

AUSTRALIAN CAPITAL TERRITORY.

No. 15 of 1953.

AN ORDINANCE

To provide for the Incorporation of certain Associations, and for matters incidental thereto.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1947*, as follows:—

1. This Ordinance may be cited as the *Associations Incorporation Ordinance 1953*.* Short title.

2.—(1) In this Ordinance, unless the contrary intention Interpretation. appears—

“association” means—

(a) an association, society, institution or body formed or carried on for a religious, educational, benevolent or charitable purpose, for the purpose of providing medical treatment or attention or promoting or encouraging literature, science or art or for the purpose of recreation or amusement or of beautifying or improving a community centre, being an association, society, institution or body the activities of which are carried on in whole or in part in the Territory;
or

(b) any other association, society, institution or body certified in writing by the Attorney-General to be an association for the purposes of this Ordinance,

but does not include an association, society, institution or body formed or carried on for the purpose of trading or securing pecuniary profit to its members;

“committee”, in relation to an association, means the committee of the association or, if there is no committee of the association, the persons having the management of the affairs of the association;

“incorporated association” means an association incorporated under this Ordinance;

* Notified in the *Commonwealth Gazette* on 30th November, 1953.

“public officer”, in relation to an incorporated association, means the public officer of that association appointed in pursuance of section nine of this Ordinance;

“the Companies Acts” means the Companies Act, 1899, the Companies Act Amendment Act, 1900, the Companies (Amendment) Act, 1906, and the Companies (Amendment) Act, 1907, of the State of New South Wales, in their application to the Territory, as modified by the *Companies Ordinance 1931-1949*;

“the Registrar means the Registrar of Companies appointed under the *Companies Ordinance 1931-1949* and includes a Deputy Registrar so appointed;

“unauthorized name”, in relation to an association, means a name—

(a) which is the same as, or is likely to be mistaken for, the name of—

(i) any other association incorporated under this Ordinance;

(ii) a company incorporated under the Companies Acts;

(iii) a firm registered under the *Business Names Ordinance 1933-1953*; or

(iv) a co-operative trading society registered under the *Co-operative Trading Societies Ordinance 1939-1950*;

(b) which contains the words, or an abbreviation of the words, “building society” or the word, or an abbreviation of the word, “limited”, “no-liability”, “proprietary”, “chartered”, “co-operative”, “trust” or “trustee”;

(c) which is blasphemous or is likely to be offensive to members of the public or to mislead members of the public as to the nature, or the objects or purposes, of the association;

(d) which, being a name which has not been approved by the Governor-General for use by the association, contains the word “Royal”, “King”, “Queen” or “Imperial” or is likely to suggest to members of the public the patronage of Her Majesty or of a member of the Royal Family; or

(e) which, being a name which has not been approved by the Attorney-General of the Commonwealth for use by the association, is likely to suggest to

members of the public connexion with the Government of the Commonwealth, of a State or of any other part of Her Majesty's dominions.

(2.) In this Ordinance, a reference to an alteration of the objects, purposes or rules of an association, or of the trusts relating to an association, includes a reference to any addition to, or revocation or rescission (whether in whole or in part) of, those objects, purposes, rules or trusts.

3.—(1.) Where the committee of an association authorizes a person to apply for the incorporation of the association under this Ordinance, that person may, by notice published in a newspaper circulating in the Territory, give notice that he intends to apply for the incorporation of the association under this Ordinance.

Notice of intention to apply for incorporation.

(2.) A notice given under the last preceding sub-section shall—

- (a) be in the prescribed form;
- (b) specify the objects and purposes of the association in respect of which it is given; and
- (c) be approved by the Registrar before publication.

4.—(1.) Any person may, within three weeks after the publication of a notice under the last preceding section of intention to apply for the incorporation of an association, apply to the Judge of the Supreme Court for an injunction to restrain the person who gave the notice, or any other person, from applying, or proceeding with an application, for the incorporation of the association.

Restraint on incorporation.

(2.) The Judge of the Supreme Court may grant an injunction for which application is made under the last preceding sub-section—

- (a) on the ground that—
 - (i) the association is not an association for the purposes of this Ordinance;
 - (ii) the association was formed or is carried on, or is proposed to be incorporated, for an immoral, disloyal or illegal purpose;
 - (iii) the incorporation of the association is against the public interest; or
 - (iv) the name of the association is an unauthorized name; or

(b) on any other ground which the Judge considers just.

(3.) The Judge of the Supreme Court may determine an application under this section notwithstanding that all the parties interested are not parties to the proceedings.

Application for incorporation.

5.—(1.) Subject to any injunction granted under the last preceding section, a person who gives notice under section three of this Ordinance of intention to apply for the incorporation of an association may, after the expiration of a period of one month, and within a period of six months, after the publication of the notice, apply in writing to the Registrar, in a form approved by the Registrar, for the incorporation of the association.

(2.) An application under the last preceding sub-section shall state—

- (a) the name of the association;
- (b) the objects and purposes of the association;
- (c) the place or places where the association was formed and is carried on; and
- (d) the names and addresses of the persons who constitute the committee of the association or, if there is no committee of the association, the names and addresses of the persons having the management of the affairs of the association and the means by which the management is so vested.

(3.) The application shall be accompanied by a statutory declaration made by the applicant declaring—

- (a) that he is authorized by the committee of the association to apply for the incorporation of the association under this Ordinance;
- (b) that, on a date and in a newspaper specified in the declaration, he gave notice under section three of this Ordinance of his intention to apply for the incorporation of the association; and
- (c) that the particulars contained in the application are true.

Certificates of incorporation.

6.—(1.) Upon receipt of an application under, and in accordance with, the last preceding section for the incorporation of an association, the Registrar may, if he is satisfied that it is proper for him so to do, issue to the association a certificate of incorporation.

(2.) Subject to the next succeeding sub-section, the Registrar may refuse to issue a certificate of incorporation to an association on any ground specified in paragraph (a) of sub-section (2.) of section four of this Ordinance or on any other ground which he considers just.

(3.) The Registrar shall not refuse to issue a certificate of incorporation to an association on any ground which the Judge of the Supreme Court has refused to make the ground for the granting of an injunction under section four of this Ordinance to restrain a person from applying, or proceeding with an application, for the incorporation of the association.

7.—(1.) Upon the issue of a certificate of incorporation to an association under the last preceding section, the association becomes a body corporate with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

Incorporation
of associations.

(2.) The corporate name of an incorporated association is the name of the association followed by the word "Incorporated".

(3.) The common seal of an incorporated association is of no effect unless the name of the association is inscribed on the seal in legible characters.

(4.) All courts, judges and persons acting judicially shall take judicial notice of the seal of an incorporated association affixed to a document and shall presume that it was duly affixed.

8. Upon the incorporation of an association under this Ordinance, any personal property (other than personal property consisting of an estate or interest in land) held by a person, in trust or otherwise, for or on behalf of the association shall, subject to any trust, covenant, contract or liability affecting the property, be vested in the association.

Vesting of
personal
property in
incorporated
associations.

9.—(1.) The committee of an incorporated association shall, within fourteen days after the incorporation of the association under this Ordinance, appoint a person resident in the Territory to be the public officer of the association and, if that office at any time becomes vacant, shall, within fourteen days after it becomes vacant, appoint a person resident in the Territory to fill that vacancy.

Appointment of
public officer.

(2.) If the committee of an association fails to comply with the last preceding sub-section, each member of the committee is guilty of an offence punishable upon conviction by a fine not exceeding Ten pounds.

10.—(1.) The office of public officer of an incorporated association becomes vacant if the person holding that office—

Vacation of
office of public
officer.

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors;
- (c) becomes of unsound mind;
- (d) resigns his office by writing under his hand addressed to the committee of the association; or
- (e) ceases to be resident in the Territory.

(2.) The public officer of an incorporated association may, subject to the rules of the association, hold any other office in the association.

11.—(1.) A public officer shall, within fourteen days after his appointment, give notice in writing to the Registrar of his appointment and of his full name and address.

Notification of
appointment,
and change of
address, of
public officers.

(2.) If a public officer changes his address, he shall, within fourteen days after the change, give notice in writing to the Registrar of the change.

Penalty: Twenty pounds.

Filing of rules
and trusts.

12.—(1.) An incorporated association shall, within three months after its incorporation under this Ordinance, file with the Registrar—

- (a) a copy of the rules of the association; and
- (b) particulars of, and a copy of any instruments evidencing, the trusts, if any, relating to the association.

Penalty: Fifty pounds.

(2.) A copy of the rules of an incorporated association or of any other instrument filed under the last preceding sub-section shall be accompanied by a statutory declaration made by the public officer of the association declaring that that copy is a true copy of the instrument of which it purports to be a copy.

Alteration of
rules, &c.

13.—(1.) The public officer of an incorporated association shall, within one month after an alteration of—

- (a) the objects or purposes of the association;
- (b) the rules of the association; or
- (c) any trusts relating to the association,

file with the Registrar notice of the alteration, a copy of any instrument evidencing the alteration and a statutory declaration made by the public officer declaring that that copy is a true copy of the instrument of which it purports to be a copy and, in the case of an alteration of the objects, purposes or rules of the association, that the alteration is authorized, and was made in the manner provided, by the rules of the association.

Penalty: Twenty pounds.

(2.) Where, under the rules of an incorporated association, the members of the association are liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding-up of the association and an alteration of the rules of the association affects that liability, the public officer of the association shall, within one month after the alteration, give notice of that alteration in a newspaper circulating in the Territory.

Penalty: Twenty pounds.

(3.) An alteration of the objects, purposes or rules of an association, or of any trusts relating to an association, is of no effect until the last two preceding sub-sections have been complied with in respect of that alteration and, in the case of an alteration of the objects or purposes of the association, unless the alteration is approved by the Registrar.

14.—(1.) Where the Registrar is satisfied that the members of an incorporated association have, in accordance with the rules of the association, resolved to change the name of the association, the Registrar may, upon the application of the public officer of the association, issue to the association a certificate of incorporation in the new name and that certificate of incorporation has effect, from the date of issue, as the certificate of incorporation of the association.

Change of name.

(2.) The Registrar shall refuse to issue a certificate of incorporation to an association under the last preceding sub-section if the proposed new name of the association is an unauthorized name.

15. An alteration of the objects, purposes or rules of an incorporated association, or of any trusts relating to an incorporated association, or the issue of a certificate of incorporation under the last preceding section to an incorporated association in a new name, does not affect any right, liability or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect or the certificate was issued, as the case may be.

Alteration of rules, change of name, &c., does not affect existing rights and obligations.

16. An incorporated association shall cause every notice, advertisement, bill of exchange, promissory note, endorsement, order, way-bill, invoice, receipt or other document given, published, drawn, endorsed or issued by it to contain the name of the association in legible characters.

Name of association to appear on documents.

Penalty: Twenty pounds.

17. Subject to the next two succeeding sections, the provisions of the Companies Acts relating to the winding-up of unregistered companies apply, so far as applicable and with such modifications as are prescribed, to and in relation to the winding-up of incorporated associations and, in that application—

Winding-up.

- (a) a reference in the Companies Acts to an unregistered company shall be read as a reference to an incorporated association;
- (b) a reference in the Companies Acts to the directors of a company shall be read as a reference to the members of the committee of an incorporated association;
- (c) a reference in the Companies Acts to the secretary of a company shall be read as a reference to the public officer of an incorporated association; and
- (d) a reference in the Companies Acts to the principal place of business of a company shall be read as a reference to the place where the public officer of an incorporated association resides.

18. A member of an incorporated association is not liable, except as provided in the rules of the association, to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding-up of the association.

Liability of members.

Distribution of surplus assets.

19.—(1.) Where, upon the winding-up of an incorporated association, a resolution relating to the distribution of the surplus assets of the association has been passed by a majority of at least two-thirds of the members of the association, the Judge of the Supreme Court shall, subject to the next succeeding sub-section, make an order for the distribution of those assets in accordance with the resolution.

(2.) Where—

(a) the Judge of the Supreme Court considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in the last preceding sub-section would not be just; or

(b) such a resolution has not been passed,

the Judge of the Supreme Court shall make such order for the distribution of those assets as, having regard to the objects and purposes of the association being wound up, he considers just.

(3.) In this section, “surplus assets” means, in relation to an incorporated association, the assets remaining on a winding-up of the association after payment of the debts and liabilities of the association and the costs, charges and expenses of the winding-up.

Power to sell trust property.

20.—(1.) Where property is held by an incorporated association upon trust and the trust has come either wholly or partly to an end, the public officer of the association may, with the authority of the committee of the association, apply to the Judge of the Supreme Court for an order authorizing the disposal of the whole or a part of the property.

(2.) At the hearing of the application, the Judge of the Supreme Court may, if he thinks it proper so to do and notwithstanding that the provisions of the deed or other instrument creating the trust, or the rules of the association, forbid or do not authorize the disposal of the property, make an order—

(a) authorizing the disposal of the whole or a part of the property; and

(b) directing the manner in which the proceeds arising from the disposal of the property, or the part of the property, are to be disposed of or dealt with.

Service on associations and notices and demands by associations.

21.—(1.) A notice, demand, summons, writ or other document or process may be served on an incorporated association by serving it personally on the public officer of the association or by sending it by post to him at his last-known address.

(2.) An incorporated association may give a notice or make a demand by writing under the hand of the public officer of the association.

22.—(1.) The committee of an incorporated association shall, at least once in each period of twelve months— Audit and
balance-sheet.

- (a) cause the financial affairs of the association to be audited by a person who is not a member, or the public officer, of the association; and
- (b) prepare, or cause to be prepared, a balance-sheet setting out the assets and liabilities of the association.

(2.) If the committee of an association fails to comply with the last preceding sub-section, each member of the committee is guilty of an offence punishable upon conviction by a fine not exceeding Ten pounds.

(3.) The public officer of an incorporated association shall, within one month after the preparation of a balance-sheet in respect of the association under sub-section (1.) of this section, file with the Registrar a copy of that balance-sheet certified to be correct by the person who audited the financial affairs of the association.

Penalty: Twenty pounds.

23.—(1.) The Registrar may, by writing under his hand, certify— Evidentiary
provisions.

- (a) that, on a date specified in the certificate, an association so specified was, or was not, an incorporated association; or
- (b) 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,

and such a certificate is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(2.) Judicial notice shall be taken of the signature of the Registrar appearing on a certificate under the last preceding sub-section and of the fact that the person by whom the certificate purports to have been signed is the Registrar.

24. Where, under this Ordinance or the regulations, an act or thing is required to be performed or done within a specified time, Extension of
time. the Registrar may, in special circumstances, if he thinks fit, extend the time for the performance or doing of that act or thing.

Regulations.

25. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular—

- (a) providing for or in relation to the cancellation, and matters arising out of the cancellation, of the incorporation of—
 - (i) incorporated associations that have ceased to exist or to be associations for the purposes of this Ordinance; or
 - (ii) incorporated associations the names of which are unauthorized names;
- (b) providing for the issue of certified copies of certificates of incorporation;
- (c) providing for the inspection of documents filed with the Registrar under this Ordinance or the regulations;
- (d) prescribing the form in which any application, notice, declaration or certificate shall be made, given, published, issued or filed under this Ordinance or the regulations;
- (e) providing for the form of, and the matters to be provided for in, the rules of incorporated associations;
- (f) prescribing the fees to be paid on the making, giving, publishing, issuing, filing or inspecting of any application, notice, declaration, certificate or other document under this Ordinance or the regulations; and
- (g) prescribing penalties, not exceeding a fine of Twenty pounds, for offences against the regulations.

Dated this twenty-sixth day of November, 1953.

W. J. SLIM
Governor-General.

By His Excellency's Command,

J. A. SPICER
for and on behalf of the Minister of State
for the Interior.

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