



Australian Capital Territory

# **Associations Incorporation Act 1991 No 46**

## **Republication No 5**

Republication date: 23 November 2001

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Associations Incorporation Act 1991* as in force on 23 November 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Associations Incorporation Act 1991

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Amendments incorporated to  
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Australian Capital Territory

# Associations Incorporation Act 1991

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An Act to provide for the incorporation of certain associations, and for related purposes

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Associations Incorporation Act 1991*.

### 3 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***accounting records*** includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, books and records which record documents of prime entry, and such working papers and documents as are necessary to explain the methods and calculations by which accounts are made up.

***annual general meeting***, in relation to an incorporated association, means a meeting of the association held under section 68 or 69.

***annual return*** means a statement referred to in section 79 (1) (a).

***approved form*** means a form approved by the registrar-general under section 126 (Approved forms).

***authorised person*** means a person authorised to apply for the incorporation of an association or proposed association under section 16 (a).

***banker's books*** means—

- (a) books of a banking corporation including any documents used in the ordinary business of a banking corporation; and
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banking corporation; and

- (c) securities or documents of title to securities in the possession or under the control of a banking corporation whether by way of pledge or otherwise.

***banking corporation*** means a bank, building society or credit union.

***books*** includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored and any other document.

***certificate of incorporation*** means a certificate of incorporation issued under section 19, 27 or 38 (3).

***commencement date*** means 1 January 1992.

***committee***, in relation to an association, means the committee of the association established under section 60 (1).

***court*** means the Supreme Court or the Magistrates Court.

***financial year***, in relation to an incorporated association, means the period, not exceeding 12 months, fixed by the rules of the association as the financial year of the association for this Act.

***inaugural member of a committee*** means a person who is, under section 61, taken to be an inaugural member of the committee of an incorporated association.

***inaugural public officer*** means the person who is, under section 58, taken to be the inaugural public officer of an incorporated association.

***incorporated*** means incorporated under this Act or the repealed Act.

***member***, in relation to membership of an incorporated association whether as an individual or as a body corporate, includes associate member or any other class of member.

***model rules*** means the rules prescribed under section 127 (1) (a).

***objects***, in relation to an incorporated association, means the objects that are, under section 29, the objects of the association.

***officer***, in relation to an incorporated association, means—

- (a) a member of the committee of the association; or
- (b) the public officer, secretary, treasurer or executive officer of the association, the holder of any other office of the association (however described) or a person occupying any of the abovementioned offices, whether validly appointed or not; or
- (c) any other person who is concerned in or takes part in the management of the association's affairs;

but does not include a patron or the holder of another honorary office of the association if the office does not confer on its incumbent a right to participate in the management of the association's affairs.

***public officer***, in relation to an incorporated association, means the person appointed to be the public officer of the association in accordance with section 57.

***repealed Act*** means the *Associations Incorporation Act 1953* as in force from time to time before the commencement date.

***reproduction***, in relation to a document, means—

- (a) a machine-copy of the document; or
- (b) a print made from the negative of the document; or
- (c) if an image of the document has been stored by means of a computer or by other electronic means—a print-out of the image.

***rules***, in relation to an incorporated association, means the rules that are, under section 31 (1), the rules of the association.

***special resolution*** means a resolution passed in accordance with section 70.

#### **4 Trade or pecuniary gain—interpretation**

For this Act, an association shall not be taken to be formed or carried on with the object of trading or obtaining pecuniary gain for its members, or to be trading or obtaining pecuniary gain for its members, only because—

- (a) the association obtains a pecuniary gain, none of which is received by any of its members, or otherwise credited to its members; or
- (b) the association buys or sells or otherwise deals in goods or services where those transactions are ancillary to the principal object of the association and, if the transactions are carried out with persons other than its members, the transactions—
  - (i) are not substantial in number or value in relation to the other activities of the association; or
  - (ii) consist of charging admission fees to displays, exhibitions, contests, sporting fixtures or other events organised for the purpose of promoting the objects of the association; or
- (c) the association—
  - (i) is established with the object of protecting a trade, business, industry or calling in which its members are engaged or interested; and
  - (ii) does not engage in, or in a branch or part of, the trade, business, industry or calling; or
- (d) the association provides facilities or services for its members; or
- (e) its members derive a pecuniary gain from the enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes; or
- (f) any of its members receives remuneration from the association for goods or services supplied by the member, or otherwise

obtains a pecuniary gain from the association to which the member would be entitled if he or she were not a member of the association; or

- (g) its members compete for trophies or prizes in contests directly related to the objects of the association.

## **Part 2 Administration**

### **9 Registers**

The registrar-general shall keep such registers as he or she considers necessary for this Act, and the registers may be kept in such a form and contain such particulars as the registrar-general thinks fit.

### **10 Copies of certificates of incorporation**

The registrar-general shall keep a copy of each certificate of incorporation issued by the registrar-general.

### **11 Inspection of documents**

(1) A person may—

- (a) inspect any document lodged with the registrar-general under this Act or the repealed Act; and
- (b) obtain from the registrar-general a copy of, or an extract from, or a certified copy or certified extract, as the person requires, of or from any document that the person is entitled to inspect; and
- (c) obtain from the registrar-general a certified copy of the certificate of incorporation of an incorporated association.

*Note* A fee may be determined under s 125 (Determination of fees) for this section.

(2) In this section—

- (a) a reference to a copy of, or an extract from, a document includes a reference to a print-out of the matters or some of the matters contained in the document and recorded in a computerised database comprising the matters contained in documents issued by or lodged with the registrar-general; and
- (b) a reference to a document includes a reference to—

- (i) a copy of a certificate of incorporation kept by the registrar-general under section 10; and
- (ii) an application lodged with the registrar-general under this Act; and
- (iii) where a reproduction or transparency of a document lodged with the registrar-general has been incorporated in a register—the reproduction or transparency; and
- (iv) a display on the screen of a computer terminal of a matter or matters recorded in the computerised database referred to in paragraph (a);

but does not include a reference to any document disposed of by the registrar-general under section 12.

## **12 Disposal of documents**

The registrar-general may dispose of—

- (a) any document lodged with the registrar-general in relation to an incorporated association that, at least 7 years previously, was dissolved or ceased to be registered or the incorporation of which was cancelled; or
- (b) any document of which a reproduction or transparency has been incorporated in a register under section 9;

if, in the opinion of the registrar-general, it is no longer necessary or desirable to keep the document.

## **13 Defective documents**

- (1) Where the registrar-general is of the opinion that a document submitted for lodgment with the registrar-general—
  - (a) contains matter contrary to law; or
  - (b) contains matter that is, in a material particular, false or misleading in the form or context in which it appears; or



- (c) has not been duly completed because of an omission or misdescription; or
- (d) does not comply with this Act; or
- (e) contains an error, alteration or erasure;

the registrar-general may refuse to receive or register the document and may require—

- (f) that the document be appropriately amended or completed and resubmitted; or
- (g) that another document be lodged in place of the defective document; or
- (h) if the document has not been duly completed—that a supplementary document be lodged.

*Note* If a form is approved under s 126 (Approved forms) for a document, the form must be used.

- (2) The registrar-general may require a person who submits a document for lodgment with the registrar-general to give the registrar-general any other document or further information that the registrar-general thinks necessary in order to form an opinion whether the registrar-general may refuse to receive or register the document.

## **Part 3**                      **Incorporation generally**

### **Division 3.1**                **Preliminary**

#### **14**      **Eligibility for incorporation**

- (1) An association is eligible for incorporation if it—
  - (a) has at least 5 members; and
  - (b) is formed or carried on for a lawful object; and
  - (c) is not ineligible for incorporation within the meaning of subsection (2).
- (2) An association is ineligible for incorporation within the meaning of this subsection if it—
  - (a) is formed or carried on with the object of trading or obtaining pecuniary gain for its members; or
  - (b) is trading or obtaining pecuniary gain for its members; or
  - (c) has capital divided into shares or stock held by its members; or
  - (d) holds property in which its members have an alienable interest, whether directly or in the form of shares or stock in its capital or otherwise; or
  - (e) is capable of applying for registration as an organisation under the *Workplace Relations Act 1996* (Cwlth), section 188.

#### **15**      **Ineligible associations—incorporation**

- (1) The Minister may, in writing, declare an association or a specified class of associations to be eligible for incorporation under this Act notwithstanding that the association is, or that associations in that class are, formed or carried on with the object of obtaining pecuniary gain, or trading or obtaining pecuniary gain, for the members of the association or associations.

- (2) The Minister may make the incorporation of an association under a declaration subject to any conditions determined by the Minister.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **16 Matters preliminary to incorporation**

An association or a group of 5 or more persons proposing to form and incorporate an association may, by resolution—

- (a) authorise a person who is at least 18 years of age and who resides in the Territory to apply for the incorporation of the association or proposed association; and
- (b) approve a statement of the objects of the association or proposed association for the purposes of the application; and
- (c) adopt rules of the association or proposed association, being—
  - (i) the model rules, as in force from time to time; or
  - (ii) rules other than the model rules, being rules that comply with section 32; and
- (d) appoint at least 3 members of the association or of the group proposing to form and incorporate an association to be the inaugural members of the committee of the incorporated association if the application is successful.

## **17 Powers of authorised person**

- (1) An authorised person may—
  - (a) lodge an application with the registrar-general for the incorporation of an association or proposed association; and
  - (b) do anything necessary to secure the incorporation of the association or proposed association.

- (2) Subsection (1) (b) applies in relation to an authorised person notwithstanding any provision to the contrary in the rules adopted by the association or proposed association under section 16 (c).

## **Division 3.2                      Incorporation**

### **18      Applications for incorporation**

- (1) An application for the incorporation of an association or proposed association—
- (a) shall state—
    - (i) the proposed name of the association or proposed association (being a name that complies with division 3.5); and
    - (ii) the name and address of the applicant; and
    - (iii) the name and address of the person who will be the inaugural public officer of the association; and
    - (iv) the name and address of each person who will be an inaugural member of the committee of the association or proposed association; and
    - (v) the address and hours of opening of the registered office (if any) of the association or proposed association in accordance with section 121 (1); and
    - (vi) the prescribed particulars (if any); and
  - (b) shall be accompanied by—
    - (i) a copy of a statement of the objects of the association or proposed association approved under section 16 (b); and
    - (ii) a notice (if any) given under section 37 (3) stating the name reserved for incorporation of the association or proposed association; and

- (iii) a statement to the effect that the model rules as in force from time to time have been adopted as the rules of the association or proposed association under section 16 (c) (i), or a copy of the rules of the association or proposed association adopted under section 16 (c) (ii), as the case requires; and
- (iv) a notice specifying particulars of any trust relating to the association or proposed association, with a copy of the deed or other instrument creating or embodying the trust; and
- (v) a statement by the applicant in accordance with subsection (2); and
- (vi) the prescribed documents (if any).

*Note* If a form is approved under s 126 (Approved forms) for an application or notice, the form must be used.

- (2) A statement by the applicant for subsection (1) (b) (iv) shall certify that—
  - (a) the applicant is authorised to apply for the incorporation of the association or proposed association under section 16 (a); and
  - (b) the particulars stated in the application are correct; and
  - (c) the copy of each document accompanying the application is a true copy of the document.

## **19 Certificate of incorporation**

Where—

- (a) an application for the incorporation of an association or proposed association is made in accordance with section 18; and
- (b) the registrar-general is satisfied that the association is, or would be, when formed, eligible for incorporation under this Act;

the registrar-general shall incorporate the association or proposed association by issuing to it a certificate of incorporation.

## **20    Date of incorporation**

An association shall be taken to have been incorporated on the date specified in the certificate of incorporation as the date of incorporation.

## **21    Constitution of incorporated associations**

- (1) An incorporated association shall, subject to this Act and the rules of the association, be taken to be constituted, under the name specified in the certificate of incorporation issued in respect of the association, by the persons who are its members from time to time.
- (2) For subsection (1), persons who were, immediately before the date on which an association was incorporated—
  - (a) in the case of an association in respect of which the certificate was issued under section 19—members of the association, or members of the group proposing to form the association, as the case requires; or
  - (b) in the case of an association incorporated under section 27—the members of the associations that amalgamated under that section;

shall be taken to have been members of the association at the time the association was incorporated.

## **22    Corporate identity**

An incorporated association—

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) has power to acquire, hold and dispose of real and personal property; and

- (d) is capable of suing and being sued in its corporate name; and
- (e) is capable of performing all the functions of a body corporate.

## **23 Property**

- (1) Any property that was, immediately before the date on which an association was incorporated, held, in trust or otherwise, on behalf of the association or proposed association by any person (including, in the case of an association incorporated under section 27, property held by or on behalf of an amalgamating association within the meaning of division 3.3) shall be taken to have vested in the association upon incorporation.
- (2) Property referred to in subsection (1) vests in an association subject to any mortgage, charge, encumbrance, lien, lease, covenant, contract or other liability affecting the property immediately before the date on which the association was incorporated, and subject to the provisions of any trust affecting the property immediately before that date.
- (3) After property that is taken to have vested in an association in accordance with subsection (1) has been delivered or transferred to the association, the trustee of that property immediately before it became so vested shall not be liable or accountable for the property and is not bound to see to the application, distribution or appropriation of that property.

## **24 Legal capacity of incorporated associations**

An incorporated association has, both within and outside the Territory, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Territory, power—

- (a) to grant a floating charge on property of the association; and
- (b) to arrange for the association to be registered or otherwise recognised as a corporate body in a place outside the Territory; and

(c) to do any act that it is authorised to do by any other law.

## **25    Restriction of actions**

- (1) The objects or rules of an incorporated association may contain an express restriction on, or an express prohibition of, the exercise by the association of any power conferred by this Act on the association.
- (2) If an incorporated association—
  - (a) purports to exercise a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the objects or rules of the association; or
  - (b) does an act otherwise than in pursuance of the objects of the association;the association contravenes this subsection.
- (3) An officer of an incorporated association shall not, by act or omission, directly or indirectly, be knowingly concerned in or party to a contravention by the association of subsection (2).
- (4) Where, by purporting to exercise a power as mentioned in subsection (2) (a), or by doing an act as mentioned in subsection (2) (b), an incorporated association contravenes subsection (2), the purported exercise of the power, or the act, shall not be taken to be invalid only because of the contravention.
- (5) An act by an officer of an incorporated association shall not be taken to be invalid only because the act is prohibited by subsection (2).
- (6) The fact that—
  - (a) by purporting to exercise a power as mentioned in subsection (2) (a), or by doing an act as mentioned in subsection (2) (b), an incorporated association contravened, or would contravene, subsection (2); or



- (b) by doing a particular act, an officer of an incorporated association contravened, or would contravene, subsection (3);
- is not admissible in evidence in any proceedings except—
- (c) a prosecution of a person for an offence against this Act; or
- (d) proceedings against the association by a member of the association to restrain the association from doing any act; or
- (e) proceedings by the association or by a member of the association against an officer or former officer of the association; or
- (f) an application by the registrar-general or by a member of the association to wind up the association.

### Division 3.3                      Incorporation of amalgamating associations

#### 26      Amalgamation of incorporated associations

- (1) Two or more incorporated associations proposing to amalgamate (in this division called the *amalgamating associations*) may lodge with the registrar-general a joint application for incorporation as a single association (in this division called the *new association*) if—
- (a) the terms of the proposed amalgamation and a statement of the objects of the new association have each been approved by a special resolution passed by each amalgamating association; and
- (b) the model rules as in force from time to time, or other rules that comply with section 32, have been adopted as the rules of the new association by a special resolution passed by each amalgamating association.
- (2) An application—
- (a) shall state—

- (i) the proposed name of the new association (being a name that complies with division 3.5); and
  - (ii) the name and address of the person nominated by the amalgamating associations to be the inaugural public officer of the new association; and
  - (iii) the names and addresses of at least 3 persons nominated by the amalgamating associations to be the inaugural members of the committee of the new association; and
  - (iv) the address and hours of opening of the registered office (if any) of the new association in accordance with section 121 (1); and
  - (v) the prescribed particulars (if any); and
- (b) shall be accompanied by—
- (i) a copy of the statement of the objects of the new association approved in accordance with section 26 (1) (a); and
  - (ii) a statement to the effect that the model rules as in force from time to time have been adopted in accordance with section 26 (1) (b) as the rules of the new association, or a copy of other rules adopted in accordance with that section as the rules of the new association; and
  - (iii) a notice specifying particulars of any trust relating to the amalgamating associations or the new association, with a copy of the deed or other instrument creating the trust; and
  - (iv) a statement to the effect that the resolutions referred to in subsection (1) (a) and (b) have been duly passed by the amalgamating associations; and
  - (v) a statement by the applicants in accordance with subsection (3); and

(vi) the prescribed documents (if any).

*Note* If a form is approved under s 126 (Approved forms) for an application, notice or statement, the form must be used.

- (3) A statement for subsection (2) (b) (v) shall be made jointly by the amalgamating associations to the effect that—
- (a) the particulars stated in the application are correct; and
  - (b) the copy of each document accompanying the application is a true copy of the document.

## **27 Incorporation of amalgamating associations**

Where the registrar-general is satisfied—

- (a) that each amalgamating association making an application under section 26 (1) has complied with this Act; and
- (b) that the new association is, or would be when formed, eligible for incorporation under this Act;

the registrar-general shall incorporate the new association by issuing to it a certificate of incorporation.

## **28 Effect of incorporation—amalgamated associations**

- (1) Upon the incorporation of a new association under section 27—
- (a) each of the amalgamating associations that was a party to the incorporation shall be taken to have been dissolved and to have had its incorporation cancelled; and
  - (b) the bodies corporate previously constituted by the amalgamating associations shall be taken to be subsumed in the body corporate constituted by the new association; and
  - (c) any property or proprietary or other right that was, immediately before the date on which the new association was incorporated, vested in an amalgamating association shall, subject to any trust affecting the property or right be taken to be vested in, and may be exercised or enforced by, the new association; and

- (d) any liability, obligation or penalty that could have been enforced against or recovered from an amalgamating association immediately before that date is enforceable against or recoverable from the new association; and
  - (e) any investigation, legal proceeding or remedy that could, immediately before that date, have been instituted, continued or enforced against an amalgamating association may be instituted, continued or enforced against the new association; and
  - (f) this Act applies in relation to the new association as if it had been incorporated under section 19.
- (2) Where, under subsection (1) (c), land or an interest in land (being land in the Territory) held by an existing association is to be taken to be property of a new association, the registrar-general shall, upon production of the certificate of incorporation of the new association, endorse the relevant certificate of title in the register kept under the *Land Titles Act 1925* to that effect.
- (3) A reference in a will or other instrument to an association that was a party to the incorporation of a new association under section 27 shall, unless the will or other instrument otherwise provides, be construed as a reference to the new association.

## **Division 3.4                      Objects and rules of incorporated associations**

### **29      Objects**

The objects of an incorporated association are the objects appearing in the statement of the association's objects lodged with the registrar-general under section 18 (1) (b) (i) or 26 (2) (b) (i), being those objects as altered from time to time in accordance with section 30.

### **30 Alteration of objects**

- (1) An incorporated association may, by special resolution, alter its objects.
- (2) An incorporated association shall, not later than 1 month after a special resolution to alter the objects of the association has been passed by the association, lodge with the registrar-general a notice setting out the particulars of the alteration.

Maximum penalty: 2 penalty units.

*Note* If a form is approved under s 126 (Approved forms) for a notice, the form must be used.

- (3) A resolution to alter the objects of an incorporated association is of no effect until the notice has been lodged.

### **31 Rules**

- (1) The rules of an incorporated association are—
  - (a) if the association, or a group of persons proposing to form the association, has adopted the model rules under section 16 (c) (i), 26 (1) (b) or 33 (1) (a)—those rules as in force from time to time; or
  - (b) where the association, or group, has adopted rules other than the model rules under section 16 (c) (ii), 26 (1) (b) or 33 (1) (b)—those rules as altered from time to time in accordance with section 33.
- (2) Where the model rules make provision in relation to any matter not provided for in the rules of an incorporated association, the rules of the association shall be taken to include the provision of the model rules in relation to that matter.

### **32 Rules other than model rules**

For sections 16 (c) (ii), 26 (1) (b), 33 (1) (b) and 141, rules other than the model rules shall be taken to comply with this section if they—

- (a) provide for the matters specified in schedule 1, column 2 as required by schedule 1, column 3; and
- (b) provide for any prescribed matters; and
- (c) are arranged numerically by subject matter.

### **33 Alteration of rules**

- (1) Subject to this Act, an incorporated association may, by special resolution, alter its rules in whole or in part and may, in particular—
  - (a) adopt as its rules the model rules as in force from time to time instead of rules other than the model rules adopted under section 16 (c) (ii) or 26 (1) (b) or paragraph (b); or
  - (b) adopt as its rules other rules that comply with section 32 instead of the model rules adopted under section 16 (c) (i) or 26 (1) (b) or paragraph (a).
- (2) Where an incorporated association has resolved to alter its rules, the association shall, not later than 1 month after the resolution was passed, lodge with the registrar-general a notice setting out the particulars of the alteration, and including a declaration by at least 2 members of the committee of the association to the effect that a special resolution referred to in subsection (1) was duly passed by the association.

Maximum penalty: 2 penalty units.

*Note* If a form is approved under s 126 (Approved forms) for a notice, the form must be used.

- (3) Where a notice relating to the alteration of the rules of an association has been lodged under subsection (2), the registrar-general may give notice to the association that it is required to lodge a copy of its rules with the registrar-general.
- (4) When an incorporated association has been given notice by the registrar-general under subsection (3), the association shall, not later than 1 month after the date of the notice, lodge with the registrar-

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general a printed copy, in consolidated form, of the association's rules as altered and in force at that date.

Maximum penalty: 2 penalty units.

- (5) A resolution to alter the rules of an incorporated association is of no effect until a notice has been lodged by the association under subsection (2).

### **34 Illegal objects or rules**

An object or rule of an incorporated association that is inconsistent with this Act or with another law in force in the Territory is of no effect.

### **35 Copies of documents for members**

- (1) On the request of a member of an incorporated association, the association shall give the member—
- (a) a copy of a current statement of the objects of the association; or
  - (b) a copy of the rules of the association currently in force; or
  - (c) a copy of the deeds of any trust relevant to the association.
- (2) An incorporated association may charge a fee not exceeding the fee determined under section 125 (Determination of fees) for this section for each copy of a document given to a member under subsection (1).

## **Division 3.5 Names of incorporated associations**

### **36 Names**

The name of an incorporated association shall include, at the end of the name, the word 'Incorporated' or the abbreviation 'Inc.'.

### **37 Reservation of names**

- (1) An authorised applicant may lodge with the registrar-general an application for the reservation of the name specified in the application as—
  - (a) the name of a proposed association in relation to which an application for incorporation is to be lodged; or
  - (b) the name of an association that intends to apply for incorporation; or
  - (c) the name of a new association within the meaning of division 3.3; or
  - (d) the new name that an incorporated association has resolved to apply for approval to adopt under section 38 (1).

*Note* If a form is approved under s 126 (Approved forms) for an application, the form must be used.

- (2) If—
  - (a) the registrar-general is satisfied that an application is made in good faith; and
  - (b) the name specified in the application is available for reservation;

the registrar-general shall reserve the name, for the period of 4 months beginning on the date on which the application was lodged, for the association or proposed association to which the application relates.

- (3) As soon as practicable after making a decision in relation to an application for the reservation of a name, the registrar-general shall, by notice in writing to the applicant, inform the applicant of that decision.
- (4) The reservation of a name for an association, proposed association or incorporated association does not of itself entitle the association or proposed association to be incorporated under the reserved name,



or entitle the incorporated association to change its name to the reserved name.

- (5) For subsection (2) (b), a name shall be taken to be available for reservation for an association or proposed association unless it is—
- (a) a name that is, in the opinion of the registrar-general, undesirable; or
  - (b) a name or a name of a kind specified by the Minister in writing for this paragraph; or
  - (c) the name of an incorporated association; or
  - (d) reserved for another association or proposed association; or
  - (e) a name that so closely resembles a name referred to in paragraph (c) or (d) as to be likely to be mistaken for it.
- (6) An instrument under subsection (5) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (7) If the registrar-general refuses to reserve a name or a name of a kind referred to in subsection (5) (a), (b) or (e) for an association or proposed association, the authorised applicant may apply to the Minister for consent to the reservation of the name for the association or proposed association and, if the Minister gives that consent, the name shall, for subsection (2) (b), be taken to be available for reservation.

- (8) In this section:

***authorised applicant***, in relation to an association or proposed association, means—

- (a) an authorised person; or
- (b) in the case of a new association within the meaning of division 3.3—a person authorised for subsection (1) by the amalgamating associations; or

- (c) in the case of an incorporated association that has resolved to apply to the registrar-general for approval to adopt a new name—the public officer of the association.

### **38 Change of name**

- (1) An incorporated association may, by special resolution, resolve to apply to the registrar-general for approval to adopt a new name.
- (2) An application shall include a declaration by at least 2 members of the committee of the association to the effect that a special resolution referred to in subsection (1) was duly passed by the association.

*Note*     If a form is approved under s 126 (Approved forms) for an application, the form must be used.

- (3) If the new name has been reserved for the association in accordance with section 37 and the registrar-general approves the adoption of the new name by the association, the registrar-general shall issue to the association a certificate of incorporation under the new name.

### **39 Compulsory change of name**

- (1) If it appears to the registrar-general that an association has been incorporated under a name or a name of a kind referred to in section 37 (5) without the consent of the Minister, the registrar-general may, by notice in writing to the association, direct the association to change its name.
- (2) A direction to an association under subsection (1) has effect as if it were a special resolution of the association passed under section 38 (1).

### **40 Effect of change of name**

- (1) A change of name of an incorporated association under section 38 shall not be taken to—
- (a) create a new legal entity; or

- (b) prejudice or affect the identity of the body corporate constituted by the association or its continuity as a body corporate; or
  - (c) affect the date of incorporation of the association; or
  - (d) affect the property, or the rights and obligations of the association; or
  - (e) render defective any legal proceedings by or against the association.
- (2) Where the name of an incorporated association has been changed, any legal proceedings that could have been continued or instituted by or against the association in its former name may be continued or instituted by or against the association in its new name.

#### **41 Name on association's documents etc**

The name of an incorporated association shall appear in legible characters—

- (a) on the common seal of the association; and
- (b) on every business letter, statement of account, invoice, official notice, publication, bill of exchange, promissory note, endorsement, cheque or other negotiable instrument, order, receipt and letter of credit issued or executed by or on behalf of the association.

Maximum penalty: 2 penalty units.

### **Division 3.6 Contracts**

#### **42 Interpretation for div 3.6**

In this division—

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

#### **43    Ratification of pre-incorporation contracts**

- (1) Where—
- (a) a nonexistent incorporated association purports to enter into a contract; and
  - (b) the association is incorporated within a reasonable time after the contract is purported to have been entered into;

the incorporated association may, within a reasonable time after its incorporation, ratify the contract.

- (2) Where an incorporated association ratifies a contract as provided for in subsection (1), the association is bound by, and is entitled to the benefit of, the contract as if the association had been incorporated before the contract was entered into and had been party to the contract.
- (3) For 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 47, and section 47 has effect as if—
  - (a) a reference in that section to entering into a contract included a reference to ratifying a contract; and
  - (b) the reference in section 56 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.

#### **44 Liability of party to contract**

- (1) 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 purported to enter into the contract but does not ratify the contract within a reasonable time after the association was incorporated;

then, notwithstanding any rule of law or equity to the contrary, the person has no right of indemnity against the incorporated association in respect of the contract.

- (2) Where a nonexistent incorporated association purports to enter into a contract and the association—

- (a) is not incorporated within a reasonable time after the contract is purported to be entered into; or
- (b) is incorporated within that time but does not ratify the contract within a reasonable time after being incorporated;

the other party or each of the other parties to the contract may, subject to subsections (5) and (6), recover from the person or from any 1 or more of the persons who purported to execute the contract on behalf of the nonexistent incorporated association an amount of damages equivalent to the amount of damages for which the 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 under section 43 (1); or
- (d) where the association has been incorporated as referred to in paragraph (b)—the association had ratified the contract under section 43 (1);

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.

- (3) Where—
  - (a) proceedings are brought to recover damages under subsection (2) in relation to a contract purported to have been entered into by a nonexistent incorporated association; and
  - (b) the association has been incorporated;

the court may, if it thinks it just to do so, make either or both of the following orders:

- (c) 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;

- (d) 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.
- (4) Where, in proceedings to recover damages under subsection (2) in relation to a contract purported to be entered into by a nonexistent incorporated association, the court makes an order under subsection (3) (c), the court may refuse to award any damages in the proceedings, or may award an amount of damages less than the amount the court would have awarded if the order had not been made.
- (5) Where—
- (a) a nonexistent incorporated association purports to enter into a contract; and
  - (b) the association is incorporated and ratifies the contract as provided for in section 43 (1); and
  - (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 1 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 may, subject to subsection (7), if it thinks it just to do so, order the person or any 1 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.

- (6) Where a person purports, whether alone or together with another person or persons, to execute a contract on behalf of a nonexistent incorporated association, the other party to the contract, or any of the other parties to the contract, may, by writing signed by the party or parties, as the case requires, consent to the firstmentioned person or persons being exempted from any liability in respect of the contract.
- (7) Where a person has, in accordance with subsection (6), consented to the exemption of another person from liability in respect of a contract that the other person purported to execute on behalf of a nonexistent incorporated association—
- (a) notwithstanding subsection (2), the firstmentioned person is not entitled to recover damages from that other person in relation to that contract; and
  - (b) the court shall not, in proceedings referred to in subsection (5), order that other person to pay to the firstmentioned person any damages or proportion of the damages that the incorporated association has been, or may be, found liable to pay to that firstmentioned person.

#### **45 Substituted contract**

Where—

- (a) a nonexistent incorporated association purports to enter into a contract; and
- (b) the association is subsequently incorporated; and
- (c) the incorporated association and the other party or parties to the contract enter into a contract in substitution for the firstmentioned contract;

any liabilities to which the person who purported to execute the firstmentioned contract on behalf of the nonexistent incorporated association is subject, under this division, in relation to the firstmentioned contract (including liabilities under an order made by a court under this division) shall be taken to have been discharged.



#### **46 Substituted rights and liabilities**

Any rights or liabilities of a person under this division (including rights or liabilities under an order made by a court under this division) in relation to a contract shall be taken to be substituted 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.

#### **47 Post-incorporation contracts**

- (1) A person acting with 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 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) binds the association and the other party or parties to the contract.

### **Division 3.7 Rights and liabilities of members and officers**

#### **48 Relationship between association and members**

The rules of an incorporated association shall be taken to bind the association and its members from time to time 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 rules.

#### **49 Court's jurisdiction**

A member of an incorporated association who is deprived by a decision of the association of a right conferred on the member, as a member, by the rules of the association, may apply to the court for an order to vary or set aside the decision.

## **50 Rules of natural justice**

Where an incorporated association exercises any power that it has to adjudicate upon a dispute between its members, or between itself and a member or members, in relation to the rights conferred upon the members by the rules of the association, any decision made by the association shall not be taken to be valid unless, in any proceedings in relation to the dispute, the rules of natural justice have been complied with.

## **51 Liability of officers and members**

An officer or a member of an incorporated association shall not, except as otherwise provided by this Act or the rules of the association, be taken, only because of being a member or officer, to be liable to contribute to the payment of any debts or other liabilities incurred by the association, or to the costs, charges or expenses incurred in the course of winding up the association.

## **52 Property rights**

Membership of an incorporated association shall not, except as otherwise provided by this Act, be taken to confer upon the members of the association any right, title or interest, whether legal or equitable, in the property of the association.

## **53 Enforcement of rights**

- (1) On the application of an incorporated association or a member of an incorporated association, the court may, by order—
  - (a) give directions for the performance and observance of the rules of the incorporated association by any person who is under an obligation to perform or observe those rules; and
  - (b) declare and enforce the rights or obligations of members of an incorporated association between themselves, or the rights or obligations between an incorporated association and a member of the incorporated association.

- (2) On hearing an application, the court may make an order whether or not the application relates to a right or interest in property, and whether or not the applicant has an interest in property of the association.

## **Division 3.8                    Miscellaneous**

### **54        Disposal of trust property**

- (1) Where a trust in relation to property held by an incorporated association has come wholly or partly to an end, the association may apply to the court for an order authorising the disposal of all or part of the property as the case requires.
- (2) Application for an order shall be made—
- (a) if the value of the property does not exceed \$50 000—to the Magistrates Court; or
- (b) in any other case—to the Supreme Court.
- (3) On hearing an application, the court may, if it thinks it just to do so, make an order—
- (a) authorising the disposal of all or part of the property; and
- (b) directing the manner in which the proceeds from the disposal of the property or part are to be dealt with.
- (4) An application may be made, and the court may exercise its powers, notwithstanding that the deed or other instrument creating or embodying the trust does not, or the rules of the association do not, contain any power to dispose of the property or prohibit the disposal of the property.

### **55        Authentication and execution of documents**

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

- (2) An incorporated association may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by the agent or attorney under his or her seal on behalf of the association binds the association and has the same effect as if it were under the association's common seal.
- (3) The authority of an agent or attorney empowered to act on behalf of an incorporated association under subsection (2), as between the association and a person dealing with the agent or attorney, continues during the period (if any) specified in the instrument conferring the authority or, if no period is specified, until notice of the revocation or termination of the agent's or attorney's authority has been given to that person.
- (4) Nothing in this section shall be taken—
  - (a) to affect the operation of any law in force in the Territory 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; or
  - (b) to prevent an incorporated association from entering into, varying or discharging a contract under its common seal.

## **56    Validity of documents executed under common seal**

A contract or other instrument executed, or purporting to have been executed, under the common seal of an incorporated association shall not be taken to be invalid only because a person attesting the fixing of the common seal was in any way, directly or indirectly, interested in the contract or other instrument or in the matter to which the contract or other instrument relates.

## Part 4 Management

### 57 Public officer

- (1) An incorporated association shall have a public officer.
- (2) A person is not eligible to be the public officer of an incorporated association unless the person resides in the Territory and is at least 18 years of age.
- (3) The public officer of an incorporated association may, unless the rules of the association otherwise provide, hold any office of the association in addition to the office of public officer.
- (4) An act of the public officer of an incorporated association shall not be taken to be invalid only because—
  - (a) there is a defect in the public officer's appointment; or
  - (b) the public officer was not eligible to be the public officer under subsection (2); or
  - (c) the office of the public officer was, at the time of the act, to be taken to be vacant under section 64 (2).

### 58 Inaugural public officer

The inaugural public officer of an association incorporated under this Act shall, unless the rules of the association otherwise provide, be taken to be—

- (a) in the case of an association incorporated under section 19—  
the person authorised under section 16 (a) to apply for the incorporation of the association; or
- (b) in the case of an association incorporated under section 27—  
the person nominated as the inaugural public officer of the association under section 26 (2) (a) (ii).

**59 Notice of public officer's appointment or change of address**

- (1) A person who is appointed to be the public officer (other than the inaugural public officer) of an incorporated association shall, not later than 1 month after being appointed, lodge with the registrar-general a notice of the appointment.

Maximum penalty: 2 penalty units.

*Note* If a form is approved under s 126 (Approved forms) for a notice under this section, the form must be used.

- (2) If the public officer of an incorporated association changes his or her address, the public officer shall, within 1 month after the change, lodge with the registrar-general a notice of the change.

Maximum penalty: 1 penalty unit.

**60 Committee**

- (1) An incorporated association shall have a committee comprising at least 3 members of the association.
- (2) The committee of an incorporated association has the management of the association.

**61 Inaugural committee**

The inaugural members of the committee of an association incorporated under this Act shall, unless the rules of the association otherwise provide, be taken to be—

- (a) in the case of an association incorporated under section 19—  
the persons appointed under section 16 (d); or
- (b) in the case of an association incorporated under section 27—  
the persons nominated for section 26 (2) (a) (iii).

**62 Notice of changes in committee**

- (1) Where—
- (a) a person becomes a member (other than an inaugural member) of the committee of an incorporated association; or
  - (b) the office of a member of the committee of an incorporated association becomes vacant; or
  - (c) a member of the committee of an incorporated association changes his or her address;

the association shall, not later than 1 month after the occurrence of the event referred to in paragraph (a), (b) or (c), lodge with the registrar-general notice of the occurrence.

Maximum penalty: 1 penalty unit.

- (2) Where a member of the committee of an incorporated association changes his or her address the member shall, within 1 month after the change occurred, notify the association of the change.

Maximum penalty: 1 penalty unit.

*Note* If a form is approved under s 126 (Approved forms) for a notice, the form must be used.

**63 Disqualification from office**

- (1) A person who has been convicted, whether in or outside the Territory, of—
- (a) an indictable offence in relation to the promotion, formation or management of a body corporate; or
  - (b) an offence involving fraud or dishonesty punishable by imprisonment for a period of 3 months or more;

shall not, within the period of 5 years after the person was convicted or released from imprisonment in respect of the offence, whichever is later, without leave of the Supreme Court, accept an appointment

or act as the public officer or a member of the committee of an incorporated association.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person who is an insolvent under administration within the meaning of the Corporations Act shall not, without leave of the Supreme Court, accept an appointment or act as the public officer or a member of the committee of an incorporated association.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person referred to in subsection (1) may apply to the Supreme Court for leave to accept an appointment or to act as the public officer or a member of the committee of an incorporated association.

- (4) A person referred to in subsection (2) may apply to the Supreme Court for leave to accept an appointment or to act as the public officer or a member of the committee of an association.

- (5) A person intending to make an application under subsection (3) or (4) shall lodge with the registrar-general at least 21 days notice of his or her intention to make the application.

- (6) On hearing an application under subsection (3) or (4), the Supreme Court may grant or refuse to grant the applicant leave to accept an appointment or to act as the public officer or a member of the committee of an incorporated association, and may, when granting leave, make the grant subject to such conditions or limitations as the court thinks fit.

- (7) On the application of the registrar-general, the Supreme Court may revoke or vary leave granted to a person by the court under subsection (6).



- (8) A person shall not contravene the requirements of any conditions or limitations included in a grant of leave under subsection (6).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **64 Vacancy in office of public officer**

- (1) An incorporated association may, by resolution, remove its public officer from office.
- (2) The office of the public officer of an incorporated association shall be taken to be vacant if the public officer—
- (a) is removed from office under subsection (1); or
  - (b) resigns from office; or
  - (c) dies; or
  - (d) becomes an insolvent under administration within the meaning of the Corporations Act; or
  - (e) suffers from mental or physical incapacity; or
  - (f) was convicted or released from imprisonment in respect of an offence referred to in section 63 (1) within the period of 5 years immediately preceding his or her appointment as public officer, or is convicted of such an offence after taking office; or
  - (g) ceases to reside in the Territory.
- (3) Where a vacancy occurs in the office of the public officer of an incorporated association, the committee of the association shall, within 14 days after the vacancy occurred appoint a person to fill the vacancy.
- (4) If the committee without reasonable cause does not comply with subsection (3), each member of the committee commits an offence.

Maximum penalty (subsection (4)): 2 penalty units.

**65 Disclosure of committee member's interest**

- (1) Where a member of the committee of an incorporated association has any direct or indirect pecuniary interest in a contract or proposed contract to which the association is or may be a party, the committee member shall—
- (a) as soon as the interest becomes apparent to him or her, disclose the nature and extent of the interest to the committee; and
  - (b) disclose the nature and extent of the interest at the next general meeting of the association.

Maximum penalty: 20 penalty units.

- (2) A member of the committee of an incorporated association who has an interest in a contract or proposed contract referred to in subsection (1) shall not take part in making any decision with respect to the contract or proposed contract, but may, subject to this section and section 66, participate in any deliberations of the committee with respect to the contract or proposed contract.

Maximum penalty: 20 penalty units.

- (3) Subsection (1) does not apply in relation to a member of the committee of an incorporated association in respect of an interest in a contract or proposed contract that arises only because the committee member is an employee of the association.
- (4) Where a member of the committee of an incorporated association discloses an interest in a contract or proposed contract in accordance with subsection (1), or has an interest in a contract or proposed contract of the kind referred to in subsection (3)—
- (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the committee member and the association; and
  - (b) the committee member is not liable to account for any profits derived by him or her from the contract or proposed contract.

- (5) A person who contravenes a provision of this section is liable to the association for any profit made by that person or any other person, and any damage or loss suffered by the association, as a result of that contravention.

## **66 Information from officers**

The registrar-general may, by notice served on a person who, from returns or other information lodged with the registrar-general, appears to be a member of the committee or the public officer of an incorporated association, require the person, within the time specified in the notice, to lodge with the registrar-general a notice—

- (a) indicating the person's current residential address; and
- (b) stating whether or not the person holds the office specified in the registrar-general's notice to the person and, if not, to indicate the date on which the person ceased to hold the office.

## **67 Register of members**

- (1) An incorporated association shall keep and maintain a register of its members, and shall enter any prescribed particulars in the register.
- (2) An incorporated association shall—
  - (a) make the register of members available for inspection by members at reasonable times, or at such times as are specified for the purpose in the rules of the association, at the address of the public officer of the association, at the registered office of the association (if any) or at another place in the Territory nominated by the committee of the association; and
  - (b) in each annual return, publish the place at which the register is available for inspection.

## **68 First annual general meeting**

An incorporated association shall hold its first annual general meeting within the period of 18 months commencing on the date on which the association was incorporated.

**69 Annual general meetings**

An incorporated association shall, in addition to any other meeting it holds, hold an annual general meeting, once in each calendar year, within the period of 5 months beginning at the end of the association's most recently ended financial year.

**70 Special resolutions**

A resolution of an incorporated association shall be taken to be a special resolution if—

- (a) it is passed at a general meeting of the association, being a meeting of which at least 21 days notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the members of the association; and
- (b) it is passed by at least  $\frac{3}{4}$  of the votes of those members of the association who, being entitled to vote, vote in person or, where the rules of the association permit voting by proxy, vote by proxy at the meeting.

## Part 5                      Accounts, audit and annual returns

### 71      Accounting records

An incorporated association shall—

- (a) keep accounting records that correctly record and explain the transactions (including any transactions as trustee) and the financial position of the association; and
- (b) keep its accounting records in such a way that—
  - (i) true and fair accounts of the association can be prepared from time to time; and
  - (ii) a statement of the accounts of the association can conveniently and properly be audited in accordance with this part; and
- (c) retain its accounting records for at least 7 years after the transactions to which they relate were completed.

Maximum penalty: 20 penalty units.

### 72      Annual statement of accounts

- (1) Before the end of the period within which the first annual general meeting or any subsequent annual general meeting of an incorporated association is required to be held under section 68 or 69, the committee of the association shall cause a statement of the association's accounts to be prepared.

Maximum penalty: 20 penalty units.

- (2) The statement of accounts shall not be misleading and shall give a true and fair account of—
  - (a) the income and expenditure of the association during the most recently ended financial year of the association; and

- (b) the assets and liabilities of the association at the end of that financial year; and
- (c) any mortgages, charges or other securities of any description affecting any property of the association at the end of that financial year; and
- (d) in respect of each trust of which the association was the trustee during a period in that financial year, being part or all of that financial year as the case may be—
  - (i) the income and expenditure of the trust during that period; and
  - (ii) the assets and liabilities of the trust at the end of that period; and
  - (iii) any mortgages, charges or other securities of any description affecting any of the property of the trust during that period; and
- (e) any prescribed matters.

Maximum penalty: 20 penalty units.

### **73 Presentation of statement to members**

- (1) At each annual general meeting of an incorporated association the following documents shall be presented by the committee for the consideration of the meeting:
  - (a) the audited statement of the association's accounts in respect of the most recently ended financial year of the association;
  - (b) a copy of the auditor's report to the association in relation to the association's accounts for that financial year;
  - (c) a report signed by 2 members of the committee stating—
    - (i) the name of each member of the committee of the association during the most recently ended financial year of the association and, if different, at the date of the report; and

- (ii) the principal activities of the association during the most recently ended financial year and any significant change in the nature of those activities that occurred during that financial year; and
  - (iii) the net profit or loss of the association for the most recently ended financial year.
- (2) The committee of an association prescribed for section 76 shall ensure that the prescribed number of copies of the documents referred to in subsection (1) (a) and (b) are available for perusal by members of the association immediately before and during the annual general meeting.

Maximum penalty: 20 penalty units.

#### **74 Audit of accounts**

- (1) The committee of an incorporated association shall take reasonable steps to ensure that the audit of the association's accounts is completed at least 14 days before the audited statement of the accounts is required to be presented at the annual general meeting of the association under section 73.
- (2) The accounts of an incorporated association shall be audited by a person who—
- (a) is not an officer of the association; and
  - (b) has not prepared or assisted with the preparation of those accounts.
- (3) If an incorporated association—
- (a) has gross receipts, at the end of a financial year of the association, exceeding the prescribed amount per annum; or
  - (b) has gross assets, at the end of a financial year of the association, exceeding the prescribed amount; or
  - (c) is a prescribed association or a member of a prescribed class of associations;

the committee shall cause the association's accounts to be audited by a person who is a member of the Institute of Chartered Accountants in Australia, the National Institute of Accountants, or the Australian Society of Certified Practising Accountants, or who is registered as an auditor under the Corporations Act, being a person who is not—

- (d) an officer of the association; or
  - (e) a partner, employer or employee of an officer of the association; or
  - (f) a partner or employee of an employee of an officer of the association.
- (4) If the first financial year of an incorporated association of the kind referred to in subsection (3) ends after the commencement of this Act, the committee shall be taken to have complied with that subsection in relation to that year if the association's accounts in respect of that year have been audited by a person who is not an officer of the association.
- (5) Subsection (3) does not apply to an incorporated association prescribed for section 76.

Maximum penalty: 5 penalty units.

## **75 Auditor's powers and duties**

- (1) An auditor of an incorporated association has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from any officer of the association such information and explanations as the auditor desires for the purpose of auditing the association's accounts.
- (2) If an auditor, in the course of the performance of his or her duties as auditor of an incorporated association, is satisfied that there has been a failure to comply with this Act or with a rule of the association, the auditor shall note the matter in the auditor's report to the association in relation to the association's accounts.



**76 Auditor of prescribed associations**

- (1) An incorporated association, being an association prescribed for this section, shall appoint an auditor who is registered as an auditor under the Corporations Act, being a person who is not—
- (a) an officer of the association; or
  - (b) a partner, employer or employee of an officer of the association; or
  - (c) a partner or employee of an employee of an officer of the association.

Maximum penalty: 2 penalty units.

- (2) An auditor shall report to the association on the accounts required to be laid before the association at the annual general meeting and on the association's accounting records and other records relating to those accounts.
- (3) An auditor shall, in a report under this section, state—
- (a) whether the accounts are in the auditor's opinion properly drawn up—
    - (i) so as to give a true and fair view of matters required by section 72 (2) to be dealt with in the accounts; and
    - (ii) in accordance with the provisions of this Act; and
    - (iii) in accordance with proper accounting standards; and
  - (b) if, in the auditor's opinion, the accounts have not been drawn up in accordance with proper accounting standards—
    - (i) whether, in the auditor's opinion, the accounts would, if drawn up in accordance with proper accounting standards, have given a true and fair view of the matters required by section 72 (2) to be dealt with in the accounts; and

- (ii) if, in the auditor's opinion, the accounts would not, if so drawn up, have given a true and fair view of those matters—the auditor's reasons for being of that opinion; and
    - (iii) if subparagraph (ii) does not apply—particulars of the quantified financial effect on the accounts of the failure to so draw up the accounts; and
  - (c) any defect or irregularity in the accounts and any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained; and
  - (d) if the auditor is not so satisfied as to any matter referred to in paragraph (a) or (b)—the auditor's reasons for not being so satisfied.
- (4) It is the duty of the auditor to form an opinion as to each of the following matters:
- (a) whether the auditor has obtained all the information and explanations that the auditor required;
  - (b) whether proper accounting records and other records have been kept by the association as required by this Act;
- and the auditor shall state in the auditor's report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.
- (5) An auditor has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from any officer of the association such information and explanations as the auditor desires for the purpose of auditing the association's accounts.
- (6) The auditor's report shall be attached to or endorsed on the accounts and shall, if a member so requires, be read before the association at the annual general meeting, and is open to inspection by a member at any reasonable time.

- (7) An auditor or an agent of the auditor authorised by the auditor in writing for the purpose is entitled to attend any general meeting of the association and to receive all notices of and other communications relating to any general meeting that a member is entitled to receive and to be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor and is entitled so to be heard notwithstanding that the auditor retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.
- (8) If an auditor becomes aware that the association or the committee have made default in complying with section 69 or 73 relating to the laying of accounts before the annual general meeting of the association, the auditor shall immediately inform the registrar-general by notice in writing and if accounts have been prepared and audited, send to the registrar-general a copy of the accounts and of the auditor's report on those accounts.
- (9) Except in a case to which subsection (8) applies, if an auditor, in the course of the performance of duties as auditor is satisfied that—
- (a) there has been a contravention of this Act; and
  - (b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the committee of the association;

the auditor shall forthwith report the matter to the registrar-general by notice in writing.

- (10) In this section:

*auditor* means an auditor of the incorporated association prescribed for this section.

## **77 Auditor's liability**

An auditor of an incorporated association is not, in the absence of malice on his or her part, liable to any action for defamation in

respect of any statement that he or she makes, orally or in writing, in the course of the performance of his or her duties as auditor of the association.

### **78 Obstruction of auditor**

An officer of an incorporated association shall not, without lawful excuse—

- (a) refuse or fail to allow an auditor of the association access, for the purpose of auditing the accounts of the association, to any accounting or other records of the association in the officer's custody or control; or
- (b) refuse or fail to give the auditor, within a reasonable time, any information or explanation required by the auditor that is within the knowledge of the officer; or
- (c) otherwise hinder, obstruct or delay an auditor in the performance of his or her duties or the exercise of his or her powers as auditor of the association.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **79 Annual returns**

- (1) Subject to this section, an incorporated association shall, within the period of 6 months beginning at the end of each financial year of the association, lodge with the registrar-general—
  - (a) a statement of particulars relating to the association in the form approved under section 126 (Approved forms) for this section; and
  - (b) an audited statement of the association's accounts; and
  - (c) a copy of the auditor's report in relation to those accounts; and
  - (d) any prescribed documents; and

- (e) a statement by 2 members of the committee of the association certifying whether the provisions of this Act that apply to the association in respect of that year in relation to—
- (i) the preparation of the annual statement of the association's accounts; and
  - (ii) the auditing of the accounts and the presentation of the audited statement of accounts at the annual general meeting of the association;
- have been complied with.

Maximum penalty: 2 penalty units.

- (2) The registrar-general may, in any year, serve on an incorporated association a partly completed annual return in which the registrar-general has set out particulars in relation to the association on the basis of information previously received by the registrar-general.
- (3) Where, under subsection (2), the registrar-general serves a partly completed annual return on an incorporated association, the association may—
- (a) delete any incorrect particulars appearing in the return and substitute correct particulars of the matters to which the incorrect particulars related; and
  - (b) complete the return and lodge it with the registrar-general accompanied by the documents referred to in subsection (1) (b), (c) and (d).
- (4) Where an incorporated association lodges an annual return in accordance with subsection (3), the association shall be taken to have set out in the return any particulars included in the return that have not been deleted from the return.
- (5) Where—
- (a) the registrar-general serves a partly completed annual return on an incorporated association under subsection (2); and

- (b) the association lodges the completed return in accordance with subsection (3) (b) within the period of 6 months after the end of the most recently completed financial year of the association;

the association shall be taken to have complied with subsection (1) in respect of that financial year.

## **80 Lodgment of particulars instead of documents**

Where—

- (a) an incorporated association is required by this Act to lodge a document with the registrar-general; and
- (b) without having lodged the document, the association lodges with the registrar-general in accordance with this part an annual return that sets out all the particulars required to be set out in the document;

the association shall be taken to have lodged the document on the date on which the annual return was lodged.

## Part 6                      Transfer of incorporation

### 81      Definitions for pt 6

In this part:

*company limited by guarantee*—see the Corporations Act.

*memorandum*—see the Corporations Act.

### 82      Voluntary transfer of incorporation

- (1) An incorporated association may apply to the registrar-general for permission to apply for registration of the association under the Corporations Act as a company limited by guarantee.
- (2) The registrar-general shall give an incorporated association permission to apply for registration of the association under the Corporations Act as a company limited by guarantee if—
  - (a) the association has, by special resolution, resolved to apply for registration of the association under the Corporations Act as a company limited by guarantee; and
  - (b) an application lodged with the registrar-general by the association under subsection (1)—
    - (i) is signed by the public officer and 2 members of the committee of the association;
    - (ii) is accompanied by any prescribed documents; and
    - (iii) includes a statement to the effect that the special resolution referred to in paragraph (a) has been duly passed by the association.

*Note*      If a form is approved under s 126 (Approved forms) for an application, the form must be used.

**83 Cancellation where continued incorporation inappropriate**

(1) Where the registrar-general is satisfied that the continued incorporation of an association under this Act would be inappropriate or inconvenient because of the registrar-general's assessment of—

- (a) the scale or nature of the activities of the association; or
- (b) the value or nature of the property of the association; or
- (c) the extent or nature of the association's dealings with persons who are not members or applicants for membership of the association;

the registrar-general may—

- (d) serve a notice on the association; and
- (e) publish a notice in relation to the association in a newspaper circulating generally within the Territory.

(2) A notice under subsection (1) (d) and (e) shall—

(a) contain a statement to the effect that the incorporation of the association will be cancelled under this section unless, within 2 months of the date on which the notice was served or published, whichever is the later, the association—

- (i) obtains the registrar-general's permission to apply for registration of the association under the Corporations Act as a company limited by guarantee; or
- (ii) by special resolution, resolves to implement an arrangement that, if approved of by the registrar-general, will preserve the continued incorporation of the association under this Act; and

(b) set out the ground or grounds for the proposed cancellation.



- (3) The registrar-general may, if satisfied upon application in writing by an association, extend the period for compliance with a notice referred to in subsection (2).
- (4) The registrar-general may approve of an arrangement referred to in subsection (2) (a) (ii) if satisfied that, subject to being implemented to the satisfaction of the registrar-general, it will preserve the continued incorporation of the association under this Act.
- (5) In considering an arrangement referred to in subsection (2) (a) (ii), the registrar-general may make the arrangement subject to conditions that, if properly observed by the association, will preserve the continued incorporation of the association under this Act.
- (6) Where an association—
- (a) has not complied with either of the requirements of a notice referred to in subsection (2); or
  - (b) has not implemented an arrangement as approved by the registrar-general;
- the registrar-general may—
- (c) serve a further notice on the association; and
  - (d) publish a further notice in relation to the association in a newspaper circulating generally within the Territory.
- (7) A notice referred to in subsection (6) (c) and (d) shall—
- (a) contain a statement to the effect that the incorporation of the association will be cancelled, unless within 1 month after the date on which the notice was served or published, whichever is the later, the association shows cause why the incorporation of the association should not be cancelled by the registrar-general; and
  - (b) set out the ground or grounds for the proposed cancellation.

(8) Where the registrar-general has, in accordance with subsection (6), served a notice on an incorporated association and published a notice in relation to the association the registrar-general may, on the expiration of the period of 1 month referred to in the notice, in writing cancel the incorporation of the association unless the registrar-general is satisfied within that period that the continued incorporation of the association under this Act would not be inappropriate or inconvenient.

(9) A cancellation of incorporation under subsection (8) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

(10) The provisions of part 7 relevant to and in relation to the cancellation of the incorporation of an association under that part are applicable, according to their tenor, to and in relation to the cancellation of the incorporation of an association in accordance with this section.

#### **84 Membership of proposed company**

Each person who was a member of an incorporated association immediately before its registration under the Corporations Act as a company limited by guarantee shall, for the purposes of the association's application for that registration, be taken to be a subscriber to the memorandum of the proposed company.

#### **85 Cancellation of incorporation following voluntary transfer**

Upon the registration of an incorporated association under the Corporations Act as a company limited by guarantee, the registrar-general shall cancel the incorporation of the association under this Act.

#### **86 Effect of cancellation of incorporation**

Upon the cancellation under section 85 of the incorporation of an association (the *former association*) that has been registered as a company—

- (a) this Act ceases to apply in relation to the former association; and
- (b) the body corporate previously constituted by the former association shall be taken to be subsumed in the body corporate constituted by the company; and
- (c) any property or proprietary or other rights that were, immediately before the cancellation, vested in the former association shall be taken, subject to any trust affecting the property or part of it, to be vested in, and may be exercised or enforced by, the company; and
- (d) any liability, obligation or penalty that could have been enforced against or recovered from the former association immediately before the cancellation is enforceable against or recoverable from the company; and
- (e) any investigation, legal proceeding or remedy that could, immediately before the cancellation, have been instituted, continued or enforced against the former association may be instituted, continued or enforced against the company.

## **87 Transfer of land to company**

Where, under section 86 (c), any land or interest in land (being land in the Territory) vested in a former association is to be taken to be vested in a company, the registrar-general shall, upon production of the certificate of incorporation of the company, endorse the relevant certificate of title in the register kept under the *Land Titles Act 1925* to that effect.

## Part 7 Winding-up

### 88 Voluntary winding-up

An incorporated association may be wound up voluntarily if the association has, by special resolution, resolved that it be wound up.

### 89 Application for winding-up by the court

An application to the Supreme Court for the winding-up by the court of an incorporated association may be made by the association, by a member or creditor of the association, or by the registrar-general.

### 90 Winding-up by the court

The Supreme Court may order that an incorporated association be wound up if—

- (a) the association has, by special resolution, resolved that it be wound up by the court; or
- (b) the association does not begin its operations within the period of 1 year beginning on the date of incorporation of the association; or
- (c) the association suspends its operations for a period exceeding 1 year; or
- (d) the association is unable to pay its debts; or
- (e) the association (not being an association incorporated under a declaration under section 15 (1)) has, in the opinion of the court, traded or secured pecuniary gain, as trustee or otherwise, for its members; or
- (f) in the case of an association incorporated under a declaration under section 15 (1)—the association has not complied with a condition to which the incorporation of the association is subject under section 15 (2); or

- (g) the association has engaged in activities outside the scope of its statement of objects; or
- (h) the committee of the association has acted in affairs of the association in the interests of the committee, or of a member or members of the committee rather than in accordance with the statement of objects of the association, or has acted in any other manner that appears to the court to be unjust or inequitable to the members of the association; or
- (i) the court is of the opinion that it is just that the association be wound up.

## **91 Application of Corporations Act**

The Corporations Act, part 5.7 applies to the winding-up of an incorporated association subject to the modifications and adaptations specified in schedule 2.

## **92 Property of defunct association**

- (1) On the dissolution or the completion of the winding up of an incorporated association, any surplus property of the association shall, subject to any trust affecting the property or part of it, be taken to—
  - (a) vest in another association (whether or not the other association is incorporated), being an association that complies with subsection (2) and that—
    - (i) has been nominated for this paragraph in the rules of the former association; or
    - (ii) if no association is nominated in those rules—has been nominated by special resolution of the former association; or
  - (b) vest in a fund, authority or institution in Australia specified in the *Income Tax Assessment Act 1936* (Cwlth), section 78 (1) (a) that—

- (i) has been nominated for this paragraph in the rules of the former association; or
    - (ii) if no such fund, authority or institution in Australia is nominated in those rules—has been nominated by special resolution of the former association; or
  - (c) where no association, fund, authority or institution has been nominated in accordance with paragraph (a) or (b)—vest in the registrar-general.
- (2) For subsection (1) (a), an association shall be taken to comply with this subsection if it—
- (a) has objects substantially the same as the objects of the former association; and
  - (b) is not carried on for the object of trading or securing pecuniary gain for its members; and
  - (c) has a provision in its rules requiring any surplus property of the association to be passed, on the dissolution or winding-up of the association, to another association that—
    - (i) has objects substantially the same as the firstmentioned association; and
    - (ii) is not carried on for the object of trading or securing pecuniary gain for its members.
- (3) Where, for subsection (1), a former association has nominated another association or a fund, authority or institution, by special resolution, the former association shall lodge with the registrar-general a notice in writing, signed by at least 2 members of the committee of the former association, certifying that the special resolution was duly passed.

Maximum penalty: 2 penalty units.

- (4) A person aggrieved by the operation of subsection (1) in relation to the surplus property of a former association may apply to the Supreme Court for an order in respect of the property.

(5) Where an incorporated association has been wound up and, in accordance with subsection (1), land or an interest in land (being land in the Territory) vested in the incorporated association is to be taken to vest in another association, in a fund, authority or institution or in the registrar-general, the registrar-general shall endorse the relevant certificate of title in the register kept under the *Land Titles Act 1925* to that effect.

(6) In this section:

*surplus property* means any property or interest in property of a former association that remains after the satisfaction of any debts or liabilities of the former association and any costs, charges or expenses incurred in the winding-up of the former association.

### **93 Cancellation of incorporation**

(1) Where the registrar-general has reasonable grounds for believing that an incorporated association—

- (a) is not in operation; or
- (b) has fewer than 5 members; or
- (c) was incorporated as a result of fraud or mistake; or
- (d) has not during the last 3 years convened an annual general meeting of the association in accordance with this Act; or
- (e) has not lodged an annual return with the registrar-general in respect of each of the last 3 years;

the registrar-general may—

- (f) serve a notice on the association; and
- (g) publish a notice in relation to the association in a newspaper circulating generally within the Territory.

(2) A notice under subsection (1) (f) and (g) shall—

- (a) contain a statement to the effect that if a reply to the notice from the association showing cause why the incorporation of

the association should not be cancelled is not received by the registrar-general within the period of 2 months after the date on which the notice was served or published, whichever is the later, the incorporation of the association will be cancelled; and

- (b) set out the ground or grounds for the proposed cancellation.
- (3) Where the registrar-general has, in accordance with subsection (1), served a notice on an incorporated association and published a notice in relation to the association the registrar-general may, on the expiration of the period of 2 months referred to in the notice, in writing, cancel the incorporation of the association unless the registrar-general is satisfied within that period that the association—
- (a) is in operation; and
  - (b) has at least 5 members; and
  - (c) was not incorporated as a result of fraud or mistake; and
  - (d) has during the last 3 years convened an annual general meeting in accordance with this Act; and
  - (e) has lodged an annual return with the registrar-general in respect of each of the last 3 years.
- (4) A cancellation of incorporation under subsection (3) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) Where, under section 83 or subsection (3), the registrar-general cancels the incorporation of an association, the registrar-general shall send to the public officer of the association at the address appearing in the registrar-general's records as the last notified address of the most recently appointed public officer of the association or, if there appears to be a vacancy in the office of the public officer, to a member of the committee of the association at the address which appears in the registrar-general's records as the last notified address of the association, a notice of the cancellation.



- (6) Notwithstanding the cancellation of the incorporation of an association under section 83 or subsection (3), any liability of an officer or member of the association existing at the time of cancellation continues and may be enforced as if the incorporation of the association had not been cancelled.
- (7) If the registrar-general is satisfied that the incorporation of an association was cancelled as the result of an error on the part of the registrar-general, the registrar-general may reinstate the incorporation of the association, and the association shall then be deemed to have continued in existence as an incorporated association as if its incorporation had not been cancelled.
- (8) Where, before the registrar-general cancels the incorporation of an association under section 83 or subsection (3), the incorporated association has commenced to be wound up under section 88 or 90—
- (a) the registrar-general may cancel the incorporation notwithstanding the commencement of the winding-up; and
  - (b) the cancellation of the incorporation shall not be taken to affect the winding-up.

#### **94 Property of former incorporated association**

- (1) Where, under section 83 or 93 (3), the registrar-general cancels the incorporation of an association, and the winding-up of the association was not begun before the date of cancellation, any property or interest in property held by the association, subject to any trust affecting the property or interest, shall be taken to vest in the registrar-general.
- (2) Where the incorporation of an association has been cancelled under section 93 (3) and land or an interest in land (being land in the Territory) vested in the incorporated association is to be taken to vest in the registrar-general under subsection (1), the registrar-general shall endorse the relevant certificate of title in the register kept under the *Land Titles Act 1925* to that effect.

**95 Property vested in registrar-general**

- (1) Where the registrar-general is satisfied that under section 92 (1) or 94 any property or interest in property of a former association is vested in the registrar-general, whether solely or with any other person, the registrar-general may, subject to any trust affecting the property or interest, get in, sell or otherwise dispose of or deal with the property or interest or any part of the property or interest as the registrar-general thinks fit.
- (2) The power of the registrar-general to sell or otherwise dispose of or deal with property or an interest in property—
  - (a) may be exercised solely or with any other person, by public auction, public tender or private contract, and in such manner, for such consideration and upon such terms and conditions as the registrar-general thinks fit; and
  - (b) includes the power—
    - (i) to rescind any contract and resell or otherwise dispose of or deal with the property or interest as the registrar-general thinks fit; and
    - (ii) to execute such contracts, instruments and documents as the registrar-general thinks necessary.
- (3) There is payable to the Territory, in respect of the exercise of the powers conferred on the registrar-general by subsections (1) and (2), out of any income derived from, or the proceeds of sale of, disposition of or other dealing with, any property or interest in property, such commission as is prescribed.
- (4) The registrar-general shall apply any moneys received in the exercise of a power conferred by this section in defraying the costs and expenses of and incidental to the exercise of the power and in making payments authorised by this section, and shall pay the remainder (if any) of the moneys to the Territory.

- (5) A person making a claim in respect of any money paid to the Territory under subsection (4) may apply to the Supreme Court for an order for payment of an amount to the person and, if the court is satisfied that an amount should be paid to the person, it shall make an order for the payment accordingly.
- (6) Upon the making of an order under subsection (5) for payment of an amount to a person or upon the registrar-general notifying the Minister that he or she is satisfied that an amount should be paid to a person out of money paid to the Territory under subsection (4), an amount equal to the amount specified in the order or the notification, as the case requires, is payable by the Territory to the person.
- (7) Nothing in this section shall be taken to deprive a person of another right or remedy to which the person is entitled against a liquidator of an incorporated association or another person.

## **96 Liability in respect of property vested in registrar-general**

- (1) Property vested in the registrar-general under section 92 (1) or 94 is subject to all charges, claims or liabilities imposed on or affecting the property by a law with respect to rates, taxes or any other claim or liability to which the property would have been subject had it continued in the possession, ownership or occupation of the association or former association.
- (2) Nothing in subsection (1) shall be taken to impose on the registrar-general or the Territory a duty, obligation or liability to do or suffer anything required to be done or suffered by a law of a kind referred to in that subsection other than the liability to satisfy or pay a charge, claim or liability referred to in that subsection out of the property of an association or former association to the extent that the property is, in the opinion of the registrar-general, available for and applicable to the satisfaction or payment of the charge, claim or liability.

**97 Registrar-general's power to act for defunct association**

- (1) Where, after an incorporated association has been dissolved, or has been wound up, the registrar-general is satisfied—
- (a) that the association, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
  - (b) that, in order to carry out, complete or give effect to that dealing, transaction or matter, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the association, or should be done by or on behalf of the association if the association still existed;

the registrar-general may, as representing the association or its liquidator under this section, do that act or cause that act to be done.

- (2) The registrar-general may execute or sign any relevant instrument or document adding a memorandum stating that he or she has done so under this section, and any execution or signature under this section has the same force, validity and effect as if the association, when it still existed, had duly executed the instrument or document.

**98 Records of property vested in registrar-general**

The registrar-general shall keep—

- (a) a record of property vested in the registrar-general under sections 92 (1) and 94 and of any transactions in relation to the property; and
- (b) an account of any money realised from the property and of the payment or distribution of the money; and
- (c) any other account, voucher, receipt or other document relating to the property or the money;

for at least 7 years after the transaction to which the record, account, voucher, receipt or other document relates was completed.

## Part 8 Investigation of association's affairs

### 99 Meaning of *books* in pt 8

In this part:

*books* includes bankers' books.

### 100 Secrecy

- (1) A person who is, or has at any time been—
- (a) appointed for this Act; or
  - (b) engaged as a member of staff of the registrar-general; or
  - (c) authorised to perform or exercise any function or power of the registrar-general, or any function or power on behalf of the registrar-general;

shall not, except to the extent necessary to perform his or her official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information acquired by him or her because of his or her being or having been so appointed, engaged or authorised, or make use of any such information, for any purpose other than the performance of his or her official duties or the performance or exercise of that function or power.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Nothing in subsection (1) shall be taken to preclude a person from—
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his or her notice in the performance of his or her official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
- (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the registrar-general, it is in the public interest that the document be produced or the information be divulged or communicated; or
- (d) producing a document or divulging or communicating information that is required or permitted by any Act of the Commonwealth or of the Territory to be produced, divulged or communicated, as the case may be.

### **101 Investigations by registrar-general**

Where the registrar-general has reasonable grounds for believing that an offence against this Act or the repealed Act, or an offence relating to an incorporated association, has been, is being, or will be committed, being an offence that involves fraud or dishonesty or concerns the management or affairs of an incorporated association, the registrar-general may make such investigations as he or she thinks expedient for the due administration of this Act.

### **102 Scope of registrar-general's powers**

- (1) The powers of the registrar-general under this part may be exercised—
  - (a) for the purpose of ascertaining whether the repealed Act or this Act has been or is being complied with; and
  - (b) for the purpose of performing a function or exercising a power of the registrar-general under this Act.

- (2) Where it appears to the registrar-general that a person, or an association or other group of persons, not being an incorporated association or other body corporate of which the incorporation was effected or is recognised under a law in force in the Territory, is holding out himself, herself or itself, as the case may be, as an incorporated association, the registrar-general may exercise in relation to the person, association or group of persons all the powers that the registrar-general may exercise under this part in relation to an incorporated association for the purposes referred to in subsection (1) (a) and (b).

### **103 Production of association's books**

- (1) The registrar-general may, by notice in writing—
- (a) require an incorporated association to produce to the registrar-general, immediately or at a time and place specified in the notice, any books relating to the affairs of the association that are specified in the notice; or
  - (b) require a person who is or has been an officer or employee of an incorporated association or who has acted as an agent, banker, legal practitioner or in any other capacity on behalf of an incorporated association (including an association that is being wound up or has been dissolved) to produce to the registrar-general immediately any books relating to the affairs of the association that are specified in the notice; or
  - (c) require a person to produce immediately to the registrar-general any books relating to the affairs of an incorporated association (including an association that is being wound up or has been dissolved) that are in the custody or control of the person.
- (2) Where the registrar-general requires a person to produce books, the registrar-general may—
- (a) if the books are produced—
    - (i) take possession of the books and make copies of or take extracts from them; and

- (ii) require the person or any other person who was a party to compiling the books to make a statement providing any explanation that the person is able to provide in respect of a matter relating to the compilation of the books or to which the books relate; and
  - (iii) keep the books in his or her possession for as long as is necessary to enable the books to be inspected and copies of or extracts from them to be taken by or for the registrar-general; or
- (b) if the books are not produced, require the person—
  - (i) to state, to the best of the person's knowledge or belief, where the books may be found; and
  - (ii) to identify the person who, to the best of the firstmentioned person's knowledge and belief, last had custody of the books and to state, to the best of his or her knowledge and belief, where the identified person can be found.
- (3) Where the registrar-general requires a person to produce books that are recorded, kept or reproduced electronically, the person shall be taken to have complied with the requirement if he or she provides a printed or other reproduction of the information contained in the books.
- (4) Where the registrar-general has power to require a person to produce books relating to the affairs of an association, the registrar-general may (whether or not he or she requires the books to be produced) require the person to identify any property of the association and to explain the manner in which the association has kept account of the property.



- (5) Where the registrar-general has possession of any book related to the affairs of an association, the registrar-general shall permit any person who would be entitled to inspect the book if it were not in the possession of the registrar-general to inspect the book at any reasonable time.

#### **104 Inspection of books held by legal practitioner**

- (1) Where—
- (a) the registrar-general, under section 103, requires a legal practitioner to produce a book or to make a statement in relation to a book; and
  - (b) the book contains a privileged communication made by or on behalf of, or to, the legal practitioner;

the legal practitioner may refuse to comply with the requirement unless the person to whom, or by or on behalf of whom, the communication was made (the *third party*) consents to the legal practitioner's compliance with the requirement.

- (2) Where a legal practitioner refuses to comply with a requirement in relation to a book containing a privileged communication, the legal practitioner shall immediately—
- (a) give the registrar-general who made the requirement, in writing—
    - (i) if the name and address of the third party are known to the legal practitioner—that name and address; and
    - (ii) sufficient particulars to identify the book or part of the book containing the communication; and
  - (b) where, under section 103 (2) (a) (ii), the legal practitioner was required to make an explanatory statement—comply with the requirement to the extent that it is possible to comply without disclosing the communication.

**105 Liability of person producing books**

A person shall not be taken to be subject to any liability only because the person has complied with a requirement made under section 103 or 104.

## Part 9 Offences and related matters

### 106 Proceedings for offences

- (1) Proceedings for an offence against this Act may be instituted by the registrar-general, within the period of 5 years after the offence was committed, or within such further period as the Minister allows.
- (2) An offence against this Act is punishable on summary conviction.

### 107 Offences related to inspection of books

- (1) A person shall not—
  - (a) without reasonable excuse, refuse or fail to comply with a requirement made of the person under section 103; or
  - (b) in purported compliance with a requirement made under part 8, give information or an explanation or make a statement that is false or misleading in a material particular; or
  - (c) without reasonable excuse, obstruct or hinder the registrar-general in the exercise of a power conferred on the registrar-general by part 8.

Maximum penalty: 50 penalty units.

- (2) A person does not commit an offence against subsection (1) in relation to information or an explanation given or a statement made by the person if the person adduces evidence that he or she believed on reasonable grounds that the information, explanation or statement was true and was not misleading, and that evidence is not rebutted by the prosecution.
- (3) A person is not excused from giving information or an explanation or making a statement relating to the compilation of an association's books or to any matter to which the books relate in compliance with a requirement made of the person under part 8 on the ground that the information, explanation or statement would or would tend to

incriminate the person, but where, before giving information or an explanation or making a statement, the person claims that doing so would or would tend to incriminate him or her, the information, explanation or statement is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (1).

- (4) Subject to subsection (3), information, an explanation or a statement given or made by a person in compliance with a requirement made of the person under part 8 is admissible in evidence in civil or criminal proceedings against the person.
- (5) Where a person required to produce any books under this part has a lien on the books, the production of the books by the person shall not be taken to affect the lien.

### **108 Offences by officers of associations etc**

- (1) A member of the committee of an incorporated association who knowingly fails to take all reasonable steps to ensure that the association has complied or is complying with this Act or with a condition imposed on the association under this Act commits an offence.

Maximum penalty: 5 penalty units.

- (2) An officer of an incorporated association, or an incorporated association, who or that contravenes a condition imposed on the association under this Act by the registrar-general or the Minister commits an offence.

Maximum penalty: 10 penalty units.

- (3) Proceedings for an offence against this section may be instituted against an officer of an incorporated association, and the officer may be convicted of the offence, whether or not proceedings in relation to the offence have been instituted against the association or the association has been convicted of an offence related to the firstmentioned offence.

- (4) Nothing in this section shall be taken to affect the liability of an incorporated association in respect of an offence committed by the association against this Act.

### **109 Offence—trade or pecuniary gain**

- (1) An incorporated association shall not, as trustee or otherwise, trade or secure pecuniary gain for its members.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to an association incorporated under a declaration under section 15 (1).

### **110 Liability of members**

Where, under section 108 (1), a member or members of the committee of an incorporated association commit an offence in respect of a failure of the association to comply with section 109, the member or members is or are respectively liable, or jointly and severally liable, for any debt or liability incurred by the association because of the commission of the offence.

### **111 Improper use of officer's position**

- (1) An officer of an incorporated association who improperly uses his or her position as an officer to gain, directly or indirectly, an advantage for the officer or another person, or so as to cause detriment to the association, commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An officer of an incorporated association who commits an offence against subsection (1) is liable to the association for any profit made by the officer or another person, and any damage suffered by the association, because of the commission of the offence.

**112 Offences by unincorporated bodies**

Where a person, or an association or other group of persons, not being an incorporated association or other body corporate of which the incorporation is recognised under a law in force in the Territory or under a law of the Commonwealth, a State or another Territory—

- (a) uses a name or title in which the word ‘Incorporation’ or an abbreviation or imitation of it appears or in which the abbreviation ‘Inc.’ or any imitation of it appears; or
- (b) otherwise holds out himself or herself, or itself, as the case may be, as being an incorporated association or other body corporate of which the incorporation was effected or is recognised under a law in force in the Territory;

the person, or each member of the association or other group of persons, commits an offence.

Maximum penalty: 30 penalty units.

**113 False or misleading statements**

- (1) Where, in a document required by or for this Act, or lodged with the registrar-general in accordance with this Act, in a statement made under this Act or in a document submitted to a member or at a meeting of an incorporated association, a person—

- (a) makes or authorises the making of a statement that is, to the person’s knowledge, false or misleading in a material particular; or
- (b) omits or authorises the omission of anything where, to the knowledge of the person, the omission renders the document or statement false or misleading in a material respect;

the person commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) For subsection (1), where—
- (a) at a meeting of an association or of a group of persons proposing to form an association, a person votes in favour of a resolution approving, or otherwise approves, a document or statement referred to in subsection (1); and
  - (b) the document or statement contains a statement that is, to the knowledge of the person, false or misleading in a material particular, or omits anything where, to the knowledge of the person, the omission renders the document false or misleading in a material respect;

the person shall be taken to have authorised the making of the false or misleading statement, or to have authorised the omission, as the case requires.

#### **114 Investment with associations**

- (1) An incorporated association shall not, without the written approval of the registrar-general, invite a person other than a member or applicant for membership of the association to invest money with the association nor receive money from such a person for investment with the association.

Maximum penalty: 50 penalty units.

- (2) If an incorporated association receives money from a person in contravention of subsection (1)—
- (a) the transaction shall be taken to be void; and
  - (b) the money, any interest on the money paid or payable to the association, and any profit derived from use of the money by the association, is recoverable by the person from the association as a debt due to the person.
- (3) An incorporated association may, subject to the rules, invite a member or applicant for membership of the association to deposit money with or lend money to the association, and may receive money from a member or applicant for membership.

- (4) The registrar-general may grant an incorporated association approval to invite a person referred to in subsection (1) to invest money with the association and approval to receive money from such a person for investment, and may make the grant subject to such conditions as the registrar-general thinks fit.
- (5) An association that does not comply with a condition specified in a grant of approval given to the association under subsection (4) commits an offence.

Maximum penalty: 50 penalty units.

### **115 Certificates as evidence**

- (1) In any proceedings, a certificate of the registrar-general to the effect—
  - (a) that, on a date specified in the certificate, the association named in the certificate was or was not an incorporated association; or
  - (b) that, on a date specified in the certificate, there was no association incorporated under the name specified in the certificate; or
  - (c) that a provision of this Act specified in the certificate—
    - (i) had or had not been complied with at a date or within a period specified in the certificate; or
    - (ii) had been complied with at the date specified in the certificate but not before that date; or
  - (d) that, on a date specified in the certificate, the person named in the certificate was or was not shown by the registrar-general's records to be the public officer of an incorporated association named in the certificate; or
  - (e) that, on a date specified in the certificate, the address specified in the certificate was the last address of the public officer of the incorporated association named in the certificate of which the registrar-general was notified; or



- (f) that a copy of the statement of the objects or the rules of an incorporated association named in the certificate, or a copy of a notice specifying particulars of any trust relating to the incorporated association named in the certificate, is a true copy of the statement, the rules or the notice, as the case requires, at the date specified in the certificate;

is evidence of the matters stated in the certificate.

- (2) In any proceedings, a certificate of incorporation issued under this Act or the repealed Act in respect of an association shall be taken to be conclusive evidence that the association was incorporated under the respective Act on the date specified in the certificate as the date of incorporation.
- (3) In any proceedings, a copy of, or an extract from, any document lodged for this Act or the repealed Act that is certified under the relevant Act to be a true copy or extract of that document is admissible in evidence as if it were the original document.
- (4) In this section—
- (a) a reference to a copy of, or an extract from, a document includes a reference to a print-out of the matters or some of the matters contained in the document and recorded in a computerised database comprising the matters contained in documents issued by or lodged with the registrar-general; and
- (b) a reference to a document includes a reference to—
- (i) a copy of a certificate of incorporation kept by the registrar-general under section 10; and
- (ii) an application lodged with the registrar-general under this Act; and
- (iii) where a reproduction or transparency of a document lodged with the registrar-general has been incorporated in a register—the reproduction or transparency.

**116 Copies or extracts of books as evidence**

- (1) In any legal proceedings (whether under this Act or otherwise), a copy of, or extract from, a book relating to the affairs of an incorporated association is admissible in evidence as if it were the book or the relevant part of it upon proof that the copy or extract is a true copy of the book or the relevant part of it.
- (2) For subsection (1), evidence that a copy of or an extract from a book is a true copy of the book or a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book, and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

**117 Constructive notice of documents etc**

- (1) A person shall not be taken to have knowledge of—
  - (a) the statement of the objects or the rules, or any of the content of that statement or the rules, of an association; or
  - (b) a document or the content of a document relating to an association; or
  - (c) any particulars relating to an association;  
only because—
    - (d) the statement, the rules, the document or a statement or notice of the particulars has been lodged with the registrar-general; or
    - (e) the statement, the rules, the document or a statement or notice of the particulars is referred to in another document lodged with the registrar-general.
- (2) In any proceedings to which an incorporated association or a guarantor of an obligation of an incorporated association and a person dealing with the association or a person who has acquired rights from the association are parties, the association or the guarantor is not entitled to adduce evidence that—

- (a) the rules of the association have not been complied with; or
- (b) the most recently appointed public officer of the association of whose appointment the registrar-general was notified is not the public officer of the association;

unless the person—

- (c) had actual knowledge of that fact at the relevant time; or
- (d) ought to have had knowledge of that fact at the relevant time because of the person's connection or relationship with the association.

## Part 10 Miscellaneous

### 118 Notice of decisions

- (1) Where the registrar-general makes a decision—
- (a) under section 13 (1) to refuse to receive or register a document submitted for lodgment; or
  - (b) under section 19 to refuse an application for incorporation of an association or proposed association; or
  - (c) under section 27 to refuse an application for incorporation of amalgamating associations; or
  - (d) withholding approval to an invitation for investment in an incorporated association under section 114; or
  - (e) refusing an application for an extension of time under section 120 (1);

he or she shall cause notice in writing of the decision to be given—

- (f) in the case of a decision referred to in paragraph (a)—to the person lodging the relevant document;
  - (g) in the case of a decision referred to in paragraphs (b), (c) or (e)—to the applicant; or
  - (h) in the case of a decision referred to in paragraph (d)—to the association seeking approval.
- (2) A notice under subsection (1) and a notice under sections 39 (1), 83 (1), 93 (1) and 120 (2) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### 119 Review by tribunal

Application may be made to the administrative appeals tribunal for a review of a decision—

- (a) referred to in section 118 (1); or
- (b) of the registrar-general—
  - (i) directing an association to change its name under section 39 (1); or
  - (ii) cancelling the incorporation of an association under section 83 (8) or 93 (3); or
  - (iii) varying or revoking an extension of time granted under section 120 (1).

## **120 Extensions of time for applications etc**

- (1) The registrar-general may, on the written application of an incorporated association, an officer of an incorporated association or a person authorised for this section by an association or a group of persons proposing to form an association, extend a period of time prescribed by this Act, whether or not the application is made before the period has expired.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) The registrar-general may make the extension of a period under subsection (1) subject to any condition the registrar-general thinks fit and may, by written notice to the association, vary or revoke the extension.

## **121 Registered office of incorporated association**

- (1) An incorporated association may have a registered office in the Territory to which communications and notices may be addressed and that shall be open for such hours (not being less than 3) between the hours of 9 am and 5 pm of each day that is not a Saturday, a Sunday or a public holiday in the Territory as are specified by the association—
  - (a) in an application for incorporation under section 18 (1) (a) or 26 (2) (a); or

- (b) in a notice lodged under subsection (2) or (3), whichever is the later.
- (2) Where an incorporated association opens a registered office subsequent to incorporation under this Act, it shall, within 7 days of opening that office, inform the registrar-general by notice in writing of—
  - (a) the address of the registered office of the association; and
  - (b) the hours during which the office is required to be open as provided for under subsection (1).
- (3) An incorporated association having a registered office shall, within 7 days of a change in the situation of that office or a change in the hours of opening of the office, inform the registrar-general by notice in writing of the relevant change.

## **122 Service of documents**

- (1) Unless otherwise provided by this Act, service on an incorporated association of a document or process may be effected by—
  - (a) addressing it to the association and leaving it at, or sending it by post to, the address which appears in the registrar-general's records as the last notified address of the person who is, or was then, the public officer of the association; or
  - (b) by serving a copy of it personally on a member of the committee of the association; or
  - (c) if the association has a registered office—by addressing it to the association and leaving it at, or, by sending it by post to, the registered office of the association.
- (2) Where under this Act a document or process is served on the public officer or a member of the committee of an incorporated association, the public officer or the member shall, as soon as practicable after receiving the document or process, bring it to the attention of the committee of the association.

Maximum penalty: 5 penalty units.

- (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, at any time within the period of 2 years ended immediately before receiving the document, an officer 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: 5 penalty units.

### **123 Translation of instruments**

Where under this Act a person gives to or lodges with the registrar-general any instrument or a copy of any instrument and the instrument is not written in the English language, the person shall at the same time give to or lodge with the registrar-general a certified translation of the instrument into the English language.

### **124 Powers of the court**

On hearing an application under this Act, the court may make or refuse to make the order sought, and may make such other orders as it thinks fit.

### **125 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **126 Approved forms**

- (1) The registrar-general may, in writing, approve forms for this Act.

- (2) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **127 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to—
  - (a) prescribing model rules; and
  - (b) lodging applications or other documents with the registrar-general; and
  - (c) the verification of information required or permitted to be given to the registrar-general; and
  - (d) regulating the preparation, completion and signing of approved forms.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.
- (4) If—
  - (a) a document to be lodged under this Act is required to be verified and no way of verifying the document or its contents is prescribed by this Act; or
  - (b) the verification of a document to be lodged under this Act is not provided for by this Act.



## Part 11 Transitional and savings provisions

### 129 General savings

- (1) Unless the contrary intention appears in this Act, all persons, things and circumstances appointed or created by or under the repealed Act, or existing or continuing under the repealed Act immediately before the commencement date, shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if this Act had not been made.
- (2) Without affecting subsection (1), unless the contrary intention appears in this Act, nothing in this Act shall be taken to disturb the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, statement of objects, rules, incorporation, nomination, affidavit, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, affected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the repealed Act before the commencement date.

### 130 Legal proceedings

- (1) Any proceedings instituted by or against the registrar of incorporated associations under the repealed Act may be continued and determined as if this Act had not been made.
- (2) Any proceedings which could have been instituted and determined under the repealed Act may be instituted and determined as if this Act had not been made.

**131 Associations incorporated under repealed Act**

Unless the contrary intention appears in this Act, this Act shall be taken to apply in relation to an association incorporated under the repealed Act as if the association had been incorporated under this Act.

**132 Registers kept under repealed Act**

A register kept under the repealed Act shall be deemed to be part of a register kept under section 9.

**133 Winding-up**

Where, before the commencement date, the winding-up of an association incorporated under the repealed Act had begun, the winding up shall continue in accordance with the repealed Act as if this Act had not been made.

**134 Applications for incorporation**

Where, before the commencement date—

- (a) an application has been made under the repealed Act for the incorporation of an association; and
- (b) a certificate of incorporation has not been issued to the association by that date;

the application shall be taken to have lapsed.

**135 Documents to be lodged**

Any document that was, before the commencement date, required to be lodged with the registrar of incorporated associations under the repealed Act is required to be lodged in accordance with the relevant provisions of the repealed Act as if the latter Act had not been repealed.

**136 Statement of objects**

Where, before the commencement date—

- (a) a notice relating to the alteration of the statement of objects of an incorporated association was lodged with the registrar of incorporated associations under the repealed Act; and
- (b) the registrar-general has not, at that date, approved the alteration in accordance with the repealed Act, section 13 (3);

the notice shall be taken to have been lodged under section 30 (2), and this Act shall be taken to apply in relation to the notice as if it had been lodged under that subsection.

**137 Change of name**

Where, before the commencement date—

- (a) an application had been made to the registrar of incorporated associations under the repealed Act, section 14 in relation to a change in the name of an incorporated association; and
- (b) the registrar-general has not, at that date, issued to the association a certificate of incorporation under the new name;

the application shall be taken to have been made under section 38 (2), and this Act shall be taken to apply in relation to the application as if the application had been made under that subsection.

**138 Transition—public officer**

- (1) For this Act the person who was, immediately before the commencement date, the public officer within the meaning of the repealed Act of an association incorporated under the repealed Act shall be taken to be the public officer of the association at that date.
- (2) This Act applies in relation to a person referred to in subsection (1) as if the person had been appointed as the public officer of an association incorporated under this Act.

**139 Transition—committee**

(1) For this Act—

- (a) each person who was, immediately before the commencement date, a member of the committee of an association incorporated under the repealed Act; or
- (b) if, at that time, an association incorporated under the repealed Act had no committee—each person having the management of the association at that time;

shall be taken to have been a member of the committee of the association at that date.

(2) Where, under subsection (1), fewer than 3 persons are to be taken to have been members of the committee of an association, the person or persons who is or are to be taken as such a member or members shall, within the period of 2 months beginning on the commencement date, appoint a person or persons, as the case requires, so that the committee of the association has at least 3 members.

Maximum penalty: 2 penalty units.

(3) Where—

- (a) under subsection (1), fewer than 3 persons are to be taken to have been members of the committee of an association; and
- (b) the person or persons who is or are to be taken as such a member or members fails or fail to appoint a person or persons in accordance with subsection (2);

the association may, by resolution of a general meeting of the association, appoint a person or persons, so that the committee of the association has at least 3 members.

**140 Transition—additional return**

(1) Subject to this section, an association incorporated under the repealed Act shall, in addition to lodging any annual return in

accordance with section 79, within the period of 3 months after the commencement date, lodge with the registrar-general a statement in the approved form, being a statement of particulars relating to the association.

Maximum penalty: 2 penalty units.

- (2) The Registrar-General may serve on an association referred to in subsection (1) a partly completed return in which the registrar-general has set out particulars in relation to the association on the basis of information previously received by the registrar-general.
- (3) Where, under subsection (2), the registrar-general serves a partly completed return on an association, the association may—
  - (a) delete any incorrect particulars appearing in the return and substitute correct particulars of the matters to which the incorrect particulars related; and
  - (b) complete the return and lodge it with the registrar-general.
- (4) Where an association lodges a return in accordance with subsection (3), the association shall be taken to have set out in the return any particulars included in the return that have not been deleted from it.
- (5) Where—
  - (a) the registrar-general serves a partly completed return on an association under subsection (2); and
  - (b) the association lodges the completed return in accordance with subsection (3) (b) on or before the date specified for the purpose in the return;

the association shall be taken to have complied with subsection (1).

## Schedule 1 Matters to be provided for in rules other than model rules

(see s 32 (a))

column 1	column 2	column 3
1	membership qualifications	specify any qualification that is a prerequisite to being admitted to membership of the association
2	fees and subscriptions	specify the amount of any entrance fee, subscription or other charge payable by members of the association
3	members' liability	specify the liability (if any) of members of the association to contribute towards payment of the debts and liabilities of the association or the costs, charges and expenses of winding-up the association
4	discipline	specify— <ul style="list-style-type: none"><li>(a) the procedure (if any) for disciplining members; and</li><li>(b) the way (if any) in which a member may appeal in respect of any disciplinary action taken against the member; and</li><li>(c) the way (if any) in which a member may make representations to, or appear before, the association or its delegate, in relation to any charge made against the member</li></ul>

- 
- |   |                              |   |
|---|------------------------------|---|
| 5 | committee of the association | <p>1 specify the name, constitution and powers of the committee of the association</p> <p>2 make provision for the following matters in relation to the committee:</p> <ul style="list-style-type: none"><li>(a) the election or appointment of members of the committee;</li><li>(b) the term of office of members of the committee;</li><li>(c) any grounds on which the office of a member of the committee shall be taken to have become vacant;</li><li>(d) the manner of filling a casual vacancy in the office of a committee member;</li><li>(e) the number of members that constitute a quorum at a meeting of the committee;</li><li>(f) the procedure to be followed at a meeting of the committee</li></ul> |
| 6 | general meetings             | <p>make provision for the following matters in relation to general meetings of the association:</p> <ul style="list-style-type: none"><li>(a) the frequency with which general meetings of the association are to be convened;</li><li>(b) the way in which general meetings and special general meetings of the association are to be convened;</li><li>(c) the procedure to be followed at a general meeting of the association;</li><li>(d) the number of members that constitutes a quorum at a general meeting of the association;</li></ul>   |
-

**Schedule 1**      Matters to be provided for in rules other than model rules

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		(e) whether or not members of the association are entitled to vote by proxy at general meetings;
		(f) the time within which and the manner in which notices of general meetings and notices of motion are to be given, published or circulated
7	financial year	specify the date on which the financial year of the association ends
8	funds	1      specify the source from which the funds of the association are to be or may be derived  2      specify the way in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the association
9	common seal	provide for the custody and use of the common seal of the association
10	custody of books and documents	make provision for the custody of any books, documents or securities of the association
11	inspection of books and documents	provide for the inspection by members of any books or documents of the association



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## Schedule 2      Modification of the Corporations Act, part 5.7 in its application to incorporated associations

(see s 91)

### [2.1] Section 582

*omit*

### [2.2] Section 583

*after 2nd mention of*

Chapter

*insert*

(excluding parts 5.1, 5.2, 5.3, 5.4, 5.7A, 5.8 and 5.9)

### [2.3] Section 583 (b)

*omit*

### [2.4] Section 583 (c) (iii)

*omit*

### [2.5] New section 583 (d), (e) and (f)

*insert*

(d) in relation to a voluntary winding up—part 5.5 applies subject to the exclusion of the following provisions:

section 493 (2); division 3; sections 501 and 507.

(e) in relation to winding up generally—part 5.6 applies subject to the exclusion of the following provisions:

sections 532 (8), 544, 556 (1) (c), (d) and (j), 557, 565 (2) (a) (ii) and 572-579.

- (f) in this chapter that apply in relation to the winding up of an incorporated association—
- (i) a reference to a company or a body is a reference to an incorporated association; and
  - (ii) a reference to a contributory of a company is a reference to a member of an incorporated association; and
  - (iii) a reference to the registration of a company is a reference to the incorporation of an incorporated association; and
  - (iv) a reference to the articles of a company is a reference to the rules of an incorporated association; and
  - (v) a reference to the directors of a company is a reference to the members of the committee of an incorporated association; and
  - (vi) a reference to the secretary of a company is a reference to the public officer of an incorporated association; and
  - (vii) a reference to the registered office or to the principal place of business of a corporation is a reference—
    - (A) if an incorporated association has a registered office—to the current address of that office as notified to the registrar-general under the Act; or
    - (B) if an incorporated association does not have a registered office—to the current address of the public officer of the association as notified to the registrar-general under the Act;
  - (viii) a reference to a special resolution is a reference to a special resolution within the meaning of the Act; and
  - (ix) a reference to the commission is a reference to the registrar-general within the meaning of the Act.

**[2.6] Section 586**

*omit*

**[2.7] Section 587**

*omit*

**[2.8] Section 588 (1), (2), (4) and (5)**

*omit*

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

**Associations Incorporation Act 1991 No 46**

notified 30 September 1991 (Gaz 1991 No S97)  
s 1, s 2 commenced 30 September 1991 (s 2 (1))  
remainder commenced 1 January 1992 (s 2 (2) and Gaz 1991 No S140)

as amended by

**Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993

**Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

**Real Property (Consequential Provisions) Act 1993 No 90 sch**

notified 17 December 1993  
s 1, s 2 commenced 17 December 1993 (s 2 (1))  
sch commenced 1 January 1994 (s 2 (2) and Gaz 1993 No S270)

**Associations Incorporation (Amendment) Act 1994 No 21**

notified 20 May 1994 (Gaz 1994 No S87)  
commenced 20 May 1994 (s 2)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

**Land Titles (Consequential Amendments) Act 1995 No 54 sch 1**

notified 20 December 1995 (Gaz 1995 No S313)  
commenced 20 June 1996 (s 2)

**Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

## Endnotes

### 4 Amendment history

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#### **Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 24**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 24 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

## 4 Amendment history

### **Commencement**

s 2 om 2001 No 44 amdt 1.246

### **Definitions for Act**

s 3 def **approved form** sub 2001 No 44 amdt 1.247  
def **banking corporation** am 1997 No 88 sch  
sub 1999 No 66 sch  
def **commencement date** sub 2001 No 44 amdt 1.248  
def **determined fee** am 1999 No 66 sch; om 2001 No 44  
amdt 1.249  
def **legal practitioner** om 1997 No 88 sch  
def **Registrar** om 1993 No 64 sch 1  
def **Registrar of Titles** om 1993 No 64 sch 1

### **Registrar and Deputy Registrars**

s 5 om 1993 No 64

### **Acting appointments**

s 6 om 1993 No 64

### **Registrar a corporation sole**

s 7 om 1993 No 64

### **Protection and liability of Registrar and other officers**

s 8 om 1993 No 64

**Registers**

s 9 am 1993 No 64

**Copies of certificates of incorporation**

s 10 am 1993 No 64

**Inspection of documents**

s 11 am 1993 No 64; 2001 No 44 amdt 1.250, amdt 1.251

**Disposal of documents**

s 12 am 1993 No 64

**Defective documents**

s 13 am 1993 No 64; 2001 No 44 amdt 1.252, amdt 1.253

**Ineligible associations—incorporation**

s 15 am 2001 No 44 amdt 1.254, amdt 1.255

**Powers of authorised person**

s 17 am 1993 No 64

**Applications for incorporation**

s 18 am 2001 No 44 amdts 1.256-1.258

**Certificate of incorporation**

s 19 am 1993 No 64

**Restriction of actions**

s 25 am 1993 No 64

**Amalgamation of incorporated associations**

s 26 am 1993 No 64; 2001 No 44 amdts 1.259-1.261

**Incorporation of amalgamating associations**

s 27 am 1993 No 64

**Effect of incorporation—amalgamated associations**

s 28 am 1993 No 64; 1993 No 90; 1995 No 54

**Objects**

s 29 am 1993 No 64

**Alteration of objects**

s 30 am 1993 No 64; 1998 No 54; 2001 No 44 amdt 1.262,  
amdt 1.263

**Rules other than model rules**

s 32 am 1993 No 1

**Alteration of rules**

s 33 am 1993 No 64; 1998 No 54; 2001 No 44 amdt 1.264,  
amdt 1.265

**Copies of documents for members**

s 35 am 2001 No 44 amdt 1.266

## Endnotes

### 4 Amendment history

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#### **Reservation of names**

s 37 am 1993 No 64; 2001 No 44 amdts 1.267-1.271

#### **Change of name**

s 38 am 1993 No 64; 2001 No 44 amdt 1.272, amdt 1.273

#### **Compulsory change of name**

s 39 am 1993 No 64

#### **Name on association's documents etc**

s 41 am 1998 No 54

#### **Notice of public officer's appointment or change of address**

s 59 am 1993 No 64; 1998 No 54 2001 No 44 amdts 1.274-1.276

#### **Notice of changes in committee**

s 62 am 1993 No 64; 1998 No 54 2001 No 44 amdt 1.277,  
amdt 1.278

#### **Disqualification from office**

s 63 am 1993 No 64; 1998 No 54

#### **Vacancy in office of public officer**

s 64 am 1998 No 54

#### **Disclosure of committee member's interest**

s 65 am 1998 No 54

#### **Information from officers**

s 66 am 1993 No 64

#### **Special resolutions**

s 70 am 1994 No 21

#### **Accounting records**

s 71 am 1998 No 54

#### **Annual statement of accounts**

s 72 am 1998 No 54

#### **Presentation of statement to members**

s 73 am 1998 No 54

#### **Audit of accounts**

s 74 am 1998 No 54

#### **Auditor of prescribed associations**

s 76 am 1993 No 64; 1998 No 54

#### **Obstruction of auditor**

s 78 am 1998 No 54

#### **Annual returns**

s 79 am 1993 No 64; 1998 No 54; 2001 No 44 amdt 1.279



**Lodgment of particulars instead of documents**

s 80 am 1993 No 64

**Voluntary transfer of incorporation**

s 82 am 1993 No 64; 2001 No 44 amdts 1.280-1.282

**Cancellation where continued incorporation inappropriate**

s 83 am 1993 No 64; 2001 No 44 amdts 1.283-1.285; R5 LA (see 2001 No 44 amdt 1.286)

**Cancellation of incorporation following voluntary transfer**

s 85 am 1993 No 64

**Transfer of land to company**

s 87 am 1993 No 64; 1993 No 90; 1995 No 54

**Application for winding up by the court**

s 89 am 1993 No 64

**Property of defunct association**

s 92 am 1993 No 64; 1993 No 90; 1995 No 54; 1998 No 54

**Cancellation of incorporation**

s 93 am 1993 No 64; 2001 No 44 amdts 1.287-1.289; R5 LA (see 2001 No 44 amdt 1.290)

**Property of former incorporated association**

s 94 am 1993 No 64; 1993 No 90; 1995 No 54

**Property vested in registrar-general**

s 95 am 1993 No 64

**Liability in respect of property vested in registrar-general**

s 96 am 1993 No 64

**Registrar-general's power to act for defunct association**

s 97 am 1993 No 64

**Records of property vested in registrar-general**

s 98 am 1993 No 64

**Secrecy**

s 100 am 1993 No 64; 1998 No 54

**Investigations by registrar-general**

s 101 am 1993 No 64

**Scope of registrar-general's powers**

s 102 am 1993 No 64

**Production of association's books**

s 103 am 1993 No 64

**Inspection of books held by legal practitioner**

s 104 am 1993 No 64

## Endnotes

4 Amendment history

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### **Proceedings for offences**

s 106 am 1993 No 64

### **Offences related to inspection of books**

s 107 am 1993 No 64; 1998 No 54

### **Offences by officers of associations etc**

s 108 am 1993 No 64; 1998 No 54

### **Offence—trade or pecuniary gain**

s 109 am 1998 No 54

### **Improper use of officer's position**

s 111 am 1998 No 54

### **Offences by unincorporated bodies**

s 112 am 1998 No 54

### **False or misleading statements**

s 113 am 1993 No 64; 1998 No 54

### **Investment with associations**

s 114 am 1993 No 64; 1998 No 54

### **Certificates as evidence**

s 115 am 1993 No 64

### **Constructive notice of documents etc**

s 117 am 1993 No 64

### **Notice of decisions**

s 118 am 1993 No 64; 1994 No 60

### **Review by Tribunal**

s 119 am 1993 No 64; 1994 No 60

### **Extensions of time for applications etc**

s 120 am 1993 No 64; 2001 No 44 amdt 1.291, amdt 1.292

### **Registered office of incorporated association**

s 121 am 1993 No 64

### **Service of documents**

s 122 am 1993 No 64; 1998 No 54

### **Translation of instruments**

s 123 am 1998 No 54

### **Determination of fees**

s 125 am 1993 No 64  
sub 2001 No 44 amdt 1.293

### **Approved forms**

s 126 sub 2001 No 44 amdt 1.293

**Regulation-making power**

s 127 am 1993 No 64; 1998 No 54  
sub 2001 No 44 amdt 1.293

**Repeal**

s 128 om 2001 No 44 amdt 1.293

**Statement of objects**

s 136 am 1993 No 64

**Change of name**

s 137 am 1993 No 64

**Transition—committee**

s 139 am 1998 No 54

**Transition—additional return**

s 140 am 1993 No 64; 1998 No 54

**Transition—rules**

s 141 am 1998 No 54  
om R4 LRA

**Transition—annual general meeting**

s 142 om R4 LRA

**Transition—register of members**

s 143 am 1993 No 64  
om R4 LRA

**Modification of Corporations Act, part 5.7 in its application to incorporated associations**

sch 2 am 1993 No 64

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1993 No 90	31 January 1994
2	Act 1994 No 60	14 November 1994
3	Act 1997 No 96	30 April 1998
4	Act 1998 No 54	31 January 1999

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