

Associations Incorporation Regulation 2016

[2016-538]



New South Wales

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Associations Incorporation Amendment \(Fees\) Regulation 2017 \(204\)](#) (not commenced — to commence on 1.7.2017)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

Contents

Part 1 Preliminary	4
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Corresponding law	4
Part 2 Registration of associations	5
5 Additional information to be included with application for registration	5
6 Reservation of name—maximum number of alternative names.....	5
7 Unacceptable names	5
Part 3 Financial reporting	5
8 Gross receipts and current assets for Tier 1 associations	5
9 Financial statements for Tier 1 associations	6
10 Financial statements for Tier 2 associations	6
Part 4 Miscellaneous	6
11 Model constitution	6
12 Register of committee members—prescribed particulars.....	7
13 Conduct of postal or electronic ballots	7
14 Keeping of accounts and minutes of proceedings	7
15 Application for transfer of registration declaration	7
16 Certificates of authority	8
17 Penalty notice offences and penalties	8

18 Application of Corporations legislation to associations.....	8
19 Transitional provision relating to financial year clause in model constitution.....	9
20 Fees.....	9
Schedule 1 Model constitution.....	10
Schedule 2 Unacceptable names	28
Schedule 3 Conduct of postal or electronic ballots	30
Schedule 4 Penalty notice offences	34
Schedule 5 Fees	35

Associations Incorporation Regulation 2016



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Associations Incorporation Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Associations Incorporation Regulation 2010*, which is to be repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Secretary means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no such position in the Department, the Secretary of the Department.

the Act means the *Associations Incorporation Act 2009*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation (except in Schedule 1) do not form part of this Regulation.

4 Corresponding law

For the purposes of the definition of **corresponding law** in section 4 (1) of the Act, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth is

declared to be a corresponding law.

Part 2 Registration of associations

5 Additional information to be included with application for registration

- (1) An application for registration of an association made on behalf of a registrable corporation must include the following:
 - (a) an estimate of the corporation's income and expenditure for the financial year in which the application is made,
 - (b) a copy of the corporation's financial statement for the financial year before the application is made.
- (2) An application for registration of an association made on behalf of 2 or more associations proposing to amalgamate must include the following:
 - (a) an estimate of the income and expenditure of the amalgamated association for the first financial year of the proposed amalgamated incorporated association,
 - (b) an estimate of the combined assets and liabilities of the proposed amalgamated association,
 - (c) the original certificate of incorporation of each association (or evidence of the certificates if they have been lost),
 - (d) any documents required to be lodged under section 45 or 49 of the Act (as the case may be) by each of the amalgamating associations for the 3 financial years before the application is made that have not been lodged in accordance with those sections.

6 Reservation of name—maximum number of alternative names

The maximum number of alternative names that may be nominated in an application for reservation of a name under section 15 of the Act is 3.

7 Unacceptable names

For the purposes of section 18 (1) (g) of the Act, the names set out in Schedule 2 are declared to be unacceptable names.

Part 3 Financial reporting

8 Gross receipts and current assets for Tier 1 associations

- (1) For the purposes of section 42 (1) (a) of the Act, a Tier 1 association's gross receipts for a financial year are equal to the total revenue recorded in the association's income and expenditure statement for that financial year.

- (2) For the purposes of section 42 (1) (b) of the Act, the current assets of a Tier 1 association are equal to the assets (other than real property or assets capable of depreciation) held by the association as at the end of the association's last financial year, including amounts held in financial institutions, stocks and debentures.
- (3) For the purposes of section 42 (1) of the Act, the prescribed amount is:
 - (a) in relation to gross receipts—\$250,000, and
 - (b) in relation to current assets—\$500,000.

9 Financial statements for Tier 1 associations

- (1) For the purposes of section 43 (2) of the Act, the financial statements prepared by a Tier 1 association must include the following:
 - (a) details of any mortgages, charges and other securities affecting any property owned by the association,
 - (b) a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.
- (2) The Secretary may exempt an association, or a class of associations, from the requirement to prepare financial statements in accordance with the Australian Accounting Standards.
- (3) An exemption may be given either generally or as otherwise specified in the exemption.

10 Financial statements for Tier 2 associations

For the purposes of section 47 (2) of the Act, the financial statements prepared by a Tier 2 association must include the following:

- (a) an income and expenditure statement and a balance sheet that sets out the appropriately classified individual sources of income and individual expenses incurred in the operation of the association and the assets and liabilities of the association,
- (b) details of any mortgages, charges and other securities affecting any property owned by the association,
- (c) a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

Part 4 Miscellaneous

11 Model constitution

The model constitution set out in Schedule 1 is prescribed as the model constitution for

the purposes of the Act.

12 Register of committee members—prescribed particulars

For the purposes of section 29 (2) (d) of the Act, the following particulars are prescribed:

- (a) the name of each member of the committee of the incorporated association who holds the position (if any) of president, vice-president, secretary or treasurer of the incorporated association,
- (b) the date on which the member was elected or appointed to the position,
- (c) the date on which the member ceased to hold the position.

13 Conduct of postal or electronic ballots

A postal or electronic ballot for the passing by an association of an ordinary resolution or a special resolution under section 38 or 39, respectively, of the Act is to be conducted in accordance with Schedule 3.

14 Keeping of accounts and minutes of proceedings

- (1) An association must:
 - (a) keep each record and minute required to be kept under section 50 of the Act, in written or electronic form, and
 - (b) keep each record for a period of not less than 5 years after it was made.
- (2) If records and minutes are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

15 Application for transfer of registration declaration

For the purposes of section 78 (3) (d) of the Act, an application by an association for a transfer of registration declaration must include the following:

- (a) a statement in writing as to whether the entity to which the association intends to transfer is subject to rules that prohibit a distribution of profits to that entity's members,
- (b) a statement in writing declaring that the association's creditors are not likely to be materially prejudiced by the transfer,
- (c) a statement in writing declaring that the law of the Commonwealth or a State or Territory will adequately provide for the continuation of the association's legal personality after the transfer,
- (d) any documents required to be lodged under section 45 or 49 of the Act (as the case

may be) by the association for the 3 financial years before the application is made that have not been lodged in accordance with those sections.

16 Certificates of authority

A certificate of authority issued under section 88 (1) (a) of the Act:

- (a) must be in a form approved by the Secretary, and
- (b) must state that it is issued under the Act, and
- (c) must give the name of the person to whom it is issued, and
- (d) must describe the nature of the powers conferred on its holder and state that those powers are conferred by the Act, and
- (e) must state the date (if any) on which it expires, and
- (f) must state that the powers conferred on its holder do not extend to any part of premises used for residential purposes (except with the consent of the occupier of the premises), and
- (g) must be signed by the Secretary or by any other officer of the Department authorised by the Secretary to sign certificates of authority.

17 Penalty notice offences and penalties

For the purposes of section 93 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4 is prescribed as a penalty notice offence, and
- (b) the penalty prescribed for each offence is the amount specified in Column 2 of Schedule 4 opposite the relevant provision.

18 Application of Corporations legislation to associations

For the purposes of section 96 (1) of the Act, any matter relating to associations 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 section 1322 (1)–(3A) and (4)–(6) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) references to “this Act” are to be read as including references to the *Associations Incorporation Act 2009*,
- (b) a reference to a “corporation” is to be read as a reference to an association,
- (c) a reference to a meeting in section 1322 (3) is to be read as including a reference to a vote conducted by a postal or electronic ballot,

- (d) the reference in section 1322 (3) to “a person entitled to attend the meeting” is to be read as including a reference to a person entitled to vote in a postal or electronic ballot,
- (e) the reference in section 1322 (4) (b) to a register kept by ASIC under the *Corporations Act 2001* of the Commonwealth is to be read as a reference to a register kept under the *Associations Incorporation Act 2009*.

19 Transitional provision relating to financial year clause in model constitution

- (1) This clause applies to an association:
 - (a) to which clause 4 of Schedule 4 to the Act applied immediately before 1 September 2016, and
 - (b) whose constitution does not address the association’s financial year.

Note—

Clause 4 of Schedule 4 to the Act (the **current Act**) applies to associations that were incorporated under the former *Associations Incorporation Act 1984* and whose administration is governed by rules that comply with the former Act. Clause 4 deems the rules of the association to be its constitution, and to comply with the current Act, until the association changes them under the current Act.

- (2) Clause 47 of the model constitution in its application to an association to which this clause applies is taken to have been replaced by the following clause:

47 Financial year

The financial year of the association is each period of 12 months, or any other period (whether longer or shorter than 12 months) not exceeding 18 months that the association resolves, commencing at the expiration of the previous financial year of the association.

- (3) Clause 47 of the model constitution, as substituted by subclause (2), applies until the association’s constitution otherwise addresses the financial year of the association in accordance with the Act.

20 Fees

For each matter specified in Schedule 5 a fee is payable as specified beside the matter in that Schedule.

Schedule 1 Model constitution

(Clause 11)

Part 1 Preliminary

1 Definitions

(1) In this constitution:

ordinary committee member means a member of the committee who is not an office-bearer of the association.

secretary means:

- (a) the person holding office under this constitution as secretary of the association, or
- (b) if no person holds that office—the public officer of the association.

special general meeting means a general meeting of the association other than an annual general meeting.

the Act means the [Associations Incorporation Act 2009](#).

the Regulation means the [Associations Incorporation Regulation 2016](#).

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the [Interpretation Act 1987](#) apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

Part 2 Membership

2 Membership generally

(1) A person is eligible to be a member of the association if:

- (a) the person is a natural person, and
- (b) the person has applied and been approved for membership of the association in accordance with clause 3.

(2) A person is taken to be a member of the association if:

- (a) the person is a natural person, and

(b) the person was:

(i) in the case of an unincorporated body that is registered as the association—a member of that unincorporated body immediately before the registration of the association, or

(ii) in the case of an association that is amalgamated to form the relevant association—a member of that other association immediately before the amalgamation, or

(iii) in the case of a registrable corporation that is registered as an association—a member of the registrable corporation immediately before that entity was registered as an association.

(3) A person is taken to be a member of the association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1) (a) of the Act was made.

3 Application for membership

(1) An application by a person for membership of the association:

(a) must be made in writing (including by email or other electronic means, if the committee so determines) in the form determined by the committee, and

(b) must be lodged (including by electronic means, if the committee so determines) with the secretary of the association.

(2) As soon as practicable after receiving an application for membership, the secretary must refer the application to the committee, which is to determine whether to approve or to reject the application.

(3) As soon as practicable after the committee makes that determination, the secretary must:

(a) notify the applicant in writing (including by email or other electronic means, if the committee so determines) that the committee approved or rejected the application (whichever is applicable), and

(b) if the committee approved the application, request the applicant to pay (within the period of 28 days after receipt by the applicant of the notification) the sum payable under this constitution by a member as entrance fee and annual subscription.

(4) The secretary must, on payment by the applicant of the amounts referred to in subclause (3) (b) within the period referred to in that provision, enter or cause to be entered the applicant's name in the register of members and, on the name being so entered, the applicant becomes a member of the association.

4 Cessation of membership

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the association, or
- (d) fails to pay the annual membership fee under clause 8 (2) within 3 months after the fee is due.

5 Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

6 Resignation of membership

- (1) A member of the association may resign from membership of the association by first giving to the secretary written notice of at least 1 month (or any other period that the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

7 Register of members

- (1) The secretary must establish and maintain a register of members of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
 - (a) at the main premises of the association, or
 - (b) if the association has no premises, at the association's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.

- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
 - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the register of members is kept in electronic form:
 - (a) it must be convertible into hard copy, and
 - (b) the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

8 Fees and subscriptions

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the committee, that other amount.
- (2) In addition to any amount payable by the member under subclause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the committee, that other amount:
 - (a) except as provided by paragraph (b), before the first day of the financial year of the association in each calendar year, or
 - (b) if the member becomes a member on or after the first day of the financial year of the association in any calendar year—on becoming a member and before the first day of the financial year of the association in each succeeding calendar year.

9 Members' liabilities

The liability of a member of the 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 is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 8.

10 Resolution of disputes

- (1) A dispute between a member and another member (in their capacity as members) of the association, or a dispute between a member or members and the association, are to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

11 Disciplining of members

- (1) A complaint may be made to the committee by any person that a member of the association:
 - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:
 - (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect:

- (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
 - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause 12,
- whichever is the later.

12 Right of appeal of disciplined member

- (1) A member may appeal to the association in general meeting against a resolution of the committee under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the secretary must notify the committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under subclause (3):
 - (a) no business other than the question of the appeal is to be transacted, and
 - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
 - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

Part 3 The committee

13 Powers of the committee

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:

- (a) is to control and manage the affairs of the association, and
- (b) may exercise all the functions that may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association, and
- (c) has power to perform all acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

14 Composition and membership of committee

(1) The committee is to consist of:

- (a) the office-bearers of the association, and
- (b) at least 3 ordinary committee members,

each of whom is to be elected at the annual general meeting of the association under clause 15.

Note—

Section 28 of the Act contains further requirements concerning eligibility for membership and composition of the committee.

(2) The total number of committee members is to be 7.

(3) The office-bearers of the association are as follows:

- (a) the president,
- (b) the vice-president,
- (c) the treasurer,
- (d) the secretary.

(4) A committee member may hold up to 2 offices (other than both the offices of president and vice-president).

(5) There is no maximum number of consecutive terms for which a committee member may hold office.

Note—

Schedule 1 to the Act provides that an association's constitution is to address the maximum number of consecutive terms of office of any office-bearers on the committee.

(6) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election, and is eligible for re-election.

15 Election of committee members

(1) Nominations of candidates for election as office-bearers of the association or as ordinary committee members:

- (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and

- (b) must be delivered to the secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the association must be a member of the association.

16 Secretary

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
 - (a) all appointments of office-bearers and members of the committee, and
 - (b) the names of members of the committee present at a committee meeting or a general meeting, and
 - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).

17 Treasurer

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

18 Casual vacancies

- (1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the committee occurs if the member:
 - (a) dies, or
 - (b) ceases to be a member of the association, or
 - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (d) resigns office by notice in writing given to the secretary, or
 - (e) is removed from office under clause 19, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is absent without the consent of the committee from 3 consecutive meetings of the committee, or
 - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
 - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.

19 Removal of committee members

- (1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the secretary or the president may send a copy of the

representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

20 Committee meetings and quorum

- (1) The committee must meet at least 3 times in each period of 12 months at the place and time that the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:
 - (a) the president or, in the president's absence, the vice-president is to preside, or
 - (b) if the president and the vice-president are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

21 Appointment of association members as committee members to constitute quorum

- (1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of members of the association as committee members to enable the quorum to be constituted.

- (2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (3) This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

22 Use of technology at committee meetings

- (1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.
- (2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

23 Delegation by committee to sub-committee

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of the member or members of the association that the committee thinks fit) the exercise of any of the functions of the committee that are specified in the instrument, other than:
 - (a) this power of delegation, and
 - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A sub-committee may meet and adjourn as it thinks proper.

24 Voting and decisions

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 20 (5), the committee may act despite any vacancy on the committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

Part 4 General meetings

25 Annual general meetings—holding of

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its annual general meetings:
 - (a) within 6 months after the close of the association's financial year, or
 - (b) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

26 Annual general meetings—calling of and business at

- (1) The annual general meeting of the association is, subject to the Act and to clause 25, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the committee reports on the activities of the association during the last preceding financial year,
 - (c) to elect office-bearers of the association and ordinary committee members,

(d) to receive and consider any financial statement or report required to be submitted to members under the Act.

(3) An annual general meeting must be specified as that type of meeting in the notice convening it.

27 Special general meetings—calling of

(1) The committee may, whenever it thinks fit, convene a special general meeting of the association.

(2) The committee must, on the requisition of at least 5% of the total number of members, convene a special general meeting of the association.

(3) A requisition of members for a special general meeting:

(a) must be in writing, and

(b) must state the purpose or purposes of the meeting, and

(c) must be signed by the members making the requisition, and

(d) must be lodged with the secretary, and

(e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.

(4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.

(5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.

(6) For the purposes of subclause (3):

(a) a requisition may be in electronic form, and

(b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

28 Notice

(1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the

business proposed to be transacted at the meeting.

- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.

Note—

A special resolution must be passed in accordance with section 39 of the Act.

- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 26 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

29 Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of members—is to be dissolved, and
 - (b) in any other case—is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

30 Presiding member

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.

- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

31 Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

32 Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by:
 - (a) a show of hands or, if the meeting is one to which clause 37 applies, any appropriate corresponding method that the committee may determine, or
 - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) Subclause (2) applies to a method determined by the committee under subclause (1)
 - (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

33 Special resolutions

A special resolution may only be passed by the association in accordance with section 39 of the Act.

34 Voting

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.
- (4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.

35 Proxy votes not permitted

Proxy voting must not be undertaken at or in respect of a general meeting.

Note—

Schedule 1 to the Act provides that an association's constitution is to address whether members of the association are entitled to vote by proxy at general meetings.

36 Postal or electronic ballots

- (1) The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

37 Use of technology at general meetings

- (1) A general meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.
- (2) A member of an association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

Part 5 Miscellaneous

38 Insurance

The association may effect and maintain insurance.

39 Funds—source

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the

association in general meeting, any other sources that the committee determines.

- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

40 Funds—management

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used solely in pursuance of the objects of the association in the manner that the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

41 Association is non-profit

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the objects of the association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

Note—

Section 5 of the Act defines *pecuniary gain* for the purpose of this clause.

42 Distribution of property on winding up of association

- (1) Subject to the Act and the Regulations, in a winding up of the association, any surplus property of the association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (2) In this clause, a reference to the surplus property of an 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.

Note—

Section 65 of the Act provides for distribution of surplus property on the winding up of an association.

43 Change of name, objects and constitution

An application for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.

44 Custody of books etc

Except as otherwise provided by this constitution, all records, books and other documents

relating to the association must be kept in New South Wales:

- (a) at the main premises of the association, in the custody of the public officer or a member of the association (as the committee determines), or
- (b) if the association has no premises, at the association's official address, in the custody of the public officer.

45 Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
 - (a) records, books and other financial documents of the association,
 - (b) this constitution,
 - (c) minutes of all committee meetings and general meetings of the association.
- (2) A member of the association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.
- (3) Despite subclauses (1) and (2), the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

46 Service of notices

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
 - (a) by delivering it to the person personally, or
 - (b) by sending it by pre-paid post to the address of the person, or
 - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
 - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a

later date, on that date.

47 Financial year

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 July and ending on the following 30 June.

Notes—

1. Schedule 1 to the Act provides that an association's constitution is to address the association's financial year.
2. Clause 19 of the Regulation contains a substitute clause 47 for certain associations incorporated under the [Associations Incorporation Act 1984](#).

Schedule 2 Unacceptable names

(Clause 7)

- 1** A name that is identical to, or closely resembles, a business name registered under the [Business Names Registration Act 2011](#) of the Commonwealth unless:
 - (a) the public is not likely to be misled if the association operates under that name, or
 - (b) the applicant for registration of the relevant association has registered that name under that Act.
- 2** A name that is identical to, or closely resembles, the name of a building society, co-operative, co-operative society, co-operative company, co-operative building society, co-operative housing society or credit union.
- 3** A name that is identical to, or closely resembles, a name reserved or registered under the [Corporations Act 2001](#) of the Commonwealth (unless the applicant for registration of the relevant association has reserved or registered that name under that Act).
- 4** A name that is identical to, or closely resembles, the name of a criminal organisation or declared organisation within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2012](#).
- 5** A name that suggests a connection with the government of the Commonwealth, New South Wales, another State or Territory or another country.
- 6** A name that includes the word "Commonwealth" or "Federal", unless its use is in respect of a geographical location.
- 7** A name that suggests a connection with a government agency or public authority of the

Commonwealth, New South Wales or another State or Territory.

- 8** A name that suggests a connection with a local council or local authority.
- 9** A name that suggests a connection with a member of the royal family if that connection does not exist.
- 10** A name that suggests a connection with an ex-service person organisation if that connection does not exist.
- 11** A name that suggests a connection with any person (alive or deceased) if that connection does not exist.
- 12** A name that suggests that royal patronage has been received if that is not the case.
- 13** A name that includes any of the following words or phrases (including abbreviations of those words and phrases):
 - aboriginal corporation
 - building society
 - credit union
 - co-operative
 - co-operative society
 - co-operative company
 - co-operative building society
 - co-operative housing society
 - executor
 - futures exchange
 - GST
 - guarantee
 - institute of advanced education
 - made in Australia
 - oxfam
 - starr bowkett
 - stock exchange

torres strait islander corporation

- 14** A name (including a name used by a former association) that is likely to mislead the public in relation to the nature, objects or functions of an association or proposed association or in any other respect.

Schedule 3 Conduct of postal or electronic ballots

(Clause 13)

1 Ballots

(1) The committee must:

- (a) cause the details of the matter on which the ballot is to be held to be set out in a statement, and
- (b) fix the dates for:
 - (i) the forwarding of postal ballot papers, or the giving of access to electronic ballot papers, to members, and
 - (ii) the closing of the ballot, and
- (c) appoint a returning officer for the ballot.

(2) Every ballot must be conducted by the returning officer appointed by the committee.

2 Returning officers

- (1) A member of the association or a person who is not a member of the association may be appointed as a returning officer.
- (2) Despite subclause (1), a committee member of the association may not be appointed as a returning officer.
- (3) The returning officer may be assisted in the performance of his or her duties by any person (who would be eligible to be a returning officer) appointed by the returning officer.

3 Preparation of voting roll

- (1) The returning officer must prepare a roll of the full names and addresses of the members of the association who are eligible to vote.
- (2) A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.

4 Electronic voting

- (1) This clause applies to a ballot for determination of a matter by the association that is

to be conducted by means of electronic voting.

- (2) Electronic voting is to be by means of email or other electronic means determined by the committee.
- (3) Without limiting subclause (2), the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- (4) The returning officer must ensure that the form for the electronic ballot paper contains:
 - (a) instructions for completing the voting paper, and
 - (b) the question to be determined, and
 - (c) the means of indicating the voter's choice on the question to be determined.
- (5) The returning officer must, at least 14 days (or 21 days in the case of a special resolution) before the date fixed for the closing of the ballot, give each person entitled to vote:
 - (a) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause, and
 - (b) access to information about:
 - (i) how the ballot paper must be completed, and
 - (ii) the closing date of the ballot, and
 - (iii) if voting is by email—the address where the ballot paper is to be returned, and
 - (iv) if voting is by other electronic means, the means of accessing the electronic voting system and how the completed electronic ballot paper is to be sent to the returning officer.
- (6) Each person entitled to vote must vote in accordance with the instructions contained in the information.
- (7) If the ballot is a secret ballot, the returning officer must ensure that the identity of the voter cannot be ascertained from the form of the electronic ballot paper.
- (8) An electronic ballot paper must be sent to the returning officer no later than the close of the ballot.
- (9) The returning officer must ensure that all electronic ballot papers are stored securely

until the counting of the votes begins.

5 Postal voting

- (1) This clause applies to a ballot for the determination of a matter by the association that is to be conducted by means of postal voting.
- (2) The returning officer must prepare ballot papers that contain:
 - (a) instructions for completing the voting paper, and
 - (b) the question to be determined, and
 - (c) a box opposite and to the left of each question.
- (3) The returning officer must, at least 14 days (or 21 days in the case of a special resolution) before the date fixed for the closing of the ballot, give each person entitled to vote:
 - (a) a ballot paper prepared in accordance with this clause, and
 - (b) a notice describing:
 - (i) how the ballot paper must be completed, and
 - (ii) the closing date of the ballot, and
 - (iii) the address where the ballot paper is to be returned, and
 - (c) a returning envelope addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the member and, if the ballot is a secret ballot, an envelope marked "Voting Paper".
- (4) Each person entitled to vote must vote by marking the ballot paper in accordance with the instructions contained in the notice.
- (5) If the ballot is a secret ballot, a voter must, after completing the ballot paper:
 - (a) enclose and seal the ballot paper in the envelope marked "Voting Paper", and
 - (b) enclose and seal that envelope in the returning envelope addressed to the returning officer, and
 - (c) give the envelope to the returning officer so that it is received no later than the close of the ballot.
- (6) If the ballot is not a secret ballot, a voter must, after completing the ballot paper:
 - (a) enclose and seal the ballot paper in the returning envelope addressed to the returning officer, and

(b) give the envelope to the returning officer so that it is received no later than the close of the ballot.

(7) On receipt of a returning envelope, the returning officer must:

(a) compare the information on each returning envelope with the information on the voting roll to confirm that the vote was cast by a person entitled to vote in the ballot, and

(b) ensure that the ballot papers are securely stored until the counting of the votes begins.

(8) A voter may give a returning envelope to the returning officer by post or personal delivery.

6 Informal votes

(1) A ballot paper of a voter who votes by means of electronic voting or postal voting is informal if the voter has failed to record a vote in accordance with the information provided by the returning officer.

(2) Despite subclause (1), if, in the opinion of the returning officer, a voter's intention is clearly indicated on a ballot paper for a postal vote, the ballot paper is not informal merely because it contains an unnecessary mark.

(3) If voting is carried out by electronic voting using a voting website or other electronic application (but not if voting is by email), the website or application is to provide a warning message to a person casting an informal vote that the proposed vote is informal.

7 Ascertaining result of ballot

(1) As soon as practicable after the close of the ballot for a postal vote, the returning officer must:

(a) in the case of a secret ballot, open the envelopes marked "Voting Paper" and remove the ballot papers, and

(b) in the case of any ballot, reject as informal any ballot papers that do not comply with the requirements of this Regulation, and

(c) ascertain the result of the ballot by counting the votes not rejected.

(2) As soon as practicable after the close of a ballot conducted by electronic voting, the returning officer must:

(a) review all information and reports about the electronic ballot, and

(b) reject as informal any votes that do not comply with the requirements of this

Regulation, and

(c) ascertain the results of the electronic ballot.

8 Statement by returning officer

- (1) The returning officer must make out and sign a statement of the result of the ballot.
- (2) On the declaration of the returning officer of the result of the ballot, the committee must cause an entry to be made in the minute book showing the result of the ballot.
- (3) The returning officer must forward a copy of the statement to the chairperson of the committee who must announce the result of the ballot at the next general meeting.

9 Notification of result of ballot for special resolutions

In the case of a special resolution, the association must cause the result of the ballot to be notified in writing to its members as soon as practicable after the ballot.

10 Retention of ballot papers

- (1) The returning officer must retain:
 - (a) all ballot papers, and
 - (b) all rejected returning envelopes relating to postal voting, and
 - (c) all records relating to electronic voting (whether formal or otherwise), and
 - (d) all rolls,used in connection with the conduct of the ballot, in accordance with this clause.
- (2) The returning officer must retain those items in secure storage for a period of not less than 8 weeks after the date fixed for the closing of the ballot unless directed in writing by the committee to retain those items for a longer period.

Schedule 4 Penalty notice offences

(Clause 17)

Column 1	Column 2
Offence	Penalty
Offences under the Act	
Section 13 (1)	\$200
Section 28 (5)	\$50
Section 29 (1)	\$50

Section 34 (1) and (6)	\$50
Section 35 (2) and (3)	\$50
Section 37 (1) and (2)	\$50
Section 41 (1)	\$50
Section 43 (1)	\$200
Section 44	\$200
Section 45 (1)	\$200
Section 47 (1)	\$200
Section 48	\$200
Section 49 (1)	\$200
Section 50 (1)	\$200
Section 51 (3)	\$200
Section 90 (1)	\$50
Section 101 (2)	\$50

Schedule 5 Fees

(Clause 20)

	Column 1	Column 2
Item	Matter for which fee payable	Fee
1	Application for registration of an association (section 6 (1) of the Act):	
	(a) if the name of the association has been reserved	\$128
	(b) if the name of the association has not been reserved	\$164
2	Application for approval of change of association's name (section 10 (1) of the Act):	
	(a) if the name of the association has been reserved	\$62
	(b) if the name of the association has not been reserved	\$98
3	Application for approval of change of association's objects or constitution (section 10 (1) of the Act)	\$49
4	Application for reservation of name (section 15 (1) of the Act)	\$49
5	Issue of replacement certificate of registration where Secretary is satisfied that the original was lost or destroyed	\$42

6*	Maximum fee for inspection by any member of an association of the book recording disclosure of interest by a committee member (section 31 (3) of the Act)	\$5
7	Application for further time within which to hold AGM (section 37 (2) (b) of the Act)	\$31
8	Application for specification by Secretary as to the manner in which a special resolution may be passed (section 39 (1) (c) of the Act)	\$83
9	Lodgment of summary of Tier 1 association's financial affairs for the previous financial year, financial statements, auditor's report and a copy of any resolution passed at the association's AGM in connection with those documents (section 45 (1) of the Act)	\$187
10	Application for further time in which a Tier 1 association can lodge documents pursuant to section 45 (1) of the Act (section 45 (2) (a) of the Act)	\$31
11	Additional fee for late payment of prescribed fee for lodgment of documents pursuant to section 45 (1) of the Act:	
	(a) if the documents are lodged after the due date for lodgment, but less than 1 month after the due date	\$90
	(b) if the documents are lodged 1 or more months after the due date	\$115
12	Lodgment of summary of Tier 2 association's financial affairs for the previous financial year (section 49 (1) of the Act)	\$44
13	Application for further time in which a Tier 2 association can lodge a summary of the association's financial affairs pursuant to section 49 (1) of the Act (section 49 (2) (a) of the Act)	\$31
14	Additional fee for late payment of prescribed fee for lodgment of summary of the association's financial affairs pursuant to section 49 (1) of the Act:	
	(a) if the summary is lodged after the due date for lodgment, but less than 1 month after the due date	\$27
	(b) if the summary is lodged 1 or more months after the due date	\$34
15	Approval for person who is otherwise not qualified to carry out audit (section 52 (1) (b) or 52 (2) of the Act)	\$187
16	Grant of an exemption from requirement to prepare or audit financial statements (section 53 of the Act)	\$187
17	Application for transfer of registration declaration in relation to an association's proposed registration under a corresponding law (section 78 (1) of the Act)	\$83
18	Inspection of any document that has been lodged with the Secretary under the Act, not being a document that has been destroyed or otherwise disposed of (section 98 (2) (a) of the Act)	\$20

19	Issue of uncertified copy of, or extract from, document lodged with the Secretary (section 98 (2) (b) of the Act):	
	(a) if a fee has been paid for inspection of the document:	
	(i) for the first page	Nil
	(ii) for each additional page	\$1
	(b) if a fee has not been paid for inspection of the document:	
	(i) for the first page	\$20
	(ii) for each additional page	\$1
20	Issue of certified copy of, or extract from, document lodged with the Secretary (section 98 (2) (b) of the Act):	
	(a) for the first page	\$22
	(b) for each additional page	\$2
21	Issue of extract from computerised record forming part of the register (section 98 (2) (b) of the Act)	\$20
22	Issue of certificate by Secretary stating registration status, registered name, official address or terms of constitution (section 100 (a), (b), (d) and (e) of the Act)	\$42, plus \$1 for each page provided
23	Issue of certificate by Secretary specifying compliance with certain provisions of the Act (section 100 (c) of the Act)	\$83
24	Application for approval to serve documents on association in any other manner that the Secretary may direct (section 101 of the Act)	\$83
25	Issue of certificate by Secretary to the effect that an association or other body is a former association of an incorporated association (clause 3 (2) of Schedule 2 to the Act)	\$83
26	Additional fees payable for late payment of any prescribed fee not otherwise specified	\$27

* Fee payable to the association.