporations Act 2001* of the Commonwealth to be deregistered as a company under Chapter 5A of that Act, and
 - (c) if the association is authorised or required by or under section 56 to become

registered as a company under that Act—to the extent necessary for an association to be registered as a company under Chapter 5B of that Act.

Note—

This section ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to an incorporated association. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to that Act or Part, then the provisions of that Act or Part will not apply in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Commonwealth legislation to incorporated associations as laws of this State.

- (3) Subsection (1) extends to a company within the meaning of the *Corporations Act 2001* of the Commonwealth as soon as it becomes an incorporated association under this Act.
- (4) Subsection (1) has effect only for so long as a body is an incorporated association under this Act.

Part 2 Incorporation

7 Eligibility for incorporation

- (1) Subject to this Act, an association formed or carried on for any lawful object and consisting of not less than 5 members is eligible to be incorporated under this Act.
- (2) Notwithstanding subsection (1), an association is not eligible to be incorporated under this Act if the association:
 - (a) is carried on for the object of trading or securing pecuniary gain for its members,
 - (b) has a capital divided into shares or stock held by members of the association,
 - (c) holds property in which the members of the association have a disposable interest, whether directly or in the form of shares or stock in the capital of the association, or otherwise,
 - (d) is an industrial organisation within the meaning of the *Industrial Relations Act 1996* that is a State organisation incorporated under that Act,
 - (e) is registered as a co-operative under the *Co-operatives Act 1992*, a society under the *Friendly Societies Act 1989*, a building society or credit union under the *Financial Institutions (NSW) Code* or a co-operative housing society under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or
 - (f) is a company within the meaning of the *Corporations Act 2001* of the Commonwealth, other than a company limited by guarantee within the meaning of that Act, or
 - (g) is an association which is, or is included in a class of associations which is,

prescribed for the purposes of this subsection.

- (3) The incorporation of an association under this Act is valid notwithstanding that the association was not eligible to be so incorporated.

8 Authority to apply for incorporation

- (1) An association which is eligible to be incorporated under this Act may, by special resolution:
- (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the association under this Act,
 - (b) approve a statement of objects of the proposed incorporated association, and
 - (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association.
- (2) For the purpose of forming themselves into an incorporated association, 5 or more persons together may, in respect of a proposed association which would be eligible to be incorporated under this Act:
- (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the proposed association under this Act,
 - (b) approve a statement of objects of the proposed incorporated association,
 - (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association, and
 - (d) nominate 2 or more of their number to be the first members of the committee of the proposed incorporated association.
- (3) A person authorised under subsection (1) or (2) to incorporate an association or proposed association may make application to the Commissioner for the incorporation of the association or proposed association under this Act and may perform all such acts and do all such things as may be necessary for securing the incorporation of the association or proposed association under this Act, notwithstanding, in the case of an association referred to in subsection (1), anything to the contrary in the rules, if any, of the association.

9 Application for incorporation

An application for the purposes of section 8 shall be in an approved form and:

- (a) shall state:

- (i) the proposed name of the incorporated association, being a name under which an association may be incorporated in accordance with section 12,
 - (ii) the place where the principal place of administration of the incorporated association is proposed to be situated,
 - (iii) the name and address in the State of the applicant, and
 - (iv) (Repealed)
 - (v) such other particulars as may be prescribed,
- (b) shall be accompanied by a copy of the statement of objects of the proposed incorporated association that has been approved as referred to in section 8,
- (c) shall be accompanied by a copy of the rules of the proposed incorporated association, being rules that comply with section 11 and which have been approved as referred to in section 8 or a statement that adoption of the model rules as the rules of the proposed incorporated association has been so approved,
- (d) (Repealed)
- (e) shall be accompanied by a statutory declaration made by the applicant declaring:
- (i) that the applicant is authorised in accordance with section 8 to apply for the incorporation of the association or proposed association under this Act, and
 - (ii) that the particulars contained in the application are true,
 - (iii) (Repealed)
- (f) shall be accompanied by such other documents as may be prescribed, and
- (g) shall be accompanied by the prescribed fee.

10 Certificate of incorporation

- (1) Subject to subsection (2), where an application is made in accordance with section 9, the Commissioner shall incorporate the association or proposed association under this Act by granting in respect of it a certificate of incorporation in an approved form.
- (2) The Commissioner may refuse to incorporate an association or proposed association pursuant to subsection (1) if the Commissioner is satisfied that incorporation of the association or proposed association under this Act would be inappropriate or inconvenient:
- (a) by reason of the Commissioner's assessment of:
 - (i) the likely scale or nature of the activities of the association or proposed association,

- (ii) the likely value or nature of the property of the association or proposed association, or
 - (iii) the extent or nature of the dealings which the association or proposed association has, or is likely to have, with the public, or
- (b) for any other prescribed reason.

11 Rules of incorporated associations

- (1) The rules of an incorporated association or proposed incorporated association comply with this section if:
- (a) they make provision, whether by adoption of the model rules or otherwise, for:
 - (i) the several matters specified in Schedule 1, and
 - (ii) such other matters as may be prescribed, and
 - (b) they are divided into paragraphs which are designated by letters in alphabetical order or are numbered consecutively.
- (2) Subject to this Act, the rules of an incorporated association bind the association and the members of the association to the same extent as if the rules had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the rules.

12 Names

- (1) Except with the consent of the Minister, an association shall not be incorporated under a name that is in the opinion of the Commissioner undesirable or is a name, or a name of a kind, under which the Minister has for the purposes of this Act directed the Commissioner not to incorporate an association.
- (2) An association shall not be incorporated under a name that has not been reserved in respect of the association under section 13.
- (3) An incorporated association shall have at the end of its name the word "Incorporated" or the abbreviation "Inc."
- (4) The name of an incorporated association shall appear in legible characters on all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or executed by or on behalf of the association and if default is made in complying with this subsection the association shall be guilty of an offence and liable to a penalty not exceeding 2 penalty units.
- (5) Nothing in this section requires an incorporated association to use the word "Incorporated" or the abbreviation "Inc." at the end of its name when the name

appears on any document (other than a document referred to in subsection (4)) or on any other matter.

13 Reservation of name

- (1) A person may apply to the Commissioner in an approved form for the reservation of a name set out in the application as:
 - (a) the name of a proposed incorporated association, or
 - (b) the name to which an incorporated association proposes to change its name.
- (2) If the Commissioner is satisfied that an application made under subsection (1) for the reservation of a name is made in good faith and the name is available for reservation, the Commissioner shall, if the prescribed fee has been paid, reserve the name for a period of 3 months from the date of lodgment of the application and, where the Commissioner so reserves the name, the name shall be deemed to have been reserved from that date.
- (3) Where:
 - (a) at any time during a period for which a name is reserved under this section (whether or not pursuant to the exercise on a previous occasion or previous occasions of a power under this section) and application is made to the Commissioner for an extension of that period, and
 - (b) the Commissioner is satisfied that the application is made in good faith,the Commissioner may extend that period for a further period of 3 months.
- (4) The reservation of a name under this section in respect of a proposed incorporated association or an incorporated association does not of itself entitle the proposed incorporated association or the incorporated association to be incorporated by that name, either originally or on a change of name.

14 Change of name

- (1) An incorporated association may by special resolution and with the approval of the Commissioner change its name.
- (2) Where an incorporated association has passed a special resolution for the change of its name, the public officer of the association may make application to the Commissioner for its approval to the change of name.
- (3) An application under subsection (2) shall be in an approved form and:
 - (a) shall be made within the prescribed period after the date of the meeting of the incorporated association at which the special resolution was passed,

- (b) shall be accompanied by such verification of the application as is prescribed, and
 - (c) shall be accompanied by the prescribed fee.
- (4) Where an application is made under this section, the Commissioner shall not approve a change of name of an incorporated association unless the proposed new name is a name under which an association may be incorporated in accordance with section 12.
- (5) Where an application is made under this section and the Commissioner approves the change of name of an incorporated association, the Commissioner shall issue a certificate of incorporation in an approved form in respect of the incorporated association under its new name.
- (6) Neither a change of name of an incorporated association pursuant to this Act nor the issue of a certificate of incorporation under subsection (5) in respect of the change operates:
- (a) to create a new legal entity,
 - (b) to prejudice or affect the identity of the body corporate constituted by the incorporated association or its continuity as a body corporate,
 - (c) to affect the date of incorporation of the incorporated association,
 - (d) to affect the property, or the rights or obligations, of the incorporated association, or
 - (e) to render defective any legal proceedings by or against the incorporated association,
- and any legal proceedings that might have been continued or commenced by or against the association in its former name may be continued or commenced by or against the association in its new name.

Part 3 Incorporated associations

15 Effect of incorporation

- (1) On and from the date specified as the date of incorporation in a certificate of incorporation of an association granted under this Act (other than under section 14 (5)), but subject to this Act and the rules of the incorporated association:
- (a) in the case of a certificate granted under section 10, the persons who were the members of the association immediately before that date or, where the certificate is granted in respect of a proposed association as referred to in section 8 (2), the persons who under that subsection authorised incorporation of the proposed association,

- (b) in the case of a certificate granted under section 47, the persons who were, immediately before that date, the members of the incorporated associations which were parties to the amalgamation to which the certificate relates, or
- (c) in the case of a certificate granted under section 48, the persons who, immediately before that date, were the members of the company or society in respect of which the application under that section was made,

together with any other persons who from time to time become members of the incorporated association (as from the time they become members), are an incorporated association by the name set out in the certificate, subject to any change of name effected by the issue of a new certificate of incorporation under section 14 (5).

- (2) The incorporated association:
 - (a) is capable forthwith of performing all the functions of the body corporate,
 - (b) is capable of suing and being sued,
 - (c) has perpetual succession and shall have a common seal, and
 - (d) has power to acquire, hold and dispose of property.
- (3) Schedule 2 has effect in relation to an incorporated association.

16 Rights and liabilities of members and officers

- (1) Subject to this Act and the rules of the incorporated association, a member or officer of an incorporated association shall not by reason only of being such a member or officer be liable to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges and expenses of the winding up of the association.
- (2) Subject to this Act, membership of an incorporated association does not confer upon members of the association any right, title or interest, whether legal or equitable, in the property of the association.

17 Powers of incorporated associations

- (1) Subject to this Act, an incorporated association has the rights, the powers and the privileges of a natural person and, without limiting the generality of the foregoing, has power:
 - (a) to grant a floating charge on property of the association,
 - (b) to procure the association to be registered or recognised as a body corporate in any place outside the State, and

- (c) to do any act that it is authorised to do by any other law.
- (2) The rules of an incorporated association may restrict or prohibit the exercise by the association of any of the powers referred to in subsection (1).
- (3) An incorporated association has the capacity to exercise its powers in a place outside the State.

18 Restrictions on incorporated associations

- (1) Subject to this Act, an incorporated association shall not:
 - (a) exercise any power that the association is prohibited, by the rules of the association, from exercising,
 - (b) exercise any power contrary to a restriction on the exercise of that power contained in the rules of the association, or
 - (c) do any act otherwise than in pursuance of the objects of the association.
- (2) An officer of an incorporated association shall not be in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention by the association of subsection (1).
- (3) An act of an incorporated association, including the making of an agreement by an incorporated association and a transfer of property to or by an incorporated association, is not invalid by reason only that the doing of the act is prohibited by subsection (1) or by the rules of the association.
- (4) An act of an officer of an incorporated association is not invalid by reason only that the doing of the act is prohibited by subsection (2).
- (5) The fact that:
 - (a) the doing of an act by an incorporated association was or would be prohibited by subsection (1) or by the rules of the association, or
 - (b) the doing of an act by an officer of an incorporated association was or would be prohibited by subsection (2),may be asserted or relied on only in:
 - (c) a prosecution of a person for an offence against this Act,
 - (d) proceedings against the association by a member of the association to restrain the doing of any act by the association,
 - (e) proceedings by the association, or by a member of the association, against a present or former officer of the association, or

- (f) an application by the Commissioner or by a member of the association to wind up the association.

Part 4 Affairs of incorporated associations

19 Objects and rules

- (1) The objects of an incorporated association are the objects stated in the statement of objects that accompanied the application for its incorporation under this Act, as altered by the incorporated association from time to time in accordance with section 20.
- (2) The rules of an incorporated association are:
 - (a) where the application for incorporation of the association was accompanied by a copy of rules that complied with section 11—those rules as altered by the incorporated association from time to time in accordance with section 20 and those rules deemed to be included by subsection (3), or
 - (b) except where paragraph (a) applies—the model rules as in force from time to time, as altered from time to time by the incorporated association in accordance with section 20.
- (3) Where in relation to any matter the model rules make provision but the rules of an incorporated association do not make provision, the provision of the model rules shall, in relation to that matter, be deemed to be included in the rules of the incorporated association.
- (4) An object or a rule of an incorporated association is of no effect if it is inconsistent with this Act or contrary to law.

20 Alteration of objects and rules

- (1) An incorporated association may, by special resolution, alter its statement of objects or its rules.
- (2) The public officer of an incorporated association shall, within 1 month after the passing of a special resolution altering the statement of objects or the rules of an incorporated association, lodge with the Commissioner notice in an approved form, verified as prescribed and accompanied by the prescribed fee, setting out particulars of the alteration.

Maximum penalty: 1 penalty unit.

- (3) Any such alteration has effect when the notice is lodged with the Commissioner and the requirements of subsection (2) are complied with in respect of the alteration.
- (4) An alteration of the rules of an incorporated association is of no effect unless those

rules, as so altered, comply with section 11.

21 Committee of incorporated association

- (1) Unless the rules of an incorporated association otherwise provide, the first members of the committee of the incorporated association are:
 - (a) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (1)—the members of the committee of the association immediately before the association was incorporated,
 - (b) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (2)—the persons nominated pursuant to that subsection to be the first members of the committee,
 - (c) in the case of an incorporated association formed by the amalgamation of incorporated associations pursuant to section 47—the person specified in the application for that amalgamation under section 46 as nominated to be the first members of the committee of the amalgamated incorporated association, or
 - (d) in the case of a company or society incorporated as an incorporated association pursuant to section 48—the persons who had the management of the society or who were directors of the company, as the case may be, immediately before the date of its incorporation under this Act.
- (2) (Repealed)

21A Register of committee members

- (1) An incorporated association must keep a register of the members of the committee of the association.
- (2) The register must contain the following particulars:
 - (a) the names and residential addresses of each person who is a member of the committee,
 - (b) the date on which the person became a member,
 - (c) such other particulars as may be prescribed.
- (3) The register must be kept at the residential address of the public officer of the incorporated association concerned or at such other place or in such other manner as may be prescribed.
- (4) An incorporated association must record in the register any change in the membership of the committee of the association within 1 month after the change occurs.

- (5) In the case of an incorporated association that has ceased to exist, the person who was the public officer of the association immediately before the association ceased to exist must keep the register for a period of 2 years after the association ceased to exist.
- (6) The register of the members of the committee of an incorporated association may, at all reasonable hours, be inspected by any person without payment of any fee.

Maximum penalty (subsections (1)–(5)): 1 penalty unit.

22 Public officer

- (1) Unless the rules of the incorporated association otherwise provide, the first public officer of an incorporated association is:
 - (a) in the case of an incorporated association incorporated pursuant to an application under section 9—the person who made the application, or
 - (b) in the case of an incorporated association incorporated pursuant to an application under section 46 or 48—the person nominated in the application as the first public officer.
- (2) Unless the rules of the association otherwise provide, the public officer of an incorporated association may hold any other office of the association.

23 Vacancy in office of public officer

- (1) Where at any time there is a vacancy in the office of public officer of an incorporated association, the committee of the association shall, within 14 days after the vacancy arises:
 - (a) give notice of the occurrence of the vacancy to the Commissioner in an approved form, and
 - (b) appoint a person to fill the vacancy.
- (2) Where the committee of an incorporated association fails to comply with subsection (1), each member of the committee is guilty of an offence and liable to a penalty not exceeding 2 penalty units.
- (3) A person is not eligible to be appointed as public officer of an incorporated association unless:
 - (a) the person has attained the age of 18 years, and
 - (b) the person is resident in the State.
- (4) The acts of the public officer of an incorporated association are not invalid by reason only of any defect that may be discovered in the appointment or qualification of the

public officer.

24 Casual vacancy in office of public officer

- (1) An incorporated association may remove the association's public officer from that office.
- (2) The public officer of an incorporated association shall be deemed to have vacated the office if the public officer:
 - (a) dies,
 - (b) resigns the office,
 - (c) is removed from office,
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
 - (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act, or
 - (f) ceases to be a resident in the State.

25 Address of public officer

- (1) The public officer of an incorporated association shall, within 14 days after becoming public officer, give notice to the Commissioner in an approved form, accompanied by the prescribed fee, of the fact and of his or her full name and address in the State.
- (2) Where a public officer changes his or her address in the State, the public officer shall, within 14 days after the change, give notice of the change in an approved form, accompanied by the prescribed fee.

Maximum penalty: 1 penalty unit.

26 Annual general meeting

- (1) Subject to subsection (2), an incorporated association shall, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the association, convene an annual general meeting of its members.
- (2) An incorporated association shall hold its first annual general meeting:
 - (a) within the period of 18 months after its incorporation under this Act, and
 - (b) within the period of 6 months after the expiration of the first financial year of the association.

- (3) The Commissioner may, on application (accompanied by the prescribed fee) being made by the public officer of the incorporated association concerned, subject to such conditions as the Commissioner thinks fit:
 - (a) extend the period of 6 months referred to in subsection (1) or the period of 18 months referred to in subsection (2), or
 - (b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held.
- (4) An incorporated association is not in default in holding an annual general meeting under subsection (1) or (2) if, pursuant to an extension or permission under subsection (3), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) or (2), as the case may be, to be held, but is held within the extended period or in the calendar year in which under subsection (3) it is permitted to be held.
- (5) An application by an incorporated association for an extension of a period or for permission under subsection (3) shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required by subsection (1) or (2), as the case may be, to be held.
- (6) At the annual general meeting of an incorporated association, the committee of the association shall submit to members of the association a statement which is not misleading and which gives a true and fair view of the following:
 - (a) the income and expenditure of the association during its last financial year,
 - (b) the assets and liabilities of the association at the end of its last financial year,
 - (c) the mortgages, charges and other securities of any description affecting any of the property of the association at the end of its last financial year,
 - (d) in respect of each trust of which the association was trustee during a period, being the whole or any part of the last financial year of the association:
 - (i) the income and expenditure of the trust during that period,
 - (ii) the assets and liabilities of the trust during that period, and
 - (iii) the mortgages, charges and other securities of any description affecting any of the property of the trust at the end of that period.
- (7) Where an incorporated association fails to comply with the provisions of this section, the incorporated association and each member of the committee of the association is guilty of an offence and liable to a penalty not exceeding 2 penalty units.

27 Lodgment of statement regarding accounts

- (1) The public officer of an incorporated association shall, within 1 month after the date of each annual general meeting of the association, lodge with the Commissioner in an approved form, verified as prescribed, a statement:
 - (a) containing the particulars referred to in section 26 (6) and such other particulars as may be prescribed,
 - (b) accompanied by a certificate signed by 2 members of the committee of the incorporated association authorised by resolution of the committee to the effect that the statement has been submitted to the members at an annual general meeting of the incorporated association,
 - (c) accompanied by a copy of the terms of any resolution passed at that meeting concerning that statement, and
 - (d) accompanied by the prescribed fee.

Maximum penalty: 2 penalty units.

- (1A) The Commissioner may, at any time, insert in a form approved for the purposes of the statement referred to in subsection (1), such details relating to an incorporated association as are known to the Commissioner, and may provide the partially-completed form (or part of the form) to the association concerned.
- (1B) The public officer of an incorporated association provided with such a form does not meet the requirements of subsection (1) if the public officer does not cause the form to be completed in full (with details that were inserted by the Commissioner corrected if necessary and further matter added if part only of the form was provided) and duly lodged in accordance with this section.
- (2) The Commissioner may, on the application (accompanied by the prescribed fee) of the public officer of an incorporated association, if the Commissioner thinks fit, extend or further extend the period for lodging a statement under subsection (1).
- (3) An application for an extension under subsection (2) may be made, and the power of the Commissioner under that subsection may be exercised, notwithstanding that the period referred to in subsection (1) has expired.
- (4) The Commissioner may, by notice in writing given to an incorporated association, exempt the public officer of the association either generally or in relation to a specified year from compliance with the provisions of subsection (1) in relation to the association and may, by notice in writing given to an incorporated association, revoke any general exemption given under this subsection to the public officer of the association.

- (5) Two or more different fees may be prescribed under subsection (2), depending on how long after the relevant annual general meeting the application for an extension or further extension under that subsection is made. The fee prescribed may not exceed an amount equal to 2 penalty units.
- (6) The Commissioner may waive or remit payment of the whole or any part of a fee required to accompany a statement or application under this section.

28 Keeping of accounts and minutes of proceedings

- (1) An incorporated association must ensure:
 - (a) that proper accounting records are kept which correctly record and explain the transactions of the association and its financial position, and
 - (b) that minutes of all proceedings at committee meetings and general meetings of the association are entered in books kept for that purpose.

Maximum penalty: 5 penalty units.

- (2) The regulations may make provision for or in respect of the keeping and inspection of accounts and minutes under this section.

Part 5 Contracts, debts, etc, of incorporated associations

Division 1 General

29 Entering into contracts

- (1) A person acting under the express or implied authority of an incorporated association may enter into, vary or discharge a contract in the name of or on behalf of the association in the same manner as if the contract were entered into, varied or discharged by a natural person.
- (2) The entering into, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the incorporated association and other parties to the contract.
- (3) A contract or other common document executed, or purporting to have been executed, under the common seal of an incorporated association is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in the contract or other document or in the matter to which the contract or other document relates.
- (4) Nothing in this section prevents an incorporated association from entering into, varying or discharging a contract under its common seal.
- (5) Nothing in this section affects the operation of a law that requires some consent or

sanction to be obtained, or some procedure to be complied with, in relation to the entering into, variation or discharge of a contract.

- (6) A document or proceeding requiring authentication by an incorporated association may be authenticated by the signature of the public officer of the association and need not be authenticated under the common seal of the association.

30 Agent

- (1) An incorporated association may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent to execute deeds on the association's behalf, and a deed signed by such an agent on behalf of the association and under the agent's seal binds the association and has the same effect as if it were under the common seal of the association.
- (2) The authority of an agent empowered pursuant to subsection (1), as between the incorporated association and a person dealing with the agent, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with the agent.

Division 2 Pre-incorporation contracts

31 Definitions

In this Division:

- (a) a reference to a non-existent incorporated association purporting to enter into a contract is a reference to:
- (i) a person executing a contract in the name of an incorporated association, where no such incorporated association exists, or
 - (ii) a person purporting to enter into a contract as agent or trustee for a proposed incorporated association,
- (b) a reference to a person who purports to execute a contract on behalf of a non-existent incorporated association is a reference to a person who executes a contract or purports to enter into a contract as referred to in paragraph (a) (i) or (ii), and
- (c) a reference, in relation to the purported entry into a contract by a non-existent incorporated association, to the incorporation of the association is a reference to:
- (i) where a person has executed a contract in the name of an incorporated association and no such incorporated association exists—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the incorporated association in the name of which the person executed the contract, or

- (ii) where a person has purported to enter into a contract as agent or trustee for a proposed incorporated association—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the proposed incorporated association.

32 Ratification of pre-incorporation contracts

(1) Where:

- (a) a non-existent incorporated association purports to enter into a contract, and
- (b) the association is incorporated within a reasonable time after the contract is purported to be entered into,

the incorporated association may, within a reasonable time after it is incorporated, ratify the contract.

- (2) Where an incorporated association ratifies a contract as provided by subsection (1), the association is bound by, and is entitled to the benefit of, that contract as if the association had been incorporated before the contract was entered into and had been party to the contract.

(3) Where:

- (a) a person purports to enter into a contract as agent or trustee for a proposed incorporated association, and
- (b) the association is incorporated within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the association is incorporated,

then, notwithstanding any rule of law or equity, the agent or trustee does not have any right of indemnity against the incorporated association in respect of the contract.

33 Liability of person executing pre-incorporation contract

(1) Where a non-existent incorporated association purports to enter into a contract and:

- (a) the association is not incorporated within a reasonable time after the contract is purported to be entered into, or
- (b) the association is incorporated within such a reasonable time but does not ratify the contract within a reasonable time after the association is incorporated,

the other party or each of the other parties to the contract may, subject to subsections (3) and (6), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent incorporated association an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the incorporated association if:

- (c) where the association has not been incorporated as referred to in paragraph (a)—the association had been incorporated and had ratified the contract as provided by section 32, or
 - (d) where the association has been incorporated as referred to in paragraph (b)—the incorporated association had ratified the contract as provided by section 32, and the contract had been discharged by reason of a breach of the contract constituted by the refusal or failure of the incorporated association to perform any obligation under the contract.
- (2) Where proceedings are brought to recover damages under subsection (1) in relation to a contract purported to be entered into by a non-existent incorporated association and the association has been incorporated, the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following orders:
- (a) an order directing the incorporated association to transfer or pay to any party to the contract who is named in the order, any property, or an amount not exceeding the value of any benefit, received by the incorporated association as a result of the contract,
 - (b) an order that the incorporated association pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.
- (3) Where, in proceedings to recover damages under subsection (1) in relation to a contract purported to be entered into by a non-existent incorporated association the court in which the proceedings are brought makes an order under subsection (2) (a), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.
- (4) Where:
- (a) a non-existent incorporated association purports to enter into a contract,
 - (b) the association is incorporated and ratifies the contract as provided by section 32,
 - (c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the incorporated association to perform all or any of its obligations under the contract, and
 - (d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the incorporated association for damages for breach of the contract,

the court in which the proceedings are brought may, subject to subsection (6), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the incorporated association to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the incorporated association has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

- (5) Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent incorporated association, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, consent to the first-mentioned person being exempted from any liability in relation to the contract.
- (6) Where a person has, as provided by subsection (5), consented to the exemption of another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent incorporated association:
 - (a) notwithstanding subsection (1), that first-mentioned person is not entitled to recover damages from that other person in relation to that contract, and
 - (b) a court shall not, in proceedings under subsection (4), order that other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the incorporated association has been, or may be, found liable to pay to that first-mentioned person.

34 Contract in substitution for pre-incorporation contract

If:

- (a) a non-existent incorporated association purports to enter into a contract,
- (b) the association is incorporated, and
- (c) the incorporated association and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract,

any liabilities to which the person who purported to execute the first-mentioned contract on behalf of the non-existent incorporated association is subject under this Division in relation to the first-mentioned contract (including liabilities under an order made by a court under this Division) are discharged.

35 Effect of Division on other rights and liabilities

Any rights or liabilities of a person under this Division (including rights and liabilities under an order made by a court under this Division) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this Division, in relation to the contract.

36 Manner of ratification

For the purposes of this Division, a contract may be ratified by an incorporated association in the same manner as a contract may be entered into by an incorporated association under section 29 and the provisions of section 29 have effect as if:

- (a) a reference in that section to the entering into of a contract included a reference to the ratification of a contract, and
- (b) the reference in subsection (3) of that section to a contract executed, or purporting to have been executed, under the common seal of an incorporated association included a reference to a contract ratified, or purporting to have been ratified, under the common seal of an incorporated association.

Division 3 Offences

37 Definitions

- (1) This Division applies to an incorporated association:
 - (a) that has been wound up or is in the course of being wound up,
 - (b) the incorporation of which has been cancelled by the Commissioner, or
 - (c) that is unable to pay its debts.
- (2) In this Division, **appropriate officer** means:
 - (a) in relation to an incorporated association that has been or is being wound up—the liquidator, or
 - (b) in relation to an incorporated association the incorporation of which has been cancelled by the Commissioner or which is unable to pay its debts—the Commissioner.
- (3) For the purposes of this section, an incorporated association shall be deemed to be unable to pay its debts if, but only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the association is returned unsatisfied in whole or in part.

38 Offences relating to incurring of debts or fraudulent conduct

- (1) If an incorporated association incurs a debt and:
 - (a) immediately before the time the debt is incurred:
 - (i) there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they become due, or
 - (ii) there are reasonable grounds to expect that, if the association incurs the debt,

it will not be able to pay all its debts as and when they become due, and

(b) the association is, at the time the debt is incurred, or becomes at a later time, an association to which this Division applies,

any person who was a member of the committee of the association at the time the debt was incurred is guilty of an offence and liable to a penalty not exceeding 50 penalty units or imprisonment for a period not exceeding 1 year, or to both such penalty and imprisonment, and the association and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

(2) In any proceedings against a person under subsection (1), it is a defence if the defendant proves:

(a) that the debt was incurred without the defendant's express or implied authority or consent, or

(b) that, at the time the debt was incurred, the defendant did not have reasonable cause to expect:

(i) that the association would not be able to pay all its debts as and when they became due, or

(ii) that, if the association incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of the debt.

(4) Where subsection (1) renders a person or persons liable to pay a debt incurred by an incorporated association, the payment by that person or either or any of those persons of the whole or any part of the debt does not render the association liable to the person or persons concerned in respect of the amount so paid.

(5) If:

(a) an incorporated association does any act (including the entering into of a contract or transaction) with intent to defraud creditors of the association or of any other person or for any other fraudulent purpose, and

(b) the association is at the time it does the act, or becomes at a later time, an association to which this Division applies,

any person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence and liable to a penalty not exceeding 100 penalty

units or imprisonment for a period not exceeding 2 years, or to both such penalty and imprisonment.

39 Certificate evidence

- (1) A certificate issued by the proper officer of a court stating that a person specified in the certificate:
 - (a) was convicted of an offence under section 38 (1) in relation to a debt specified in the certificate incurred by an incorporated association so specified, or
 - (b) was convicted of an offence under section 38 (5) in relation to an incorporated association specified in the certificate,is, in any proceeding, prima facie evidence of the matters stated in the certificate.
- (2) A document purporting to be a certificate issued under subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

40 Powers of Court

- (1) Where a person has been convicted of an offence under section 38 (1) in respect of the incurring of a debt, the Court, on the application of the Commissioner or of the person to whom the debt is payable, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.
- (2) Where a person has been convicted of an offence under section 38 (5), the Court, on the application of the Commissioner or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment of the association of the amount required to satisfy so much of the debts of the association as the Court thinks proper.
- (3) For the purposes of subsection (2), in relation to an association in respect of which a conviction referred to in that subsection relates:
 - (a) the appropriate officer, and
 - (b) a member or creditor of the association authorised by the Commissioner to make an application under that subsection,are prescribed persons.
- (4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to

that declaration.

- (5) In particular, the Court may order that the liability of the person under the declaration shall be a charge:
- (a) on a debt or obligation due from the association to the person, or
 - (b) on a right or interest under a charge on any property of the association held by or vested in the person liable or a person on behalf of the person liable, or a person claiming as assignee from or through the person liable or a person acting on behalf of the person liable.
- (6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).
- (7) For the purpose of subsection (5), **assignee** includes a person to whom or in whose favour, by the direction of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.
- (8) On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence personally or call witnesses.

41 Certain rights not affected

Nothing in section 38 (1) or 40 (1) or (2) affects any rights of a person to indemnity, subrogation or contribution.

Part 6 Insurance

42 Definitions

In this Part, **approved insurer** means a person, or a person belonging to a class of persons:

- (a) approved as referred to in section 95 of the *Strata Schemes Management Act 1996*, or
- (b) approved by the Minister by order published in the Gazette.

43 Returns by approved insurers

An approved insurer shall, within 14 days after any insurance effected or renewed with the insurer by an incorporated association pursuant to section 44 lapses or is cancelled, notify the Commissioner giving details of the lapsing or cancellation.

Maximum penalty: 1 penalty unit.

44 Requirement to insure

- (1) An incorporated association shall effect and maintain with an approved insurer such insurance against a liability of the association as may be required by the regulations, for a cover of not less than the amount required by the regulations.

Maximum penalty: 5 penalty units.

- (2) Without affecting the generality of subsection (1), regulations made for the purpose of that subsection may require an incorporated association to effect and maintain insurance against a liability of the association arising out of an occurrence causing death or bodily injury to a person or damage to property.

45 Exemption where members liable

Section 44 does not operate to require an incorporated association to effect and maintain insurance against a liability of the association if the members of the association are each liable to contribute in a winding up of the association to an amount which is not less than the amount of the cover required under that section in respect of the liability.

Part 7 Amalgamation of associations and transfers of incorporation

46 Application for amalgamation

- (1) Any 2 or more incorporated associations may apply to be amalgamated as an incorporated association under this Act.
- (2) An application shall not be made under subsection (1) unless the terms of amalgamation, the statement of objects and the rules of the proposed amalgamated incorporated association are approved by a special resolution of each of the incorporated associations.
- (3) An application under subsection (1) may be made by the public officers of the incorporated associations in an approved form and shall:
 - (a) be accompanied by a copy of the statement of objects of the proposed amalgamated incorporated association,
 - (b) be accompanied by a copy of the rules of the proposed amalgamated incorporated association,
 - (c) be accompanied by a notice in an approved form of the passing of the special resolutions referred to in subsection (2),
 - (d) set out:
 - (i) the name of the incorporated association proposed to be formed by the amalgamation, being a name under which an association may be incorporated in accordance with section 12,

- (ii) the name and address in the State of a person resident in the State who has been nominated as the first public officer of the proposed amalgamated incorporated association, being a person who has attained the age of 18 years,
 - (iii) the names of the persons who have been nominated as the first members of the committee of the proposed amalgamated incorporated association,
 - (iv) the place where the principal place of administration of the amalgamated incorporated association is proposed to be situated, and
 - (v) such other particulars as may be prescribed, and
- (e) be accompanied by the prescribed fee.

47 Certificate of incorporation of amalgamated associations

If the Commissioner is satisfied that each of the incorporated associations making an application under section 46 has complied with the provisions of this Act and of the regulations and that the statement of objects and the rules of the incorporated association to be formed by the amalgamation are not contrary to this Act or the regulations, the Commissioner shall incorporate under this Act the association formed by the amalgamation by granting in respect of it a certificate of incorporation in an approved form.

48 Application to bring company or co-operative under Act

- (1) A company limited by guarantee within the meaning of the [Corporations Act 2001](#) of the Commonwealth or a co-operative registered under the [Co-operatives Act 1992](#) (not being a co-operative the capital of which is divided into shares or stock), may apply for incorporation under this Act where:
- (a) the company or co-operative has:
 - (i) in the case of a company, passed a special resolution approving the making of the application, or
 - (ii) in the case of a co-operative, resolved in accordance with its rules that the application be made,
 - (b) the objects of the company or co-operative are objects for which an incorporated association may lawfully be carried on, and
 - (c) the company or co-operative has rules that comply with this Act or, upon incorporation under this Act, that will so comply, whether by reason of the adoption of new rules or the model rules or the alteration of its articles of association or former rules.
- (2) A company or co-operative that intends to make an application under subsection (1)

may, notwithstanding any other law to the contrary, make an alteration of its articles of association or rules, or adopt new rules or the model rules, to have effect from the date on which a certificate of incorporation is granted to it under this Act as if it were an incorporated association and the articles or rules were the rules of an incorporated association.

- (3) An application by a company or co-operative under subsection (1) shall be in an approved form and:
- (a) shall state:
 - (i) its proposed name upon incorporation, being a name under which an association may be incorporated in accordance with section 12,
 - (ii) the place where the principal place of administration of the incorporated association is proposed to be situated, and
 - (iii) the name and address in the State of a member who is resident in the State and who has been nominated as the first public officer of the proposed incorporated association, being a person who has attained the age of 18 years,
 - (b) shall be accompanied by:
 - (i) a statement of objects as proposed to be in force upon its incorporation under this Act,
 - (ii) a copy of its articles of association or rules as proposed to be in force upon its incorporation under this Act or a statement that its rules will be the model rules, and
 - (iii) (Repealed)
 - (iv) the name, address and occupation of each of its directors,
 - (c) shall contain such other particulars as may be prescribed, and
 - (d) shall be accompanied by the prescribed fee.
- (4) Where an application is made under this section, the Commissioner, if satisfied that there is no reasonable cause why the company or co-operative should not be incorporated under this Act and that the company or co-operative is not carried on for the object of trading or securing pecuniary gain for its members, shall:
- (a) incorporate the company or co-operative under this Act by granting in respect of it a certificate of incorporation in an approved form,
 - (b) in the case of a co-operative, give notice of the incorporation of the co-operative under this Act to the Registrar of Co-operatives, and

(c) cause a notice of the incorporation of the company or co-operative under this Act to be published in the Gazette.

(5) Section 4 applies for the purposes of the interpretation of the reference in subsection (4) to trading or securing pecuniary gain as if a reference in section 4 to an association were a reference to a company or co-operative.

49 Effect of transfer of incorporation

(1) **Incorporation of company** Subject to this section, if a company is incorporated as an incorporated association under section 48, section 6 does not operate to declare a company to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* in relation such provisions of the Corporations legislation as are necessary:

(a) to continue in existence any right, privilege, obligation or liability acquired or incurred under that Act or any other law before the incorporation, or

(b) to preserve any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act or any other law before the incorporation, or

(c) to enable any investigation, legal proceeding or remedy to be instituted, continued or enforced in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

(2) **Incorporation of co-operative** Subject to this section, if a co-operative is incorporated as an incorporated association under section 48:

(a) the co-operative is dissolved and none of the provisions of the *Co-operatives Act 1992* apply to the co-operative after its incorporation, and

(b) the Registrar of Co-operatives must cancel the registration of the co-operative.

(3) **Identity of company or co-operative** The incorporation of a company or co-operative as an incorporated association under section 48 does not affect the identity of the company or co-operative. Any such association is taken to be the same body before and after the incorporation.

(4) **Proceedings against company or co-operative** No act, matter or thing is affected or abated by the incorporation under section 48 of a company or co-operative. In particular, any claim by or against the company or co-operative immediately before its incorporation under that section may be:

(a) continued by or against the incorporated association in the name of the company or co-operative, or

(b) commenced by or against the incorporated association in the name of the incorporated association.

- (5) **Preservation of existing rights liabilities etc** Without limiting the generality of subsections (3) and (4), nothing in section 6 or subsection (2):
- (a) affects any right, privilege, obligation or liability acquired or incurred under the Act referred to in subsection (2) or under any other law, or
 - (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act or any other law, or
 - (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if section 6 or subsection (2) had not been enacted.
- (6) **Application of subsections (3)-(5) to companies** Subsections (3)-(5) have effect in relation to a matter concerning a company only to extent that the matter is not dealt with by the *Corporations Act 2001* of the Commonwealth.

Part 8 Winding up and cancellation of incorporation

50 Voluntary winding up

- (1) An incorporated association may be wound up voluntarily if the association so resolves by special resolution.
- (2) The voluntary winding up of an incorporated association 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 Parts 5.5 (Voluntary winding up) and 5.6 (Winding up generally) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications referred to in section 52, and
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

51 Winding up by the Court

- (1) The Court may order the winding up of an incorporated association if:
 - (a) the incorporated association has by special resolution resolved that it be wound up by the Court,
 - (b) the incorporated association does not commence its operations within 1 year after the date of its incorporation under this Act or suspends its operations for a whole year,
 - (c) the incorporated association is unable to pay its debts,
 - (d) the incorporated association has traded or secured pecuniary gain for its members,
 - (e) the incorporated association has, as trustee, traded or secured pecuniary gain for members of the incorporated association,
 - (f) the incorporated association has engaged in activities inconsistent with its statement of objects,
 - (g) the committee of the incorporated association has acted in affairs of the association in the interests of the committee or of members of the committee rather than in accordance with the statement of objects of the association, or in any other manner whatever that appears to the Court to be unfair or unjust to members of the association,
 - (h) the Minister has by notice under section 56 directed the incorporated association to become registered as a company under the [Corporations Act 2001](#) of the Commonwealth or to become registered as a society under the [Co-operatives Act 1992](#) and the association has not become so registered within the time fixed by, and in accordance with any conditions specified in, the notice,
 - (i) the incorporated association would, if not incorporated under this Act, not be eligible to be so incorporated, or
 - (j) the Court is of the opinion that it is just and equitable that the incorporated association be wound up.
- (2) An application to the Court for the winding up of an incorporated association may be made by the incorporated association or by a member or creditor of the incorporated association or by the Commissioner.
- (3) The winding up of an incorporated association (other than by a voluntary winding up) by the Court in New South Wales 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, subject to the following modifications:

- (a) the modifications referred to in section 52,
- (b) the provisions of the Part are to be read as if that Part extended to the winding up of the affairs of an incorporated association in New South Wales,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

52 Modifications to text of applied *Corporations Act 2001* of the Commonwealth

The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of sections 50 (2) and 51 (3):

- (a) a reference to a company or body is to be read as a reference to an incorporated association,
- (b) 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,
- (c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association,
- (d) a reference to ASIC is to be read as a reference to the Commissioner,
- (e) a reference to the principal place of business of a company is to be read as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commissioner.

53 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) In a winding up of an incorporated association, the surplus property of the association

is to be distributed in accordance with a special resolution of the association.

(2A) Any such distribution of surplus property:

(a) must be approved by the Commissioner, and

(b) is not to be made to any member or former member of the association, or to any person to be held on trust for any member or former member of the association, unless the member or former member is an association (whether incorporated or unincorporated) that, at the time of the distribution, has rules preventing the distribution of property to its members, and

(c) is subject to any trust affecting that property or any part of it.

(2B) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

(3) A person aggrieved by the operation of this section in relation to the surplus property of an incorporated association may apply to the Court which may make such orders as to the disposal of the surplus property as to the Court appears just.

54 Cancellation of incorporation

(1) Where the Commissioner has reasonable cause to believe that an incorporated association:

(a) is not in operation,

(b) is engaged in trading or securing pecuniary gain for its members,

(c) is, as trustee, engaged in trading or securing pecuniary gain for members of the association,

(d) was incorporated under this Act by reason of fraud or mistake,

(e) has not during the preceding period of 3 years convened an annual general meeting in accordance with section 26, or

(f) is required to be insured in accordance with section 44 and is not so insured,

the Commissioner may send by registered post addressed to the association at the address of the public officer of the association last notified under this Act to the Commissioner or (where there is a vacancy in the office of public officer) at the address which appears from the Commissioner's records to be the address of the association, and publish in a newspaper circulating generally in the State, a notice stating the ground or grounds for the proposed cancellation of 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 notice published in the Gazette.

(2) Unless:

(a) the Commissioner is satisfied that within 2 months after the date of sending or publishing a notice under subsection (1), whichever is the later, cause has been shown to the effect that the incorporated association:

(i) is in operation,

(ii) is not and has not been engaged in trading or securing pecuniary gain for its members,

(iii) is not and has not been, as trustee, engaged in trading or securing pecuniary gain for members of the incorporated association,

(iv) was not incorporated by reason of fraud or mistake,

(v) has during the preceding period of 3 years convened an annual general meeting in accordance with section 26, or

(vi) is insured in accordance with section 44,

as the case may require, or

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

the Commissioner may, by notice published in the Gazette, cancel the incorporation of the association.

(3) Where the Commissioner cancels the incorporation of an incorporated association under subsection (2), the Commissioner shall send to the public officer of the association at the address of the public officer last notified under this Act to the Commissioner or (where there is a vacancy in the office of public officer) to a member of the committee of the association at the address which appears from the Commissioner's records to be the address of the association a notice in an approved form 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 the part of the Commissioner, the Commissioner may reinstate the incorporation of the association, and thereupon the association shall be deemed to have continued in existence as if its incorporation had not been cancelled.

(5) Notwithstanding the cancellation of the incorporation of an association, any liability of the public officer and of each officer and member of the incorporated association

continues and may be enforced as if the incorporation of the association had not been cancelled.

- (6) Where, before the Commissioner cancels the incorporation of an association under subsection (2), the incorporated association has commenced to be wound up under section 50 or 51:
 - (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.

55 Vesting of property after cancellation of incorporation

- (1) Where the incorporation of an incorporated association (not being an incorporated association the winding up of which commenced before the cancellation) is cancelled under section 54:
 - (a) the property of the association vests in the Commissioner, and
 - (b) subject to subsection (3), the Commissioner may give such directions as the Commissioner deems 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 with a view to the realisation 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 is entitled to be paid out of the property of an incorporated association the reasonable costs incurred by the Commissioner in the exercise of the Commissioner's powers under this section in relation to the association.
- (3) Section 53 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.

55A Voluntary cancellation of incorporation

- (1) An incorporated association may apply to the Commissioner, in a form approved by the Commissioner, to have the incorporation of the association cancelled by the

Commissioner.

- (2) Any such application must:
 - (a) be approved by a special resolution of the incorporated association, and
 - (b) be accompanied by a statement indicating the manner in which any surplus property of the association is to be distributed in accordance with section 55B, and
 - (c) be accompanied by a statement (verified by statutory declaration by 2 members of the committee of the association) that the association is able to pay or meet the association's debts and liabilities (if any).
- (3) The Commissioner may, by notice published in the Gazette, cancel the incorporation of the association if the Commissioner is satisfied:
 - (a) that the application is in accordance with subsection (2), and
 - (b) that the association is able to pay or meet its debts and liabilities, and
 - (c) all the requirements of this Act in respect of the association have been met.
- (4) Any such cancellation takes effect on the date of the publication of the relevant notice in the Gazette or such later date as may be specified in the notice.
- (5) If the Commissioner is satisfied that the incorporation of an incorporated association was cancelled under this section:
 - (a) as the result of any error by the Commissioner or in the application by the association, or
 - (b) as a result of any fraud by a member of the association or in order to avoid any liability resulting from an event which arose during the time when the association was incorporated,

the Commissioner may reinstate the incorporation of the association and the association is taken to have continued in existence as if its incorporation had not been cancelled.
- (6) Despite the cancellation of the incorporation of an association under this section, any liability of the public officer and of each officer and member of the incorporated association continues and may be enforced as if the incorporation of the association had not been cancelled.
- (7) If, before the Commissioner cancels the incorporation of an association under this section, the incorporated association has commenced to be wound up under section 50 or 51:
 - (a) the Commissioner may cancel the incorporation despite the commencement of

the winding up, and

(b) the cancellation of the incorporation does not affect the winding up.

55B Distribution of surplus property on voluntary cancellation of incorporation

- (1) On the cancellation of the incorporation of an incorporated association under section 55A, the surplus property of the association (being property of the association remaining after satisfaction of the debts and liabilities of the association) is to be distributed in accordance with a special resolution of the association.
- (2) Any such distribution of surplus property:
 - (a) must be approved by the Commissioner, and
 - (b) is not to be made to any member or former member of the association, or to any person to be held on trust for any member or former member of the association, unless the member or former member is an association (whether incorporated or unincorporated) that, at the time of the distribution, has rules preventing the distribution of property to its members, and
 - (c) is subject to any trust affecting that property or any part of it.
- (3) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.
- (4) A person aggrieved by the operation of this section in relation to the surplus property of an incorporated association may apply to the Court which may make such orders as to the disposal of the surplus property as the Court thinks proper.

56 Registration of incorporated association as company or co-operative

- (1) An incorporated association may, with the approval of the Minister and subject to such conditions as may be specified in the approval, become:
 - (a) registered as a company under the *Corporations Act 2001* of the Commonwealth, or
 - (b) registered as a co-operative within the meaning of the *Co-operatives Act 1992*, in the manner prescribed.
- (2) Where the Minister is satisfied that the continued incorporation of an association under this Act would be inappropriate or inconvenient:
 - (a) by reason of the Minister's assessment of:
 - (i) the scale or nature of the activities of the incorporated association,

- (ii) the value or nature of the property of the incorporated association, or
 - (iii) the extent or nature of the dealings which the incorporated association has with the public, or
- (b) for any other reason which to the Minister appears sufficient,
- the Minister may, by notice to the incorporated association, direct the association to become:
- (c) registered as a company under the *Corporations Act 2001* of the Commonwealth, or
 - (d) registered as a co-operative within the meaning of the *Co-operatives Act 1992*, within the period (being not less than 3 months), and subject to any conditions, specified in the notice.

57 Effect of transfer of incorporation

- (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to:
 - (a) the registration of the association as a company under the *Corporations Act 2001* of the Commonwealth, or
 - (b) the registration of the association as a co-operative within the meaning of the *Co-operatives Act 1992*.
- (2) Subject to this section, upon a transfer of incorporation by an incorporated association:
 - (a) the incorporated association shall be dissolved and none of the provisions of this Act shall, after the transfer of incorporation apply to the association, and
 - (b) the Commissioner shall cancel the incorporation of the association under this Act.
- (3) The transfer of incorporation by an incorporated association does not affect the identity of the association which shall be deemed to be the same body before and after the transfer of incorporation and no act, matter or thing shall be affected or abated by the transfer of incorporation and, in particular, any claim by or against the association subsisting immediately before the transfer of incorporation may be continued by or against the company or society formed by the transfer of incorporation in the name of the incorporated association or commenced by or against the company or society so formed in the name of the company or society.
- (4) Without limiting the generality of subsection (3), nothing in subsection (2):
 - (a) affects any right, privilege, obligation or liability acquired or incurred under this

Act,

- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act, or
- (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (2) had not been enacted.

- (5) This section has effect in relation to a matter concerning an incorporated association that is registered as a company under the *Corporations Act 2001* of the Commonwealth only to extent that the matter is not dealt with by that Act.

57A Effect of incorporation as an Aboriginal association

If an association is incorporated as an Aboriginal association under the *Aboriginal Councils and Associations Act 1976* of the Commonwealth, the Commissioner must cancel the incorporation of the association under this Act.

58 Appeal

A person aggrieved by any act, omission or decision of a liquidator or provisional liquidator of an incorporated association may appeal to the Court in respect of the act, omission or decision, and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as the Court thinks fit.

Part 9 Miscellaneous

59 Register

- (1) The Commissioner shall keep a register for the purposes of this Act in such form and containing such particulars as the Commissioner thinks fit.
- (2) The Commissioner shall keep a copy of a certificate of incorporation granted under section 10, 14, 47 or 48 and a reference in this section to a document lodged with the Commissioner includes a reference to such a copy.
- (3) A person may, upon payment of the prescribed fee:
 - (a) inspect any document lodged with the Commissioner, not being a document that has been destroyed or otherwise disposed of, or
 - (b) require a copy of, or extract from, any document that the person is entitled to inspect pursuant to paragraph (a) to be given, or given and certified, by the

Commissioner.

- (4) Where a reproduction or transparency of a document lodged with the Commissioner has been incorporated in the register kept under subsection (1), a reference in subsection (3) (a) to inspection of a document so lodged shall be read and construed as a reference to inspection of the reproduction or transparency.
- (5) (Repealed)
- (6) The Commissioner may, if in the opinion of the Commissioner it is no longer necessary or desirable to retain it, destroy or dispose of:
 - (a) any document lodged or registered in respect of an incorporated association that has been dissolved or has ceased to be registered for not less than 10 years, or
 - (b) any document a transparency of which has been incorporated in the register kept under subsection (1).

60 Constructive notice

A person shall not be taken to have knowledge of:

- (a) the statement of objects or the rules of an incorporated association or any of the contents of the statement of objects or the rules of an incorporated association,
- (b) a document or the contents of a document, or
- (c) any particulars,

by reason only:

- (d) that the statement of objects, the rules, the document or the particulars has or have not been lodged with the Commissioner, or
- (e) that the statement of objects, the rules, the document or the particulars is or are referred to in any other document that has been lodged with the Commissioner.

61 Compliance with rules and authority of public officer

An incorporated association or a guarantor of an obligation of an incorporated association may not assert against a person dealing with the association or with a person who has acquired rights from the association the fact that:

- (a) the rules of the association have not been complied with, or
- (b) the public officer of the association whose name was last notified to the Commissioner as the public officer is not the public officer,

unless the person:

- (c) has actual knowledge of that fact, or
- (d) ought to have knowledge of that fact by reason of the person's connection or relationship with the association.

62 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 so specified,
 - (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, on a date specified in the certificate, a person so specified was, or was not, the public officer of an incorporated association so specified, as appearing from the Commissioner's records,
 - (e) that, on a date specified in the certificate, the address of the public officer of a specified incorporated association last notified under this Act to the Commissioner was the address specified in the certificate, or
 - (f) that a copy of the statement of objects or the rules of, or trusts relating to, an incorporated association specified in the certificate is a true copy of that statement or those rules or trusts as at a date so specified,is prima facie evidence of the matter or matters so certified.
- (2) A certificate of incorporation of an association granted under section 10, 14, 47 or 48 is conclusive evidence of the incorporation of the association under this Act on the date specified in the certificate as the date of incorporation.

63 Service of documents

- (1) A document may be served on an incorporated association:
 - (a) by addressing it to the association and leaving it at, or by sending it by post to, the address of the public officer of the association last notified under this Act to the Commissioner whether or not, at the time the document is so left or sent, there is a vacancy in the office of public officer of the association,
 - (b) by delivering a copy of the document personally to each of 2 members of the

committee of the association addressed to the association, or

(c) in such manner as the Commissioner may in the special circumstances of the case direct.

(2) The public officer or a member of the committee of an incorporated association who receives a document addressed to the association shall, as soon as practicable after receiving the document, bring it to the attention of the committee of the association.

(3) Where a person who is not the public officer or a member of the committee of an incorporated association:

(a) receives a document addressed to the association, and

(b) was within the period of 12 months before receiving the document the public officer or a member of the committee of the association,

the person shall, as soon as practicable after receiving the document, bring it to the attention of the committee of the association.

Maximum penalty: 1 penalty unit.

64 Payment of fees on lodgment of documents

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

65 Powers of Commissioner in relation to documents

(1) The Commissioner may refuse to register or receive a document submitted to the Commissioner for lodgment under this Act where the Commissioner is of the opinion that the document:

(a) contains matter contrary to law,

(b) contains matter that is false or misleading in a material particular,

(c) by reason of an omission or misdescription has not been duly completed,

(d) does not comply with the requirements of this Act or the regulations, or

(e) contains an error, alteration or erasure.

(2) Where the Commissioner refuses under subsection (1) to register or receive a document, the Commissioner may request that:

(a) the document be appropriately amended or completed and resubmitted,

- (b) a fresh document be submitted in its place, or
- (c) where the document has not been duly completed, a supplementary document in an approved form be lodged.

66 Trading etc by incorporated association

(1) An incorporated association shall not:

- (a) trade,
- (b) secure pecuniary gain for its members, or
- (c) as trustee, trade or secure pecuniary gain for members of the incorporated association.

Maximum penalty: 5 penalty units.

- (2) Where an incorporated association contravenes subsection (1), any members and officers of the association who by reason of the operation of section 70 are deemed to have contravened that subsection also are jointly and severally liable to any creditor of the association for all debts and liabilities incurred by the association in or in consequence of the trading or the securing of pecuniary gain for members of the association.
- (3) The contravention by an incorporated association of subsection (1) does not affect the validity of any transaction.

67 Production and inspection of records

(1) In this section, **records** includes:

- (a) any document, register 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 the powers of an authorised person under subsection (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
 - (b) an offence relating to an incorporated association that involves fraud or

dishonesty or concerns the management of affairs of the association.

- (3) The Commissioner may at any time, by notice in writing, give a direction to:
- (a) an incorporated association, or
 - (b) a person who is or has been an officer of, or an agent, banker, solicitor, auditor 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 so specified.
- (4) A person authorised by the Commissioner for the purpose may, at any reasonable time, enter any premises or place in which the Commissioner or authorised person has reasonable cause to believe the association is acting in furtherance of its purposes or in which any records relating to the affairs of the association are kept, and may:
- (a) require any person at that place or on those premises to furnish such information as the authorised person may reasonably require,
 - (b) search that place or those premises, and
 - (c) inspect, take and retain possession of, and take copies of, any records found in or upon that place or those premises relating to the affairs of the association.
- (5) A person shall not assault, hinder, obstruct or interfere with an authorised person in the exercise of the powers conferred by subsection (4) on the authorised person.

Maximum penalty: 5 penalty units.

- (6) A person shall not:
- (a) when required under subsection (3) to produce a record:
 - (i) refuse or neglect to produce the record, or
 - (ii) 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, or
 - (b) when required under subsection (4) to furnish information:
 - (i) refuse or neglect to furnish the information, or
 - (ii) furnish information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when furnishing the information.

Maximum penalty: 5 penalty units.

- (7) 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.
- (8) Any information furnished pursuant to a requirement made under subsection (4) (a) shall not, if at the time of furnishing the information the person objected to doing so on the ground that it might tend to incriminate the person, be admissible in evidence in any prosecution against that person for any offence or in any proceedings relating to any offence, other than an offence under subsection (5) or (6).
- (9) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (4).

68 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 declaration made under this Act 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 is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

69 Offence of using certain names

Where a person or an association or other group of persons, not being a body corporate or an association incorporated under this or any other Act or under an Act or law in force in any other place, uses a name or title of which the word "Incorporated" or any abbreviation or imitation thereof forms part, or uses a name or title of which the abbreviation "Inc." or any imitation thereof forms part, the person, association or group and each member of the association or group is guilty of an offence and liable to a penalty not exceeding 2 penalty units.

70 Offences by officers etc

- (1) Where an incorporated association contravenes, whether by act or omission, any provision of this Act or the regulations, the public officer of the association and each member of the committee of the association shall be deemed to have contravened the same provision unless that officer or member satisfies the court that:
 - (a) the association contravened the provision without his or her knowledge,

- (b) he or she was not in a position to influence the conduct of the association in relation to its contravention of the provision, or
 - (c) he or she, being in such a position, used all due diligence to prevent the contravention of the provision by the association.
- (2) An officer or a member of an incorporated association who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly knowingly concerned in or party to the commission by the association of an offence against this Act or the regulations shall be deemed to have committed that offence and is punishable accordingly.
- (3) A person may be proceeded against and convicted under a provision pursuant to subsection (1) or (2) whether or not the incorporated association has been proceeded against or convicted under that provision.
- (4) Nothing in this section prejudices or affects any liability imposed by a provision of this Act or the regulations on an incorporated association by which an offence against that provision is actually committed.

71 Proceedings for offences

Proceedings for an offence against a provision of this Act or the regulations shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

72 Appeals from decisions of Commissioner

A person aggrieved by the refusal of the Commissioner to incorporate an association or to register or receive a document, or by any other act, omission or decision of the Commissioner (other than an act or decision of the Commissioner that is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive or final), may within such period as may be prescribed by rules made under the *Local Courts (Civil Claims) Act 1970*, appeal to a Local Court, which may confirm, reverse or modify the refusal, act or decision, or remedy the omission, as the case may be, and make such orders and give such directions in the matter as the Local Court thinks fit.

72A Delegation by Commissioner

- (1) The Commissioner may delegate any of the Commissioner's functions, other than this power of delegation.
- (2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

73 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) prescribing rules as model rules, being rules that make provision for the several matters that are specified in Schedule 1, whether or not they make provision for other matters, or
 - (b) the refunding of the whole or any part of a fee which has been paid to the Commissioner in respect of an application under this Act which is withdrawn or refused by the Commissioner, or
 - (b1) the payment of additional fees for the late payment of any prescribed fee, or
 - (b2) the waiver of fees in whole or in part, or
 - (c) prescribing the books, documents and other records to be kept by incorporated associations.
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (3) A regulation may impose a penalty not exceeding 2 penalty units for any offence against the regulation.

74 Savings and transitional provisions

Schedule 3 has effect.

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

(Sections 11, 73)

1 Membership qualifications

The qualifications (if any) for membership of the incorporated association.

2 Register of members

The register of members of the incorporated association.

3 Fees, subscriptions etc

The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.

4 Members' liabilities

The liability (if any) of members of the incorporated association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.

5 Disciplining of members

The procedure (if any) for the disciplining of members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.

5A Internal disputes

The mechanism for the resolution of disputes between members (in their capacity as members) and between members and the incorporated association.

6 Committee

The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as **the committee**) and:

- (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, and
- (e) the quorum and procedure at meetings of the committee.

7 General meetings—calling of

The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.

8 General meetings—procedure

The quorum and procedure at general meetings of members of the incorporated association and whether members are entitled to vote by proxy at general meetings.

9 General meetings—notices

The time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated.

10 Funds—source

The sources from which the funds of the incorporated association are to be or may be derived.

11 Funds—management

The manner in which the funds of the incorporated association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association.

12 Alteration of objects

The manner of altering the statement of objects of the incorporated association.

13 Rules

The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

14 Common seal

Provision for the custody and use of the common seal of the incorporated association.

15 Custody of books etc

The custody of books, documents and securities of the incorporated association.

16 Inspection of books etc

The inspection by members of the incorporated association of books and documents of the incorporated association.

Schedule 2 Provisions relating to property, liabilities, etc, of incorporated associations

(Section 15)

1 Definitions

In this Schedule:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

former association, in relation to an incorporated association, means:

- (a) the association or other body which was incorporated under this Act to form the incorporated association, or
- (b) in the case of an amalgamated association incorporated under section 47—an incorporated association which was a party to the amalgamation,

and includes any or all the members of the former association as members.

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

2 Transfer of assets and liabilities etc

- (1) On the incorporation of an association or other body under this Act, the following provisions have effect:
 - (a) the assets of a former association of the incorporated association vest in the incorporated association without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of a former association of the incorporated association become the rights and liabilities of the incorporated association,
 - (c) all proceedings relating to the assets, rights and liabilities of a former association of the incorporated association commenced before the incorporation by or against the former association and pending immediately before the incorporation are taken to be proceedings pending by or against the incorporated association,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities of a former association of the incorporated association before the incorporation by, to or in respect of the former association is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the incorporated association,
 - (e) a reference in an instrument or in any document of any kind to a former association of the incorporated association is, subject to the regulations, to be read as, or as including, a reference to the incorporated association.
- (2) Assets which vest in an incorporated association by virtue of this clause are not to be dealt with contrary to the provisions of any trust affecting the assets immediately before the incorporation of the association or other body under this Act, being provisions as to the purposes for which the assets may or are required to be applied.

- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.

3-5 (Repealed)

6 Certificate evidence

- (1) A certificate, in an approved form and verified as prescribed, of the public officer of an incorporated association to the effect that property specified in the certificate was, immediately before the incorporation of the association under this Act, vested in a specified former association of the incorporated association or was held by a person, in trust or otherwise, for or on behalf of such a former association or for its objects, shall:
- (a) in any action, suit or other proceeding, civil or criminal, be prima facie evidence of the matters so certified, and
 - (b) be prima facie evidence of the matters so certified in favour of the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.
- (2) A certificate of the Commissioner in an approved form to the effect that an association or other body specified in the certificate is a former association of an incorporated association so specified is prima facie evidence of the matter so certified in favour of:
- (a) a person, or a person claiming through or under a person, dealing with the incorporated association to which the certificate relates in good faith and for valuable consideration and without notice of any defect or error in the certificate, and
 - (b) the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.

7, 8 (Repealed)

9 Attornment not necessary

No attornment to an incorporated association by any lessee of land vested in the

association by reason of the operation of this Schedule shall be necessary.

10 Stamp duty etc

- (1) A document or an instrument executed or registered only for:
 - (a) a purpose ancillary to, or consequential on, the operation of this Schedule, or
 - (b) the purpose of giving effect to this Schedule,shall not be liable to stamp duty, to duty under the *Duties Act 1997* or to any fee or charge payable under any Act for registration.
- (2) A dutiable transaction within the meaning of the *Duties Act 1997* that is not in writing and that occurs only for:
 - (a) a purpose ancillary to, or consequential on, the operation of this Schedule, or
 - (b) the purpose of giving effect to this Schedule,is not liable to duty under the *Duties Act 1997*.

Schedule 3 Savings and transitional provisions

(Section 74)

Part 1 Savings and transitional regulations

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the *Associations Incorporation (Amendment) Act 1992*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done before the date of its publication.

Part 2 Provisions consequent on the *Associations Incorporation*

(Amendment) Act 1992

2 Definition

In this Part:

amending Act means the *Associations Incorporation (Amendment) Act 1992*.

3 Matters arising under Companies Code

Despite Schedule 1 (3) and (4) to the amending Act, the provisions of the *Companies (New South Wales) Code*, as applied by this Act in relation to matters affecting associations, continue to operate in relation to such matters that arose before, and are still current at, the commencement of those amendments.

4 Prescribed insurers

On the commencement of Schedule 1 (13) to the amending Act, any insurer prescribed for the purposes of section 42 (b) of this Act (as in force immediately before that commencement) is taken to be an insurer approved by the Minister under section 42 (b) as amended by that Schedule.

5 Appeals from decisions of Commissioner

The amendments to section 72 made by Schedule 1 (18) to the amending Act apply only to decisions of the Commissioner made after the commencement of those amendments.

6 Vesting of property and transfer of assets, liabilities etc on incorporation

The amendments to Schedule 2 made by Schedule 1 (22) of the amending Act apply to the incorporation of an association or other body under this Act whether before or after the commencement of those amendments.