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South Australia

ASSOCIATIONS INCORPORATION ACT 1985

An Act to make provision for the incorporation, administration and control of associations; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 July 2001**.*

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 June 1993.

ASSOCIATIONS INCORPORATION ACT 1985

being

Associations Incorporation Act 1985 No. 30 of 1985
[Assented to 4 April 1985]¹

as amended by

Associations Incorporation Act Amendment Act 1985 No. 100 of 1985 [Assented to 7 November 1985]²
Associations Incorporation (Miscellaneous) Amendment Act 1992 No. 36 of 1992 [Assented to 21 May 1992]³

Associations Incorporation (Miscellaneous) Amendment Act 1997 No. 29 of 1997 [Assented to 12 June 1997]⁴

Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]⁵
District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]⁶

Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000 No. 57 of 2000 [Assented to 20 July 2000]⁷

Associations Incorporation (Oppressive or Unreasonable Acts) Amendment Act 2000 No. 65 of 2000 [Assented to 16 November 2000]⁸

Statutes Amendment (Corporations) Act 2001 No. 23 of 2001 [Assented to 14 June 2001]⁹

¹ Came into operation 28 June 1985: *Gaz.* 27 June 1985, p. 2244.

² Came into operation 28 June 1985: s. 2.

³ Came into operation 1 June 1993: *Gaz.* 20 May 1993, p. 1694.

⁴ Came into operation 1 February 1998: *Gaz.* 24 December 1997, p. 1860.

⁵ Schedule (item 5) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.

⁶ Schedule 1 (cl. 3) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.

⁷ Part 2 (s. 4) came into operation 14 August 2000: *Gaz.* 10 August 2000, p. 444.

⁸ Came into operation 15 February 2001: *Gaz.* 1 February 2001, p. 392.

⁹ **Part 5 (ss. 9-19) came into operation 15 July 2001 (being the day on which the *Corporations Act 2001* of the Commonwealth came into operation: *Commonwealth of Australia Gazette No. S 285, 13 July 2001*): *Gaz.* 21 June 2001, p. 2270.**

NOTE:

• *Asterisks indicate repeal or deletion of text.*

• *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*

• *For the legislative history of the Act see Appendix.*

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Associations Incorporation Act 1985*.

Interpretation

3. (1) In this Act, unless the contrary intention appears-

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

"**accounts**" of an incorporated association means-

- (a) a combination of-
 - (i) an account of receipts and payments recording the total receipts and payments based on the cash method of accounting; and
 - (ii) a statement of assets and liabilities; or
- (b) a combination of-
 - (i) an account of income and expenditure recording the total income and expenditure based on the accrual method of accounting; and
 - (ii) a balance sheet,

together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the account, statement or balance sheet, as the case may be;

"**association**" includes society, club, institution or body;

"**authorised person**" means a person appointed by the Commission by instrument in writing to be an authorised person for the purposes of this Act;

"**beneficiary**" includes an object under a discretionary trust;

"**body corporate**" includes a body corporate within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;

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

"**the Commission**" means the Corporate Affairs Commission;

"**financial year**", in relation to an incorporated association, means-

- (a) in the case of an association whose rules fix a period ending on a specified day as the association's financial year-

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- (i) if such a period is fixed or varied at incorporation or during the first financial year of the association-the period not exceeding 18 months commencing on the date of incorporation and ending on the day specified;
 - (ii) if such a period is fixed or varied during any subsequent financial year-the period not exceeding 12 months commencing at the end of the last preceding financial year and ending on the day specified;
 - (iii) each succeeding period of 12 months ending on the day specified;
- (b) in the case of an association whose rules do not fix a period as the association's financial year-
- (i) the period commencing on the date of incorporation and ending on the next succeeding 30 June;
 - (ii) each succeeding period of 12 months ending on 30 June;

"gross receipts" of an incorporated association means the total amount of the receipts of the association including any grant or subsidy paid to or on behalf of the association by the Government of the State or the Commonwealth, local government or an agency of the Crown in right of the State or the Commonwealth, but not including any money received by the association-

- (a) by way of a membership fee, subscription, levy or other fee, if any, paid by a member; or
- (b) as a devise or bequest; or
- (c) from the sale of any of the association's assets that had not been originally purchased by the association for the purpose of resale;

"incorporated association" means an association incorporated under this Act;

"insolvent under administration" means a person who-

- (a) under the *Bankruptcy Act 1966* of the Commonwealth is a bankrupt in respect of a bankruptcy from which he or she has not been discharged; or
- (b) under the law of a country other than Australia has the status of an undischarged bankrupt,

and includes-

- (c) a person who has executed a deed of arrangement under Part 10 of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of the law of a country other than Australia where the terms of the deed have not been fully complied with; and
- (d) a person whose creditors have accepted a composition under Part 10 of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of the law of a country other than Australia where a final payment has not been made under that composition;

"member" of an incorporated association means-

- (a) a person who is under the rules of the association a member of the association; or

(b) a body that is under the rules of the association a member of the association;

"officer" of an incorporated association means-

(a) any person who-

(i) occupies or acts in a position of-

(A) a member of the committee of the association; or

(B) the secretary, treasurer or public officer of the association; or

(ii) is concerned, or takes part, in the management of the affairs of the association,

by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; or

(b) the holder of any other office established by the rules of the association (except a patron or the holder of some other honorary office that confers no right to participate in the management of the affairs of the association); or

(c) any person in accordance with whose directions or instructions the committee of the association is accustomed to act;

"prescribed association" means an incorporated association-

(a) that had gross receipts in that association's previous financial year in excess of-

(i) \$200 000; or

(ii) such greater amount as is prescribed by regulation; or

(b) that is prescribed or of a class prescribed by regulation;

"putative spouse" includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person;

"the repealed Act" means the *Associations Incorporation Act 1956* repealed by this Act;

"special resolution" of an incorporated association means-

(a) where the rules of the association provide for the membership of the association-a resolution passed at a duly convened meeting of the members of the association if-

(i) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the association; and

(ii) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such members of the association as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting;

(b) where the rules of the association do not provide for the membership of the association-a resolution passed at a duly convened meeting of the members of the

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committee of the association if-

- (i) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the committee; and
- (ii) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such members of the committee as, being entitled to do so, vote in person or, where alternates are allowed, by alternates, at that meeting;

"total receipts and payments" means the amount arrived at by aggregating receipts and payments in connection with all activities of the association in that association's financial year;

"transparency", in relation to a document, means-

- (a) a developed negative or positive photograph of that document (in this definition referred to as an "original photograph") made, on a transparent base, by means of light reflected from, or transmitted through, the document; or
- (b) a copy of an original photograph made by the use of photosensitive material (being photosensitive material on a transparent base) placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material (being photosensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

(2) Except as otherwise provided, a reference in this Act to the rules of an association is a reference to the rules relating to the constitution, powers, management and administration of the association, and the rights and liabilities of its members, but does not extend to rules, by-laws or ordinances relating to or affecting personal dress or behaviour, practices, procedures or other matters that are of a religious, ceremonial or doctrinal nature, or any other prescribed matter.

(3) Where under the rules of an incorporated association provision is made for confirmation or approval of a resolution of the association by some other person or body, such a resolution is not to be regarded as having been duly passed until it has been confirmed or approved as required by the rules.

(4) A provision in the rules of an association requiring confirmation or approval of a resolution or decision of the association by some other person or body is not to be regarded as oppressive or unreasonable.

(6) For the purposes of this Act, a person is an associate of another person if-

- (a) they are partners; or
- (b) one is a spouse, putative spouse, parent or child of the other; or
- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (d) one is a corporation and the other is a director of the corporation; or

- (e) one is a corporation and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the corporation; or
- (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (g) a chain of relationships can be traced between them under any one or more of the above paragraphs.

Exclusion of operation of Corporations Act

3A. (1) An incorporated association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

(2) Subsection (1) does not exclude the application of provisions of the *Corporations Act 2001* of the Commonwealth to incorporated associations to the extent that they relate to any matter that the regulations provide is not to be excluded from the operation of that Act.

Act binds Crown

4. This Act binds the Crown.

**PART 2
ADMINISTRATION**

DIVISION 1-THE COMMISSION

Administration by the Commission

5. (1) Subject to subsection (2), the Commission is responsible for the administration of this Act.

(2) The Commission is, in relation to the administration of this Act, subject to the control and direction of the Minister.

Inspection of documents

6. (1) For the purposes of this Act, the Commission must keep, in such form as it thinks fit-

- (a) a register of incorporated associations; and
- (b) such other registers as the Commission thinks fit.

(2) Subject to subsection (2a) a person may, on payment of the prescribed fee-

- (a) inspect a register kept by the Commission under this Act; or
- (b) inspect any document registered or held by the Commission under this Act (not being a document that has been destroyed or otherwise disposed of); or
- (c) obtain from the Commission-
 - (i) a certified copy of, or extract from, an entry in a register kept under this Act or the repealed Act; or
 - (ii) a certified copy of a certificate of incorporation issued under this Act or the repealed Act; or
 - (iii) a certified copy of, or extract from, any document registered or held by the Commission under this Act, or registered or held under the repealed Act.

(2a) The Commission may, at the request of a person whose residential address appears in a register or document that is available for inspection under this section, take any steps necessary to ensure that the person's address is not publicly disclosed under this section.

(3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled pursuant to subsection (2) to require the production of the original of that document.

(4) The reference in subsection (2)(c) to a certificate or document includes, where a reproduction or transparency of that certificate or document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that subsection to a copy of, or extract from, the original of that certificate or document.

Power of Commission to refuse to register or reject document, etc.

7. (1) If the Commission is of the opinion that a document submitted to the Commission-

- (a) contains matter contrary to law; or
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or

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

the Commission may refuse to register or may reject the document and may request-

- (f) that the document be appropriately amended or completed and resubmitted; or
- (g) that a fresh document be submitted in its place; or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be submitted.

(2) The Commission may request a person who submits a document to the Commission to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it should refuse to register or should reject the document.

(3) If a person fails to comply with a request of the Commission made pursuant to subsection (1) or (2) within 14 days after the service on the person of the request, a court of summary jurisdiction may, on an application of the Commission, order the person to comply with the Commission's request within the time specified in the order.

(4) An order made under subsection (3) may provide that all costs of, and incidental to, the application are to be borne by the person responsible for the non-compliance.

(5) A person who contravenes or fails to comply with an order made under subsection (3) is guilty of an offence.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000;
or

(b) in any other case-\$1 250.

Annual report

9. (1) The Commission must, on or before 31 December in each year, deliver to the Minister a report on the administration of this Act during the period of 12 months that ended on the preceding 30 June.

(2) The Minister must cause a copy of the report to be laid before each House of Parliament.

DIVISION 2-POWER OF INSPECTION, ETC.

Power of Commission to require production of books

10. For the purpose of ascertaining whether the provisions of this Act have been or are being complied with, an authorised person may, by notice in writing, require-

- (a) any incorporated association to produce to the authorised person immediately or, if a time and place at which the books are to be produced are specified in the notice, at that time and place such books relating to affairs of the association as are specified by the authorised person; or
- (b) any person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for, or on behalf of, an incorporated association (including an association that is in the course of being wound up or has been dissolved) to

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produce to the authorised person immediately such books relating to affairs of the association as are specified by the authorised person; or

- (c) any person to produce to the authorised person immediately any books relating to affairs of an incorporated association (including an association that is in the course of being wound up or has been dissolved) that are in the custody or under the control of that person.

Power of Commission to carry out investigations in relation to books

11. (1) Subject to this Division, where an authorised person exercises a power under this Division to require another person to produce books-

- (a) if the books are produced, the authorised person-
- (i) may take possession of the books and may make copies of, or take extracts from, the books; and
 - (ii) may require the other person, or any person who was party to the compilation of the books, to make a statement providing any explanation that the person concerned is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate; and
 - (iii) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission; and
 - (iv) during that period must permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the authorised person to inspect that book or those books at any reasonable time; or
- (b) if the books are not produced, the authorised person may require the other person-
- (i) to state, to the best of his or her knowledge and belief, where the books may be found; and
 - (ii) to identify the person who, to the best of his or her knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that person may be found.

(2) Where an authorised person exercises a power under this Division to require another person to produce books that are recorded, kept and reproduced by electronic means, the other person may comply with the requirement to produce those books by providing a printed reproduction of the information contained in the books.

(3) Where this Division confers a power on an authorised person to require a person to produce books relating to affairs of an incorporated association, the authorised person also has power to require that person (whether or not he or she requires that person to produce books and whether or not any books are produced pursuant to such a requirement), so far as the other person is able to do so, to identify property of the association and explain the manner in which the association has kept account of that property.

Protection from liability

12. A person is not subject to any liability by reason of compliance with a direction or requirement given or made under this Division.

Privileged communications

13. (1) Where-

- (a) an authorised person makes a requirement under this Division of a duly qualified legal

practitioner in respect of a book; and

- (b) the book contains a privileged communication made by or on behalf of the legal practitioner, or to the legal practitioner, in his or her capacity as such,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he or she must immediately furnish, in writing, to the authorised person-

- (c) if he or she knows the name and address of the person to whom, or by or on behalf of whom, the communication was made-that name and address; and

- (d) sufficient particulars to identify the book, or the part of the book, containing the communication.

Maximum penalty: \$5 000.

(2) Where-

- (a) an authorised person, acting in pursuance of this Division, requires a duly qualified legal practitioner to make a statement providing an explanation as to any matter relating to the compilation of books or as to any matter to which any books relate; and

- (b) the legal practitioner is not able to make that statement without disclosing a privileged communication made by or on behalf of the legal practitioner, or to the legal practitioner, in his or her capacity as such,

the legal practitioner is entitled to refuse to comply with the requirement, except to the extent that he or she is able to comply with the requirement without disclosing any privileged communication referred to in paragraph (b), unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he or she must immediately furnish, in writing, to the authorised person-

- (c) if he or she knows the name and address of the person to whom, or by or on behalf of whom, the communication was made-that name and address; and

- (d) if the communication was made in writing-sufficient particulars to identify the document containing the communication.

Maximum penalty: \$5 000.

Offences

14. (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under this Division.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000;
or

(b) in any other case-\$2 500.

(2) A person must not, in purported compliance with a requirement made under this Division, furnish information or make a statement that is false or misleading in a material particular.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000;
or

(b) in any other case-\$2 500.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that he or she believed on reasonable grounds that the information or statement was true and was not misleading.

(4) A person must not, without reasonable excuse, obstruct or hinder the Commission or another person in the exercise of any power under this Division.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000;
or

(b) in any other case-\$2 500.

Self-incrimination

15. (1) A person is not excused from making a statement providing an explanation as to any matter relating to the compilation of any books or as to any matter to which any books relate pursuant to a requirement made of him or her in accordance with this Division on the ground that the statement might tend to incriminate him or her but, where the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings other than proceedings under section 14.

(2) Subject to subsection (1), a statement made by a person in compliance with a requirement made under this Division may be used in evidence in any criminal or civil proceedings against that person.

Liens on books

16. Where an authorised person requires the production of any books under this Division and a person has a lien on the books, the production of the books does not prejudice the lien.

Secrecy

17. (1) An authorised person who, by reason of the authority granted to him or her pursuant to this Act, acquires information must not, except to the extent necessary to perform his or her official duties or to perform a function or exercise a power authorised by this Act, make a record of, or divulge or make use of in any other way, the information acquired.

Maximum penalty: \$10 000.

(2) Notwithstanding subsection (1), a person is not guilty of an offence if he or she-

- (a) produces a document to a court in the course of criminal proceedings or proceedings taken under this or any other Act; or
- (b) divulges to a court during 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 exercise of a power referred to in subsection (1); or
- (c) produces a document or divulges information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged; or
- (d) produces a document or divulges information that is required or permitted by any other Act to be produced or divulged, as the case may be.

**PART 3
INCORPORATION OF ASSOCIATIONS**

DIVISION 1-INCORPORATION

Eligibility for incorporation

18. (1) An association formed-

- (a) for a religious, educational, charitable or benevolent purpose; or
- (b) for the purpose of promoting or encouraging literature, science or the arts; or
- (c) for the purpose of providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability; or
- (d) for the purpose of sport, recreation or amusement; or
- (e) for the purpose of establishing, carrying on, or improving a community centre, or promoting the interests of a local community or a particular section of a local community; or
- (f) for conserving resources or preserving any part of the environmental, historical or cultural heritage of the State; or
- (g) for the purpose of promoting the interests of students or staff of an educational institution; or
- (h) for political purposes; or
- (i) for the purpose of administering any scheme or fund for the payment of superannuation or retiring benefits to the members of any organisation or the employees of any body corporate, firm or person; or
- (j) for the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry; or
- (k) for any purpose approved by the Minister,

is, subject to this Act, eligible to be incorporated under this Act.

(2) Subject to subsection (4), an association of the kind referred to in subsection (1)(i) is not, unless the Minister otherwise approves, eligible to be incorporated under this Act.

(3) Subject to subsection (4), an association which is formed for the purpose of furthering or protecting the interests of employers or employees and which is eligible for registration under the *Industrial Relations Act (S.A.) 1972* is not, unless the Minister otherwise approves, eligible to be incorporated under this Act.

(4) Subsections (2) and (3) do not apply to an association that was, immediately before the commencement of this Act, an association incorporated under the repealed Act.

(5) Subject to subsection (6), an association of which-

- (a) a principal or subsidiary object is to secure a pecuniary profit for the members of the association or any of those members; or
- (b) a principal or subsidiary object is to engage in trade or commerce,

is not, unless the Commission otherwise approves, eligible to be incorporated under this Act.

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(6) An association is not, for the purposes of this Act, to be regarded as having as a principal or subsidiary object the securing of a pecuniary profit for its members or any of its members or engaging in trade or commerce by reason only of any one or more of the following circumstances:

- (a) that the association itself makes a pecuniary profit, unless that profit or any part of it is or is to be divided among or received by the members or any of them otherwise than in accordance with section 55; or
- (b) that the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal objects of the association and, in the case of transactions with non-members (other than spouses, children or parents of members), the transactions-
 - (i) are not substantial in number or value in relation to the other activities of the association; or
 - (ii) are intended to provide financial support to the association in a manner that is directly related to the objects of the association; or
 - (iii) consist in the charging of admission fees to functions organised for the promotion of the objects of the association; or
- (c) that the association is established for the protection of a trade, business, industry or calling in which the members are engaged or interested, if the association itself does not engage or take part in any such activity; or
- (d) that the members of the association compete for trophies or prizes in contests directly related to the objects of the association.

(7) An approval of the Minister or the Commission under this section may be given on such conditions as the Minister or the Commission thinks fit.

Manner in which application for incorporation is to be made

19. (1) An application for the incorporation of an association must be made to the Commission in the prescribed manner and form by a person duly authorised by the association to apply for incorporation.

(2) The application must be accompanied by-

- (a) a copy of the rules of the association; and
- (b) a statutory declaration made by the applicant verifying-
 - (i) that he or she is authorised by the association to apply for registration; and
 - (ii) the particulars contained in the application; and
 - (iii) that the copy of the rules of the association which accompanies the application is a true copy; and
- (c) a copy of any instrument creating or establishing a trust-
 - (i) which is referred to in the rules of the association; or
 - (ii) upon which any rule of the association relies for its operation; and
- (ca) a copy of the settled draft of any instrument prepared for the creation or establishment of a trust of which the association is intended to be the trustee-

- (i) where the contemplated trust is referred to in the rules of the association; or
 - (ii) where any rule of the association relies on the contemplated trust for its operation; and
- (d) the prescribed fee.

Incorporation of association

20. (1) If, on an application for incorporation duly made under this Part, the Commission is satisfied-

- (a) that the association is eligible to be incorporated under this Act; and
- (b) that the rules of the association conform with the requirements of this Act; and
- (c) that the name of the association-
 - (i) is not such as to be misleading as to the nature, objects or purposes of the association; and
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and
 - (iii) is not undesirable as a name for an incorporated association; and
 - (iv) conforms with any direction of the Minister relating to the names of incorporated associations,

the Commission must, subject to subsection (2), register the rules of the association and issue to the association a certificate of incorporation.

(2) The Commission may-

- (a) decline to incorporate an association under this Act if, in its opinion, it would be more appropriate for its activities to be carried on by a body corporate incorporated under some other Act; or
- (b) with the consent of the Minister, decline to incorporate an association under this Act if, in its opinion, the incorporation of the association under this Act would not be in the public interest.

(3) Upon incorporation under this section-

- (a) the association becomes a body corporate-
 - (i) with perpetual succession and a common seal; and
 - (ii) with a corporate name as set out in the certificate of incorporation (in which the word "Incorporated" must appear as part, and at the end, of the name); and
- (b) all real and personal property held by any person for or on behalf of the association is vested in and held by the incorporated association (subject to any trusts that may affect that property); and
- (c) all rights and liabilities (whether certain or contingent) of the association immediately before the incorporation of the association become rights and liabilities of the incorporated association.

(4) The Registrar-General must-

- (a) on the application of an incorporated association in which any estate or interest in land has vested by virtue of this section; and
- (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

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

Rights and liabilities of members

21. (1) Membership of an incorporated association does not confer on a member, except as may be provided by the rules of the association, any right, title or interest in any real or personal property of the association.

(2) Except as may be provided by the rules of the association, a member of an association is not liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding up of the association.

(3) Subsection (2) does not apply in respect of debts or liabilities incurred by or on behalf of the association prior to incorporation.

DIVISION 2-AMALGAMATION

Amalgamation

22. (1) Any two or more incorporated associations-

- (a) may, by special resolution passed by each association, resolve to amalgamate; and
- (b) may apply to the Commission for amalgamation as a single incorporated association.

(2) An application under subsection (1)-

- (a) must be made in the prescribed form; and
- (b) must be accompanied by a copy of the special resolution passed by each of the incorporated associations supporting the amalgamation; and
- (c) must be accompanied by a copy of the rules of the association proposed to be formed by the amalgamation; and
- (d) must be accompanied by a copy of any instrument creating or establishing a trust-
 - (i) which is referred to in the rules of the association proposed to be formed by the amalgamation; or
 - (ii) on which any rule of the association proposed to be formed by the amalgamation relies for its operation; and
- (da) must be accompanied by a copy of the settled draft of any instrument prepared for the creation or establishment of a trust of which the association proposed to be formed by the amalgamation is intended to be the trustee-
 - (i) where the contemplated trust is referred to in the rules of the association proposed to be formed by the amalgamation; or
 - (ii) where any rule of the association proposed to be formed by the amalgamation

relies on the contemplated trust for its operation; and

- (e) must be accompanied by such certificates and other documents as may be prescribed; and
- (f) must be accompanied by the prescribed fee.

(3) A party to an application under this section must, at the request of the Commission, supply it with such further documents or information as the Commission may require.

(4) Where the Commission is satisfied-

- (a) that the association proposed to be formed by the amalgamation is eligible to be incorporated under this Act; and
- (b) that the rules of that association conform with the requirements of this Act; and
- (c) that the name of that association-
 - (i) is not such as to be misleading as to the nature, objects or purposes of the association; and
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and
 - (iii) is not undesirable as a name for an incorporated association; and
 - (iv) conforms with any direction of the Minister relating to the names of incorporated associations,

the Commission must, subject to subsection (5), register the rules of the association and issue to the association a certificate of incorporation.

(5) The Commission may-

- (a) decline to incorporate an association under subsection (4) if, in its opinion, it would be more appropriate for its activities to be carried on by a body corporate incorporated under some other Act; or
- (b) with the consent of the Minister, decline to incorporate an association under subsection (4) if, in its opinion, the incorporation of the association under this Act would not be in the public interest.

(6) Upon incorporation of an association under subsection (4)-

- (a) the association becomes a body corporate-
 - (i) with perpetual succession and a common seal; and
 - (ii) with a corporate name as set out in the certificate of incorporation (in which the word "Incorporated" must appear as part, and at the end, of the name); and
- (b) any incorporated association that was a party to the application for amalgamation is dissolved; and
- (c) the property of the associations that were parties to the application for amalgamation becomes the property of the incorporated association formed by the amalgamation (subject to any trusts that may affect that property); and

- (d) the rights and liabilities (whether certain or contingent) of the associations that were parties of the application for amalgamation become rights and liabilities of the incorporated association formed by the amalgamation.

(7) The Registrar-General must-

- (a) on the application of an incorporated association in which any estate or interest in land has vested by virtue of this section; and
- (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

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

(8) A reference in a will or other instrument to an association that is a party to an amalgamation under this section is, after the amalgamation, to be construed (subject to any provision in the will or other instrument to the contrary) as a reference to the association formed by the amalgamation.

(9) Where property vests by virtue of this section in an association, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

DIVISION 3-RULES

Rules binding on association and its members

23. (1) The rules of an incorporated association bind the association and all members of the association.

(2) The reference in this section to the rules of an association extends to rules, by-laws or ordinances of the association relating to any matter.

Contents of rules of an incorporated association

23A. (1) The rules of an incorporated association-

- (a) must state the name of the association and set out its objects; and
 - (b) must not contain any provision that is contrary to or inconsistent with this Act; and
 - (c) must contain provisions that, in the opinion of the Commission, deal with the following matters with sufficient particularity and certainty having regard to the nature and objects of the association:
 - (i) membership in the case of an association that has members;
 - (ii) the powers, duties and manner of appointment of the committee of the association;
 - (iii) the appointment of an auditor in the case of an association that is a prescribed association;
- *****
- (v) the calling of and procedure at general meetings;
 - (vi) who has the management and control of the funds and other property of the association;
 - (vii) the powers of the association and by whom and in what manner they may be

exercised;

- (viii) the manner in which the rules of the association may be altered;
- (ix) any other matter prescribed by regulation.

(2) This section applies only to rules, or an alteration to rules, submitted to the Commission for registration after the commencement of this section.

Alteration of rules

24. (1) An alteration to a rule of an incorporated association may be made by a special resolution of the association unless other provision is made in the rules of the association.

(2) An incorporated association must, within one month after making an alteration to a rule, register the alteration with the Commission.

Maximum penalty: \$1 250.

(3) An application for registration of a proposed alteration of the rules of an incorporated association-

- (a) must be made in the prescribed form; and
- (b) must be accompanied by a statutory declaration made by the public officer verifying the alteration; and
- (c) must be accompanied by the prescribed fee.

(4) Subject to subsection (5), where the Commission is satisfied that the proposed alteration conforms with the requirements of this Act, the Commission must register the alteration.

(5) Where an alteration to the rules of an incorporated association consists of or includes an alteration to the name of the association-

- (a) the Commission must not register the alteration unless it is satisfied that the name-
 - (i) is not such as to be misleading as to the nature, objects or purposes of the association; and
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and
 - (iii) is not undesirable as a name for an incorporated association; and
 - (iv) conforms with any directions of the Minister as to the names of incorporated associations; and
- (b) the Commission must, if it registers the alteration, issue to the association a new certificate of incorporation and make an appropriate notation on the register of incorporated associations.

(6) Subject to any provision in the rules of the association or a resolution to the contrary, an alteration to the rules of an incorporated association comes into force at the time that the alteration is passed.

(7) Notwithstanding subsection (6), an alteration to the name of an incorporated association does not come into force until the alteration is registered by the Commission in accordance with this section.

Court may order variation of rules

24A. (1) The rules of an incorporated association may be varied, on the application of the association,

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by the Supreme Court.

(2) Where the rules of the incorporated association provide for the membership of the association, a meeting of the members must be held, before an application is made under this section, to explain the purposes of the proposed application and seek the views of the members in relation to the proposed application.

(3) Notice of an application under this section must be given as the Supreme Court directs.

(4) The Supreme Court may, on application under this section, order that the rules of an incorporated association be varied in a manner the Court thinks fit, if it is satisfied that-

- (a) the rules unduly limit the conduct of the association's affairs; and
- (b) the variation of the rules-
 - (i) is consistent with the objects of the association; and
 - (ii) will not prejudice any member of the association; and
 - (iii) is justified in the circumstances of the particular case.

(5) Before making an order under this section the Supreme Court must have regard to any views expressed by members of the association in relation to the proposed variation at a meeting held in accordance with subsection (2).

(6) The Commission is entitled to appear and be heard in relation to an application under this section.

DIVISION 4-POWERS

Powers of an incorporated association

25. For the purpose of carrying out its objects, an incorporated association may, subject to this Act and its rules-

- (a) acquire, hold, deal with, and dispose of, any real or personal property; and
- (b) administer any property on trust; and
- (c) open and operate ADI accounts; and
- (d) invest its moneys-
 - (i) in any security in which trust moneys may, by Act of Parliament, be invested; or
 - (ii) in any other manner authorised by the rules of the association; and
- (e) borrow money upon such terms and conditions as the association thinks fit; and
- (f) give such security for the discharge of liabilities incurred by the association as the association thinks fit; and
- (g) appoint agents to transact any business of the association on its behalf; and
- (h) enter into any other contract it considers necessary or desirable.

DIVISION 5-TRANSACTIONS

Manner in which contracts may be made

26. (1) Contracts may be made by or on behalf of an incorporated association as follows:

- (a) a contract which, if made between private persons, would be required to be in writing under seal may be made by the incorporated association under its common seal;
- (b) a contract which, if made between private persons, would be required to be in writing signed by the parties to be charged may be made on behalf of the association in writing by any person acting under its authority, express or implied;
- (c) a contract which, if made between private persons, would be valid although made by parol only may be made by parol on behalf of the association by any person acting under its authority, express or implied.

(2) A contract may be varied or rescinded by or on behalf of an incorporated association in the same manner as it is authorised to be made.

Limitation of doctrine of *ultra vires*

27. (1) A contract made with an incorporated association is not invalid by reason of any deficiency in the capacity of the association to enter into, or carry out, the contract unless the person contracting with the association has actual notice of the deficiency.

(2) An incorporated association that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.

(3) This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into or carrying out a transaction that lies beyond the powers conferred on the association by this Act or its rules.

Abolition of doctrine of constructive notice in relation to incorporated association

28. It is not to be presumed that a person dealing with an incorporated association, or an agent of an incorporated association, has notice of the rules of the association, or of any other document registered by, or lodged with, the Commission in relation to the association.

**PART 4
MANAGEMENT OF INTERNAL AFFAIRS**

DIVISION 1-THE COMMITTEE

Management of incorporated associations

29. (1) Subject to this Act, the persons who have under the rules of an incorporated association power to administer the affairs of the association constitute, for the purposes of this Act, the committee of the association.

(2) No person is to be precluded from being appointed as a member of the committee of an incorporated association by reason only of the fact that he or she is a member of a class of persons for whose benefit the association is established.

(3) Subject to the rules of the association, no employee of an incorporated association is to be precluded by reason of that employment from being appointed as a member of the committee of the association.

Certain persons not to be members of the committee

30. (1) A person who is an insolvent under administration must not, without leave of the Commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

Maximum penalty: \$5 000.

(2) A person who has been convicted within or outside the State-

- (a) on an indictment of an offence in connection with the promotion, formation or management of a body corporate; or
- (b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than three months; or
- (c) of an indictable offence; or
- (d) of-
 - (i) an offence against section 39A; or
 - (ii) an offence against a provision applied by section 41B; or
 - (iii) an offence against section 60,

must not, within a period of five years after his or her conviction or, if he or she was sentenced to imprisonment, after his or her release from prison, without leave of the Commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

Maximum penalty: \$5 000.

(3) When granting leave under this section, the Commission may impose such conditions or limitations as it thinks fit and any person contravening or failing to comply with any such condition or limitation that is applicable to him or her is guilty of an offence.

Maximum penalty: \$5 000.

(4) The Commission may, at any time, revoke leave granted by it under this section.

Disclosure of interest

31. (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, with the association-

- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of his or her interest to the committee; and
- (b) must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the association (if an annual general meeting is required to be held by the association).

Maximum penalty: \$5 000.

(2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact-

- (a) that the member of the committee is an employee of the association; or
- (b) that the member of the committee is a member of a class of persons for whose benefit the association is established; or
- (c) that the member of the committee has the pecuniary interest in common with all or a substantial proportion of the members of the association.

(3) Where a member of the committee of an incorporated association discloses a pecuniary interest in a contract, or proposed contract, in accordance with this section, or his or her interest is not such as need be disclosed under this section-

- (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and
- (b) the member is not liable to account for profits derived from the contract.

Voting on a contract in which a committee member has an interest

32. (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, with the association must not take part in any decision of the committee with respect to that contract (but may, subject to complying with the provisions of this Division, take part in any deliberations with respect to that contract).

Maximum penalty: \$5 000.

(2) Subsection (1) does not apply in respect of a pecuniary interest-

- (a) that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established; or
- (b) that the member of the committee has in common with all or a substantial proportion of the members of the association.

DIVISION 2-ACCOUNTS AND AUDIT OF PRESCRIBED ASSOCIATIONS

Accounts to be kept

35. (1) A prescribed association must keep its accounting records in such a manner as will enable-

- (a) the preparation from time to time of accounts that present fairly the results of the operations of the association; and
- (b) the accounts of the association to be conveniently and properly audited in accordance with this Division.

Maximum penalty: \$5 000.

(2) A prescribed association must, after the end of a financial year of the association-

- (a) cause accounts in respect of the financial year to be prepared; and
- (b) cause the accounts to be audited by a registered company auditor, a firm of registered company auditors, a person who is a member of the Australian Society of Certified Practising Accountants or The Institute of Chartered Accountants in Australia or such other person who may be approved by the Commission as an auditor of the accounts of the association for the purposes of this Division; and
- (c) cause to be attached to the accounts, before the auditor reports on the accounts, a statement made in accordance with a resolution of the committee of the association and signed by two or more members of the committee-
 - (i) stating whether or not-
 - (A) the accounts present fairly the results of the operations of the association for the financial year and the state of affairs of the association as at the end of the financial year; and
 - (B) the committee has reasonable grounds to believe that the association will be able to pay its debts as and when they fall due; and
 - (ii) giving particulars-
 - (A) of any body corporate that is a subsidiary of the association within the meaning of section 46 of the *Corporations Act 2001* of the Commonwealth; and
 - (B) of any trust of which the association is a trustee.

Maximum penalty: \$5 000.

(3) A prescribed association will not be taken to have complied with subsection (2) unless the accounts prepared for a financial year are submitted to the auditor in sufficient time to enable the auditor to audit the accounts and furnish a report in respect of the accounts in accordance with section 37(3).

(4) A person who is-

- (a) an officer; or
- (b) a partner, employer or employee of an officer; or
- (ba) an employee; or
- (c) a partner or employee of an employee,

of a prescribed association, may not be appointed as auditor of the accounts of the association for the

purposes of this section.

(5) The committee of a prescribed association must cause a report of the committee to be made in accordance with a resolution of the committee and signed by two or more members of the committee, stating in relation to each officer of the association-

- (a) whether or not, during the financial year to which the accounts relate-
 - (i) the officer; or
 - (ii) a firm of which the officer is a member; or
 - (iii) a body corporate in which the officer has a substantial financial interest,
has received or become entitled to receive a benefit as a result of a contract between the officer, firm or body corporate and the association, and if so the general nature of the benefit;
- (b) whether or not, during the financial year to which the accounts relate, the officer has received directly or indirectly from the association any payment or other benefit of a pecuniary value, and if so the general nature and extent of that benefit.

(6) The committee of a prescribed association that has members must cause-

- (a) the audited accounts including the statement prepared in accordance with subsection (2)(c); and
- (b) the auditor's report on those accounts; and
- (c) the report of the committee prepared in accordance with subsection (5),

to be laid before the members of the association at the annual general meeting of the association or, if an annual general meeting is not to be held, within five months of the end of the financial year to which the accounts relate.

(7) A member of the committee of an association who fails to take all reasonable steps to comply with or secure compliance with this section is guilty of an offence.

Maximum penalty: (a) if the offence is committed with intent to deceive or defraud the association, creditors of the association or creditors of any other person or for any fraudulent purpose-\$20 000 or imprisonment for four years; or

(b) in any other case-\$5 000.

Lodgment of periodic returns

36. (1) A prescribed association must lodge with the Commission such periodic returns, containing accounts and other information relevant to the affairs of the association, as the regulations may require.

(2) The requirements of the regulations in relation to periodic returns and the accounts and other information to be contained in them may vary according to the various classes of associations to which the regulations are expressed to apply but no such regulation may require the disclosure of the identity of members of the association.

(3) If a prescribed association fails to comply with subsection (1), the association is guilty of an offence.

Maximum penalty: \$5 000.

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Provisions relating to auditors acting under this Division

37. (1) An auditor of a prescribed 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 he or she desires for the purposes of an audit.

(2) An officer of a prescribed association must not, without lawful excuse-

- (a) refuse or fail to allow an auditor of the association access, for the purposes of this Division, to any accounting records and other records of the association in his or her custody or control; or
- (b) refuse or fail to give any information or explanation as and when required by the auditor; 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.

Maximum penalty: \$1 250.

(3) The auditor of a prescribed association must furnish to the committee of the association, in sufficient time to enable the committee to comply with section 35(6), a report that states-

(a) in respect of accounts consisting of an account of income and expenditure and a balance sheet, whether or not the auditor is satisfied that these accounts are drawn up so as to present fairly-

- (i) the results of the association's activities for the association's financial year; and
- (ii) the financial state of the association at the end of the association's financial year; and

(b) in respect of accounts consisting of an account of receipts and payments and a statement of assets and liabilities, whether or not the auditor is satisfied that these accounts present fairly-

- (i) the results of the association's activities for the association's financial year; and
- (ii) the financial state of the association at the end of the association's financial year,

notwithstanding that the accounts may not have been prepared on the accrual method of accounting; and

(c) whether the auditor has examined the accounts and auditors' reports of-

- (i) each body corporate that is a subsidiary of the association within the meaning of section 46 of the *Corporations Act 2001* of the Commonwealth; and
- (ii) each trust of which the association is a trustee,

and the conclusions drawn from the examination; and

(e) whether the auditor has obtained all of the information and explanations that he or she required from the association.

(4) If, in the course of performing his or her duties, an auditor of a prescribed association is satisfied that-

(a) it is likely that there has been a contravention of, or failure to comply with, a provision of this

Act or a rule of the association; or

- (b) there is a deficiency in relation to the accounts or information in respect of the activities of the association that, in the auditor's opinion, will not be adequately dealt with by bringing the matter to the notice of the committee of the association,

the auditor must immediately report the matter to the Commission by notice in writing.

(5) If an auditor is removed or dismissed as auditor of a prescribed association, the auditor must immediately report the matter of his or her removal or dismissal and the circumstances of the removal or dismissal to the Commission by notice in writing.

(6) An auditor of a prescribed 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 performing his or her duties as an auditor under this Act.

(7) In subsection (6)-

"auditor" includes a person who has been removed or dismissed as the auditor of a prescribed association.

(8) Subsection (6) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as a defendant in an action for defamation.

Payment of auditor

37A. The reasonable fees and expenses of an auditor of a prescribed association are payable by the association.

Power of exemption

38. (1) The Commission may, on the written application of an incorporated association to which this Division applies, or on its own motion, exempt an association from the obligation to comply with one or more provisions of this Division.

(2) An exemption under subsection (1) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

DIVISION 3-ANNUAL GENERAL MEETING

Annual general meeting

39. (1) Subject to this section, a prescribed association must hold an annual general meeting within five months after the end of the financial year of the association.

(2) A prescribed association may hold its first annual general meeting at any time within the period of 18 months after its incorporation.

(4) The Commission may, on the written application of a prescribed association, or on its own motion, exempt an association from the obligation to comply with a requirement of this section.

(5) An exemption under subsection (4) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

(6) This section does not apply to an incorporated association where the rules of the association do not provide for the membership of the association.

DIVISION 3A-DUTIES OF OFFICERS, ETC.

Duties of officers, etc.

39A. (1) An officer of an incorporated association must not, in the exercise of his or her powers or the discharge of the duties of his or her office, commit an act with intent to deceive or defraud the association, members or creditors of the association or creditors of any other person or for any fraudulent purpose.

Maximum penalty: \$20 000 or imprisonment for four years.

(2) An officer or employee of an incorporated association, or former officer or employee of an incorporated association, must not make improper use of information acquired by virtue of his or her position in the association so as to gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person, or so as to cause a detriment to the association.

Maximum penalty: \$20 000 or imprisonment for four years.

(3) An officer or employee of an incorporated association must not make improper use of his or her position as such an officer or employee so as to gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person, or so as to cause a detriment to the association.

Maximum penalty: \$20 000 or imprisonment for four years.

(4) An officer of a prescribed association must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office.

Maximum penalty: \$1 250.

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

Provisions indemnifying officers or auditors

39B. (1) Any provision, whether contained in the rules of an incorporated association or in a contract with the association or otherwise, exempting any officer or auditor of the association from, or indemnifying him or her against, any liability to the association that by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association, is void.

(2) Notwithstanding anything in this section, an incorporated association may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted.

(3) Subsection (1) does not apply in respect of a contract of insurance.

DIVISION 3B-RECORDS

Keeping of records

39C. (1) An incorporated association must keep such accounting records as correctly record and explain the transactions of the association and the financial position of the association.

(2) The accounting records must be kept at the place at which the association is situated or established within the State or in the custody of an officer of the association in accordance with its rules or a resolution of the committee of the association.

(3) If an incorporated association fails to comply with subsection (1), the association and any officer of the association who is in default are each guilty of an offence.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$2 500;
or
(b) in any other case-\$1 250.

Inspection of records

39D. (1) A member of an incorporated association may apply to the District Court for an order authorising an inspection of the association's books on behalf of the member by a person authorised under this Act to audit the accounts of a prescribed association or a legal practitioner.

(2) If the Court is satisfied that-

- (a) the member is acting in good faith; and
- (b) the inspection is for a proper purpose,

the Court may make an order authorising a person authorised under this Act to audit the accounts of a prescribed association or a legal practitioner, at a time specified in the order, to inspect and make copies of or take extracts from the association's books.

(3) The Court may, on an application under this section, make such further or other orders as it thinks fit, including an order for costs.

DIVISION 4-DISPUTES

Rules of natural justice to be applied in relation to adjudication of dispute

40. Where the committee of an incorporated association exercises any power of adjudication that it may have in relation to a dispute between its members, or a dispute between itself and members of the association, the rules of natural justice must be observed.

PART 5
COMPROMISE, WINDING UP, TRANSFER OF ACTIVITIES AND DISSOLUTION

DIVISION 1-GENERAL

Power to compromise with creditors

40A. An incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.1 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) the modifications necessary to give effect to this section and the succeeding provisions of this Part; and
- (b) such other modifications (within the meaning of Part 3 of *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Power to enter into voluntary administration

40B. An incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.3A and Division 3 of Part 5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) the modifications necessary to give effect to this section and the succeeding provisions of this Part; and
- (b) such other modifications (within the meaning of Part 3 of *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Winding up of incorporated association

41. (1) Subject to the succeeding provisions of this Part, an incorporated association may be wound up-

- (a) by the Supreme Court; or
- (b) voluntarily; or
- (c) on the certificate of the Commission issued with the consent of the Minister.

(2) An incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4B, 5.5, 5.6, Divisions 1 and 2 of Part 5.7B, Division 3 of Part 5.9 and Part 5A.1 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) the modifications necessary to give effect to this section and the succeeding provisions of this Part; and
- (b) such other modifications (within the meaning of Part 3 of *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(3) The grounds on which an incorporated association may be wound up by the Supreme Court are as follows:

- (a) that the association has by a special resolution resolved that it be wound up by the Court; or
- (b) that-
 - (i) the association has not commenced any activity or function; and

- (ii) more than one year has elapsed since the date of its incorporation; or
 - (c) that the association is unable to pay its debts; or
 - (d) that members of the committee of the association have acted in the affairs of the association in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members; or
 - (e) that affairs of the association are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole; or
 - (f) that an act or omission, or a proposed act or omission, by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or
 - (g) that the Court is of the opinion that it is just and equitable that the association be wound up.
- (4) For the purposes of subsection (3), if-
- (a) a creditor, by assignment or otherwise, to whom the association is indebted in a sum exceeding \$1 000 then due, has served on the association a demand, signed by or on behalf of the creditor, requiring the association to pay the sum so due and the association has, for three weeks after service of the demand, failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor; or
 - (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the association is returned unsatisfied in whole or in part; or
 - (c) the Court, after taking into account any contingent and prospective liabilities of the association, is satisfied that the association is unable to pay its debts,

the association is to be taken to be unable to pay its debts.

(5) Where an application has been filed with the Court for the winding up of an incorporated association on the ground that it is unable to pay its debts, the association is not, without the leave of the Court, entitled to resolve that it be wound up voluntarily.

(6) Subject to subsection (5), an incorporated association may, by a special resolution, resolve that it be wound up voluntarily.

(7) The grounds on which the Commission may issue a certificate for the winding up of an incorporated association are as follows:

- (a) that the association has contravened or failed to comply with a condition imposed in relation to the association by the Commission or the Minister under this Act;
- (b) that the incorporation of the association has been obtained by mistake or fraud;
- (c) that the association has, after notice by the Commission of any breach of this Act or the rules of the association, failed, within the time referred to in the notice, to remedy the breach;
- (d) that the association has not, within three months of notice being given by the Commission under section 42, requested the Commission to transfer its undertaking to another body corporate;

(e) that the association is defunct.

(8) For the purposes of this Act, the winding up of an incorporated association on the certificate of the Commission commences on application to the Supreme Court by the Commission and lodgment with the Court of a copy of the certificate and is to proceed as if the association had by special resolution resolved that it be wound up by the Court.

(9) The Supreme Court may, on an order being made for the winding up of an incorporated association by the Court (including a winding up on the certificate of the Commission), if the Commission nominates a person who is not a registered company liquidator for appointment as the liquidator of the association, appoint the person so nominated as the liquidator of the association.

(10) The Commission may, in relation to the voluntary winding up of an incorporated association, approve the appointment of a person who is not a registered company liquidator as the liquidator of the association.

(11) The reasonable costs of a winding up are payable out of the property of the association.

Appeals from decisions of receivers, liquidators, managers, etc.

41A. (1) A person aggrieved by an act, omission or decision of-

- (a) a person administering a compromise or arrangement;
- (b) a receiver, or a receiver and manager, of property of an incorporated association;
- (c) a liquidator or provisional liquidator of an incorporated association,

may appeal to the Supreme Court in respect of that act, omission or decision.

(2) The Court may, on an appeal pursuant to subsection (1), confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

Reports to be submitted to liquidator

41B. (1) Where an incorporated association is wound up by the Supreme Court-

- (a) the members of the committee of the association (as at the date the order for winding up was made or any earlier date specified by the liquidator) must submit a report to the liquidator in the prescribed form within 14 days after the making of the winding up order; and
- (b) any officer or former officer of the association who has received notice in writing from the liquidator must submit a report to the liquidator, containing the information specified in the notice, within 14 days of service of the notice.

(2) A liquidator must, within seven days after receiving a report under this section, lodge a copy of that report with the Supreme Court and the Commission.

(3) On application by a committee or person required to submit a report under this section, the liquidator may, if satisfied that special reasons exist, extend the time for submitting that report.

(4) The liquidator must, as soon as practicable, notify the Commission of any extension of time granted under subsection (3).

(5) A person who fails to comply with a requirement of subsection (1), (2) or (4) is guilty of an offence.

Maximum penalty: \$5 000.

(6) The liquidator must reimburse a person who has made a report under this section, out of the property of the association, for the reasonable costs of making the report.

Declaration of solvency

41C. (1) Where it is proposed to wind up an incorporated association voluntarily, a majority of the members of the committee may make a written declaration to the effect that they have made an inquiry into the affairs of the association and that, at a meeting of the committee, they have formed the opinion that the association will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) A declaration made under this section must be made and lodged with the Commission before the date on which notices of the meeting at which the resolution for winding up is to be proposed are sent out, or at a later date approved by the Commission.

(3) A statement showing the affairs of the association, in the form prescribed by the regulations, must be attached to a declaration under this section.

(4) A declaration under this section has no effect unless-

(a) the resolution for voluntary winding up is passed within the period of five weeks after the making of the declaration or within any further period approved by the Commission (whether approved before or after the end of that five week period); and

(b) the other requirements of this section have been complied with.

(5) A member of the committee who makes a declaration under this section (including a declaration that has no effect in accordance with subsection (4)) without having reasonable grounds for the opinion stated in the declaration is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for one year.

(6) If the association is voluntarily wound up within the period of five weeks after the making of the declaration or a further period approved by the Commission under subsection (4)(a) but its debts are not paid or provided for in full within the period stated in the declaration; it will be presumed, unless the contrary is shown, that a member of the committee who made the declaration did not have reasonable grounds for his or her opinion.

Disclosure to creditors on voluntary winding up

41D. (1) Where a meeting of creditors of an incorporated association is to be held in accordance with Division 3 of Part 5.5 of the *Corporations Act 2001* of the Commonwealth, as it applies to the incorporated association by virtue of this Part, the committee of the association must-

(a) cause to be laid before the meeting of creditors a report in the form prescribed by the regulations, and verified by all members of the committee, as to the affairs of the association, made up to the latest practicable date before the notices of the meeting of creditors were sent; and

(b) appoint a member of the committee to attend the meeting of creditors.

(2) A member of the committee appointed under subsection (1)(b) must attend the meeting of creditors and disclose to the meeting the affairs of the association and the circumstances leading up to the proposed winding up.

(3) The committee must, not later than seven days after the report referred to in subsection (1)(a) is laid before the meeting of creditors, lodge a copy of the report with the Commission.

(4) If a committee or a committee member fails to comply with a requirement of this section, each

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committee member or that particular committee member (as the case may be) is guilty of an offence.

Maximum penalty: \$5 000.

Penalty for contravention of applied provisions

41E. A person who contravenes or fails to comply with a provision of the *Corporations Act 2001* of the Commonwealth, as it applies to an incorporated association by virtue of this Part, is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

Power of Commission to require transfer of activities

42. (1) Where the Commission is of the opinion-

- (a) that an incorporated association has ceased to be an association eligible to be incorporated under this Act; or
- (b) that the undertaking or operations of an incorporated association are being carried on by a body corporate incorporated under some other Act, or would more appropriately be carried on by such a body corporate,

it may give notice to the association under this section.

(2) If, within three months of the date of a notice under subsection (1), the incorporated association requests the Commission to transfer its undertaking to a body corporate specified in the request, the Commission may, by instrument published in the *Gazette*, order that the undertaking of the association be transferred accordingly.

(3) On the date specified in the order under subsection (2)-

- (a) the incorporated association is dissolved; and
- (b) the property of the association becomes the property of the body corporate referred to in the order; and
- (c) the rights and liabilities of the association (whether certain or contingent) become rights and liabilities of the body corporate referred to in the order.

(4) The Registrar-General must-

- (a) on the application of a body corporate in which any estate or interest in real property has vested by virtue of this section; and
- (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the body corporate.

(5) The vesting of property in a body corporate by virtue of this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Distribution of assets upon winding up

43. (1) Subject to subsection (1a), it is not lawful to distribute among members, former members or associates of members or former members of an incorporated association any surplus assets available for distribution at the completion of the winding up of the association under this Part.

(1a) The surplus assets of an incorporated association may, with the consent of the Commission, be distributed among the members of the association if each of the members of the association is also an

incorporated association that has identical or similar aims and objects.

(2) Subject to this section and any order of the Supreme Court, the surplus assets of an incorporated association are, on a winding up of the association, to be distributed in accordance with-

- (a) the rules of the association; or
- (b) where there are no valid rules of the association governing distribution of the surplus assets-a special resolution of the association.

(3) The Supreme Court may, on the application of the Commission, a liquidator or a member of an incorporated association, determine how surplus assets of the association are to be distributed on a winding up.

(4) The Court must, in determining how the surplus assets of an association are to be distributed, have regard to the objects of the association and any relevant provisions of the rules of the association.

(5) In this section-

"surplus assets", in relation to the winding up of an incorporated association, means those assets that remain after the liabilities of the association have been discharged and the costs and expenses of the winding up have been paid.

Application for deregistration

43A. (1) A person authorised by a special resolution of an incorporated association that has surplus assets of a value not exceeding the prescribed amount may apply to the Commission, in the form prescribed by the regulations, for deregistration of the association.

(2) Where it is impracticable for an incorporated association to authorise a person to make an application under this section because the association no longer has an active membership, the Commission may accept an application signed by not less than two people each of whom is-

- (a) an officer of the association; or
- (b) a member of the association; or
- (c) a person who, in the opinion of the Commission, has a proper interest in the application.

(3) An application under this section must be accompanied by-

- (a) a declaration in the prescribed form stating that the association has no liabilities and is not a party to any legal proceedings; and
- (b) a statement setting out the proposed manner of distributing the association's surplus assets (or, where distribution has already occurred, setting out the basis on which that distribution was made); and
- (c) any other prescribed material; and
- (d) the prescribed fee.

(4) A party to an application under this section must, at the request of the Commission, supply it with such further documents or information as the Commission may require.

(5) Where an incorporated association making an application under this section does not have any valid rules governing the distribution of surplus assets on deregistration, the two people making an application under subsection (2) may request that the Commission approve the manner or proposed

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manner of distribution.

(6) The Commission must, in approving a manner of distribution of surplus assets of an incorporated association, have regard to the objects of the association and any relevant provisions of the rules of the association.

(7) Within one month of the receipt of an application under this section, the Commission must publish a notice, in a newspaper circulating generally throughout the State, setting out the prescribed particulars of the application and inviting members of the public to make written submissions to the Commission, within one month of the date of publication of the notice, in relation to the application.

(8) In relation to an incorporated association that has not distributed its surplus assets, the Commission may, but is not obliged to, after the expiration of one month from the date of publication of the notice under subsection (7), approve the application for deregistration of the association if satisfied that-

- (a) the proposed manner of distribution of surplus assets is consistent with the requirements under section 43 in relation to distribution of assets upon winding up or with an approval of the Commission; and
- (b) no member of the public will suffer undue hardship as a result of deregistration of the association.

(9) In relation to an incorporated association that has distributed its surplus assets, the Commission must, after the expiration of one month from the date of publication of the notice under subsection (7) or after the receipt of evidence satisfactory to the Commission as to the manner of distribution of surplus assets (whichever is the later), approve the application for deregistration of the association if satisfied that-

- (a) the manner of distribution of surplus assets was consistent with the requirements under section 43 in relation to distribution of assets upon winding up or with an approval of the Commission; and
- (b) no member of the public will suffer undue hardship as a result of deregistration of the association.

(10) Within one month of an application under this section being approved, the Commission must publish a notice in the *Gazette* advising members of the public that the association named in the notice was deregistered under this section on the date specified in the notice.

(11) On publication of a notice in the *Gazette* under subsection (10), the association named in the notice will be taken to be dissolved.

(12) In this section-

"prescribed amount" means-

- (a) \$5 000; or
- (b) if a greater amount is prescribed by regulation, that amount;

"surplus assets", in relation to the deregistration of an incorporated association, means those assets that remain after the liabilities of the association have been discharged and the costs and expenses of deregistration have been paid.

Defunct associations

44. (1) Where the Commission is of the opinion that an incorporated association is defunct, it may, by notice served upon the association or, where service cannot reasonably be effected in accordance with this Act, by notice published in a daily newspaper circulating generally throughout the State, require the

association to show good cause why the association should not be dissolved.

(2) If, upon the expiration of one month from giving notice under subsection (1), the Commission is satisfied that the incorporated association should be dissolved, it may, by notice published in the *Gazette*, cancel the incorporation of the association, whereupon the incorporated association is dissolved.

(3) If the Commission is satisfied that an incorporated association was dissolved as a result of an error on the part of the Commission, the Commission may reinstate the association as an incorporated association after which the association is to be taken to have continued in existence as if it had not been dissolved and any property which may have vested in the Commission under section 45 is re-vested in the association.

Commission to act as representative of defunct association in certain events

44A. (1) Where, after an association has been dissolved (whether before or after the commencement of this Act), it is proved to the satisfaction of the Commission-

- (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 Commission may, as representing the association or its liquidator under the provisions of this section, do that act or cause that act to be done.

(2) The Commission may execute or sign any relevant instrument or document adding a memorandum stating that it has done so pursuant to this section, and any such execution or signature has the same force, validity and effect as if the association, if it still existed, had duly executed the instrument or document.

Outstanding property of former association

45. *****

(2) Any estate or interest in outstanding property of an association that is dissolved under this Act vests in the Commission.

(3) In this section-

"**outstanding property**", in relation to an association, means any property, whether within or outside the State, which was vested in the association, to which the association was entitled, or over which the association had a disposing power, at the time that the association was dissolved but which was not got in, realised upon or otherwise disposed of or dealt with at that time.

Disposal of outstanding property

46. (1) Upon proof to the satisfaction of the Commission that there is vested in it by force of section 45 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Commission may get in, sell or otherwise dispose of or deal with that estate or interest, or any part of that estate or interest, as it sees fit.

(2) The power of the Commission under subsection (1) to sell or otherwise dispose of or deal with any such estate or interest may be exercised, either solely or together 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 Commission thinks fit, and includes power to rescind any contract and resell or otherwise dispose of or deal with that property as the Commission thinks expedient, and power to make, execute, sign and give such contracts, instruments and documents as the Commission thinks necessary.

(3) There is payable to the Commission in respect of the exercise of the powers conferred upon the Commission by subsections (1) and (2), out of any income derived from, or the proceeds of sale or other disposition of, the estate or interest concerned, such commission as is prescribed.

(4) The Commission may apply any moneys received by it in the exercise of any power conferred on it by this section in defraying the costs and expenses of and incidental to the exercise of that power and pay the remainder (if any) of the moneys to the Treasurer.

(5) The Treasurer must pay all moneys paid to him or her under this section into the Consolidated Account.

(6) A person making a claim in respect of any money paid to the Treasurer under subsection (4) may apply to the Supreme Court for an order of payment of an amount to him or her and the Court, if satisfied that an amount should be paid to him or her, must make an order for the payment accordingly.

(7) On the making of an order under subsection (6) for payment of an amount to a person or where the Treasurer is otherwise of the opinion that an amount should be paid to a person out of moneys paid to the Treasurer under this section, the Treasurer must pay that amount to that person out of moneys lawfully available for that purpose.

Liability of Commission and Crown as to property vested in Commission

47. Property vested in the Commission by operation of section 45 is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any laws as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the association, but there is not to be imposed, on the Commission or the Crown, any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the property of the association so far as it is, in the opinion of the Commission, properly available for and applicable to such a payment.

Accounts

48. The Commission must-

- (a) keep a record of any property coming into its possession or under its control or to its knowledge vested in it by force of section 45 and of its dealings with that property; and
- (b) keep accounts of all moneys arising from those dealings and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to that property and those moneys.

Removal of name from register

49. On the dissolution of an incorporated association, its name is to be removed from the register of incorporated associations.

DIVISION 2-OFFENCES

Interpretation and application

49AA. (1) This Division applies to an incorporated association-

- (a) that is being or has been wound up;
- (b) that has been in the course of being wound up, where the winding up has been stayed or terminated;
- (c) of which a provisional liquidator has been appointed;

- (d) that is or has been under administration;
- (e) that has executed a deed of arrangement (even if the deed has since been terminated);
- (f) that is defunct or is unable to pay its debts.

(2) For the purposes of this Division, an incorporated association will be taken to be defunct if, and only if, the Commission has served or published notice in respect of the association under section 44(1).

(3) For the purposes of this Division, an incorporated association will be taken to be unable to pay its debts if, and only if, execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the association is returned unsatisfied in whole or in part.

(4) In this Division-

"appropriate officer" means-

- (a) in relation to an incorporated association that is being, has been or has been being wound up-the liquidator;
- (b) in relation to an incorporated association of which a provisional liquidator has been appointed-the provisional liquidator;
- (c) in relation to an incorporated association that is or has been under administration-the administrator;
- (d) in relation to an incorporated association that has executed a deed of arrangement-the deed's administrator;
- (e) in relation to an incorporated association that is defunct or is unable to pay its debts-the Commission;

"relevant day" means-

- (a) in relation to an incorporated association that has been wound up or is being or has been being wound up-
 - (i) if, because of the application of Division 1A of Part 5.6 of the *Corporations Act 2001* of the Commonwealth, as applied by virtue of this Part, the winding up is taken to have begun on the day when an order that the association be wound up was made-the day on which the application for the order was filed;
 - (ii) otherwise-the day on which the winding up is taken, because of Division 1A of Part 5.6 of the *Corporations Act 2001* of the Commonwealth, as applied by virtue of this Part, to have begun;
- (b) in relation to an incorporated association of which a provisional liquidator has been appointed-the day on which the provisional liquidator was appointed;
- (c) in relation to an incorporated association that is or has been under administration-the day on which the administration began;
- (d) in relation to an incorporated association that has executed a deed of arrangement-the day on which the deed was executed;

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- (e) in relation to an incorporated association that is defunct-the day on which notice was served or published under section 44(1);
- (f) in relation to an incorporated association that is unable to pay its debts-the day on which execution or other process was first returned unsatisfied in whole or in part in respect of the association.

Non-disclosure

49AB. (1) An officer or former officer of an incorporated association to which this Division applies who-

- (a) does not, to the best of the person's knowledge and belief, fully and truly disclose to the appropriate officer-
 - (i) all the property of the association; and
 - (ii) how, to whom, for what consideration and when the association disposed of any part of its property, except such part as has been disposed of in accordance with the rules of the association; or
- (b) does not deliver up to the appropriate officer, or as the appropriate officer directs-
 - (i) all the property of the association in the person's custody or under the person's control and that the person is required by law to deliver up; or
 - (ii) all documents in the person's custody or under the person's control belonging to the association and that the person is required by law to deliver up; or
- (c) has, within five years before the relevant day or at any time on or after that day-
 - (i) fraudulently concealed or removed any part of the association's property to the value of \$100 or more; or
 - (ii) concealed a debt due to or from the association; or
 - (iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making an omission in, a document affecting or relating to affairs of the association; or
 - (iv) by a false representation or other fraud, obtained on credit for or on behalf of the association, property that the association has not subsequently paid for; or
 - (v) fraudulently pawned, pledged or disposed of property of the association that has been obtained on credit and has not been paid for; or
- (d) fraudulently makes any material omission in a statement relating to the affairs of the association; or
- (e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of the knowledge or belief; or
- (f) prevents the production of any document affecting or relating to the affairs of the association; or
- (g) within five years before the relevant day, or at any time on or after that day, has attempted to account for any part of the association's property by making entries in the association's documents showing fictitious transactions, losses or expenses; or

- (h) within five years before the relevant day, or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the association's creditors or any of them to an agreement relating to the association's affairs or to the winding up,

commits an offence.

Maximum penalty: \$10 000 or two years imprisonment.

(2) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under subsection (1)(c)(v), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

Maximum penalty: \$10 000 or two years imprisonment.

Failure to keep proper records

49AC. (1) If-

- (a) a provision of section 39C was not complied with, in respect of a incorporated association to which this Division applies, during the whole or any part of the period of two years immediately preceding the relevant day or the period between the incorporation of the association and the relevant day, whichever is the shorter; and
- (b) the incorporated association was at any time during that period, or became at a later time, an incorporated association to which this Division applies,

a member of the committee of the association who failed to take all reasonable steps to secure compliance by the association with the provision throughout that period and any other officer of the association who is in default each commit an offence.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000 or one year imprisonment; or

(b) in any other case-\$5 000.

(2) It is a defence to proceedings against a person under this section if it is proved that the person had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of section 39C were complied with and was in a position to discharge that duty.

(3) A person who has been convicted of an offence under section 39C(3) constituted by a particular act, omission or course of conduct (including a course of omissions) is not liable to be prosecuted for, or convicted of, an offence under this section constituted by the same act, omission or course of conduct during the same period or any part of it.

Incurring debts not likely to be paid

49AD. (1) Where-

- (a) an incorporated association has incurred a debt; and
- (b) immediately before the time when the debt was incurred-
- (i) there were reasonable grounds to expect that the incorporated association will not be able to pay all its debts as and when they become due; or
- (ii) there were reasonable grounds to expect that, if the incorporated association incurs the debt, it will not be able to pay all its debts as and when they become due; and

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- (c) the incorporated association was, at the time when the debt was incurred, or becomes, at a later time, an incorporated association to which this Division applies,

a person who was a member of the committee of the association, or took part in the management of the association, at the time when the debt was incurred commits an offence.

Maximum penalty: \$5 000 or one year imprisonment.

- (2) In any proceedings against a person under subsection (1) it is a defence if proved-

- (a) that the debt was incurred without the person's express or implied authority or consent; or
- (b) that at the time when the debt was incurred, the person did not have reasonable cause to expect-
- (i) that the incorporated association would not be able to pay all its debts as and when they became due; or
- (ii) that, if the incorporated association incurred that debt, it would not be able to pay all its debts as and when they became due.

- (3) Where-

- (a) an incorporated association has done an act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the association or of any other person or for any other fraudulent purpose; and
- (b) the incorporated association was at the time when it does the act, or becomes at a later time, an incorporated association to which this Division applies,

a person who was knowingly concerned in the doing of the act with that intent or for that purpose commits an offence.

Maximum penalty: \$10 000 or two years imprisonment.

- (4) A certificate issued by a court stating that a person specified in the certificate-

- (a) was convicted of an offence under subsection (1) in relation to a debt specified in the certificate incurred by an incorporated association so specified; or
- (b) was convicted of an offence under subsection (3) in relation to an incorporated association specified in the certificate,

is, in any proceedings, *prima facie* evidence of the matters stated in the certificate.

(5) A document purporting to be a certificate issued under subsection (4) will, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

Powers of court

49AE. (1) A court that convicts a person of an offence under section 49AD may, on application by the Commission or the liquidator of the incorporated association (if any), declare that the person is personally responsible without any limitation of liability-

- (a) in the case of a conviction under section 49AD(1)-for the payment to the incorporated association of an amount equal to the whole of the debt to which the conviction relates or such part of the debt as the court considers appropriate; and

- (b) in the case of a conviction under section 49AD(3)-for the payment to the incorporated association of the amount required to satisfy all or any of the association's debts, as the court considers appropriate.

(2) A court that makes a declaration under this section may make any consequential and ancillary orders and directions.

(3) This section has effect despite the fact that the person concerned is criminally liable in relation to the matters on the ground on which the declaration is made.

(4) On the hearing of an application under this section, the applicant may give evidence or call witnesses.

Frauds by officers

49AF. (1) A person who, while an officer of an incorporated association-

- (a) by false pretences or by means of any other fraud, induces a person to give credit to the association or to a related body corporate; or
- (b) with intent to defraud the association or a related body corporate, or members or creditors of the association or a related body corporate, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of, or charge on, or causes or connives at the levying of any execution against, property of the association or of a related body corporate; or
- (c) with intent to defraud the association or a related body corporate, or members or creditors of the association or of a related body corporate, conceals or removes any part of the property of the association or of a related body corporate after, or within two months before, the date of any unsatisfied judgement or order for payment of money obtained against the association or a related body corporate,

is guilty of an offence.

Maximum penalty: \$10 000 or two years imprisonment.

(2) In this section "**related body corporate**" has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**PART 6
MISCELLANEOUS**

General power of exemption of the Commission

49A. (1) The Commission may, on the application of an incorporated association, an officer of an incorporated association, or a person authorised by an incorporated association to make an application under this section-

- (a) extend any limitation of time prescribed by or under this Act whether or not the prescribed period has expired; or
- (b) exempt the association or any officer of the incorporated association from the obligation to comply with any provision of this Act.

(2) An application under subsection (1) may be granted by the Commission on such conditions as it thinks fit.

(3) Where an incorporated association or an officer of an incorporated association contravenes or fails to comply with a condition imposed by the Commission under subsection (2), the association or the officer (as the case may be) is guilty of an offence.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$5 000;
or

(b) in any other case-\$1 250.

(4) The Commission may, at any time by instrument in writing, revoke or vary an extension or exemption under subsection (1).

Immunity from liability

49B. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

Right of appeal

50. (1) Subject to this section, a person aggrieved by an act or decision of the Commission under this Act may appeal to the Administrative and Disciplinary Division of the District Court (**the Court**) against that decision.

(2) An appeal under this section must be lodged with the Court within 21 days after the act or decision being appealed against.

(4) Where a decision of the Commission to cancel the incorporation of a defunct association is reversed on appeal, the Commission must restore the registration of the association under this Act and, if the Court so orders, the incorporation of the association is to be taken to have continued during the period of deregistration.

(5) No appeal lies against a decision of the Court on an appeal under this section.

Minutes

51. (1) An incorporated association must-

- (a) cause minutes of all proceedings of general meetings and of meetings of the committee to be

entered in books kept for that purpose; and

(b) cause those minutes to be-

(i) confirmed by the members of the association present at a subsequent meeting; and

(ii) signed by the member who presided at the meeting at which the proceedings took place or by the member presiding at the meeting at which the minutes are confirmed.

(2) If a prescribed association fails to comply with subsection (1), the association and any officer of the association who is in default are each guilty of an offence.

Maximum penalty: \$2 500.

(3) A minute that is entered, confirmed and signed in accordance with subsection (1) is, in the absence of proof to the contrary, to be accepted as proof of the proceedings to which the minute relates.

(4) Where minutes have been entered, confirmed and signed in accordance with subsection (1), it is to be taken, in the absence of proof to the contrary, that-

(a) the meeting to which the minutes relate was held; and

(b) the proceedings that are recorded in the minutes as having occurred during the meeting occurred; and

(c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting were validly made.

(5) The books containing the minutes of proceedings of any general meeting or of a meeting of the committee of an incorporated association must be kept by the association at the place at which the association is situated or established or in the custody of an officer of the association in accordance with its rules or a resolution of the committee of the association.

(6) The books containing the minutes of proceedings of general meetings must be made available for inspection by any member without charge.

(7) If default is made in complying with subsection (5) or (6), the incorporated association and any officer of the association who is in default are each guilty of an offence.

Maximum penalty: (a) if the offence is committed in respect of a prescribed association-\$2 500;
or

(b) in any other case-\$1 250.

Investing or depositing money with association

53. (1) An incorporated association must not invite any person who is not a member of the association to invest or deposit money with the association, unless-

(a) prior to or at the time of making any such invitation, the association issues to the person a disclosure statement in accordance with subsection (2); and

(b) the Commission has approved the invitation.

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(2) For the purposes of this section, a disclosure statement must set out-

- (a) the name and principal objects of the association as set out in the rules of the association; and
- (b) the names, addresses and occupations of the members of the committee of the association; and
- (c) the total amount of deposits sought by the association; and
- (d) the purposes for which the deposits (if obtained) will be applied; and
- (e) the particulars of the security (if any) to be given in respect of the deposits; and
- (f) the rate of interest (if any) payable on the deposits; and
- (g) the terms of repayment of the deposits; and
- (h) details of the association's-
 - (i) current assets and liabilities; and
 - (ii) other assets and liabilities; and
 - (iii) net tangible assets,

as at the association's last balance date and the amount of any operating profit and extraordinary items after income tax for the association's last financial year.

(3) Where a person invests or deposits money with an association in response to an invitation made contrary to subsection (1), the transaction is void.

(4) A person who invests or deposits money with an association pursuant to a transaction that is void by virtue of subsection (3) may recover that money from the association as a debt.

(5) Where a disclosure statement-

- (a) includes any statement-
 - (i) that is false; or
 - (ii) that is misleading in the form or context in which it is included; or
- (b) omits any matter or thing that is required to be included,

any person who authorised or caused the disclosure statement to be issued is guilty of an offence.

Maximum penalty: \$5 000.

(6) It is a defence to a charge of an offence against subsection (5)-

- (a) that the statement or omission was immaterial; or
- (b) that he or she had reasonable grounds to believe, and did at the time of the issue of the disclosure statement believe, that the statement was not false or misleading or that the omission was immaterial; or
- (c) in the case of an omission-that the omission was inadvertent.

(7) For the purposes of subsection (5) a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document.

(8) The approval of the Commission under subsection (1) may be granted on such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

(9) This section does not apply to an invitation by an association for the investment of money-

- (a) in a fund that was being maintained by the association on 1 March 1985; or
- (b) in accordance with an approval of the Commission given before the commencement of this section.

Reservation of name

53A. (1) A person may apply to the Commission, in the prescribed form, for reservation of a name for a proposed incorporated association.

(2) The Commission may accept an application for reservation of a name under this section if the Commission is satisfied that-

- (a) the application has been made in good faith; and
- (b) the name is available for reservation; and
- (c) the name satisfies the criteria prescribed by Part 3 in respect of names of associations applying for incorporation or amalgamation.

(3) If the Commission accepts an application for reservation under this section-

- (a) the name proposed in the application will be reserved for a period of three months from the date of acceptance of the application; and
- (b) the Commission must not, during that three months, without the consent in writing of the applicant, accept any other application for reservation of a name or register any association under a name that is likely to be confused with the reserved name.

(4) The Commission must maintain a register of names reserved under this section.

(5) The Commission may cancel the reservation of a name under this section at any time before the expiration of the three month reservation period if-

- (a) the Commission becomes aware of any reason why the name should not have been reserved; or
- (b) the applicant notifies the Commission that he or she no longer wishes the name to be reserved.

Name of association to be printed, etc., on documents

54. Subject to exceptions prescribed by regulation, an incorporated association must cause its name to be legibly printed, stamped or endorsed on every notice, advertisement, bill of exchange, receipt or other document given, published, drawn or issued by the association.

Maximum penalty: \$1 250.

Prohibition against securing profits for members

55. (1) Unless the Commission otherwise approves, an incorporated association must not conduct its affairs in a manner calculated to secure a pecuniary profit for the members of the association or any of them, or for associates of the members or any of them.

(2) Unless the Commission otherwise approves, an incorporated association must not make a payment from its income or capital, or dispose of any of its assets *in specie*, to the members of the association or any of them, or to associates of the members or any of them.

(3) Subsection (2) does not apply-

- (a) to reasonable remuneration of a member of the association for work done by the member for or on behalf of the association; or
- (b) to any payments or dispositions that are incidental to activities carried on by the association in accordance or consistently with its objects.

(4) An officer of an incorporated association who is knowingly concerned in or party to a contravention of subsection (1) or (2) is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for one year.

(5) The approval of the Commission under this section may be granted on such conditions as the Commission thinks fit and may, by instrument in writing, be varied or revoked by the Commission.

Public officer

56. (1) An incorporated association must have a public officer.

(2) The public officer of an association must be a natural person of or above the age of 18 years who is resident in the State.

(3) If the public officer of an incorporated association ceases (otherwise than temporarily) to be resident in the State, he or she ceases to be the public officer of the association.

(4) If an incorporated association is without a public officer for a period longer than one month, the association is guilty of an offence.

Maximum penalty: \$1 250.

(5) An incorporated association must within one month after any change in the identity or address of its public officer give notice to the Commission containing prescribed particulars of the change.

Maximum penalty: \$1 250.

(6) It is a defence to a charge of an offence against subsection (4) or (5) for the association to prove that the matters alleged against it did not arise from a failure by the association or its committee to exercise proper diligence.

Penalty for non-compliance with Act or a condition imposed under Act

57. (1) If an officer of an incorporated association fails to take all reasonable steps to secure compliance by the association with its obligations under this Act, the officer is guilty of an offence.

Maximum penalty: \$1 250.

(2) If an incorporated association, or an officer of an incorporated association, contravenes or fails to comply with a condition imposed under this Act by the Commission or the Minister in relation to the

association, the association or the officer (as the case may be) is guilty of an offence.

Maximum penalty: \$1 250.

Falsification of books

58. (1) An officer, former officer, member or former member of an incorporated association who conceals, destroys, mutilates or falsifies any books relating to or affecting the affairs of the association is guilty of an offence.

Maximum penalty: \$5 000 or one year imprisonment.

(2) Where matter that is used or intended to be used in connection with the keeping of any books relating to or affecting the affairs of an incorporated association is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who-

- (a) records or stores, by means of that device, matter that the person knows to be false or misleading in a material particular; or
- (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or
- (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device-
 - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
 - (ii) knowing that the failure to so record or store the matter will render false or misleading in a material particular other matter so recorded or stored,

commits an offence.

Maximum penalty: \$5 000 or one year imprisonment.

(3) It is a defence to a charge arising under this section if the defendant proves that he or she acted honestly and that, in all the circumstances, the act or omission constituting the offence should be excused.

General defence

58A. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Variation or revocation of trusts

59. (1) This section applies to a trust-

- (a) which is referred to in the rules of the association; or
- (b) upon which any rule of the association relies for its operation.

(2) Where a trust to which this section applies is varied or revoked, the trustees of the trust must, not later than one month after the variation or revocation (as the case may be) notify the Commission of that variation or revocation.

Maximum penalty: \$1 250.

Misrepresentation as to incorporation under this Act

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60. A person must not, in order to gain an advantage for himself or herself or any other person, falsely represent that a body is an association incorporated under this Act.

Maximum penalty: \$5 000.

Oppressive or unreasonable acts

61. (1) A member or former member of an incorporated association may apply to the Supreme Court or the Magistrates Court for an order under this section on the ground that the association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable.

(2) An application by a former member must be made within six months of the cessation of the person's membership of the association.

(3) A proceeding-

(a) on an application made to the Magistrates Court under this section; or

(b) on an application made to the Supreme Court under this section but transferred under section 19 of the *Magistrates Court Act 1991* to the Magistrates Court,

is a minor statutory proceeding for the purposes of the *Magistrates Court Act 1991*.

(4) The Court hearing a proceeding under this section may, if satisfied that the association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable, make one or more of the following orders:

(a) an order for regulating the conduct of the association's affairs in the future;

(b) an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the association to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the association;

(c) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(d) an order requiring a person to do a specified act or thing;

(e) an order for the alteration of the rules of the association;

(f) an order that a former member be reinstated as a member of the association;

(g) any other order that is, in the opinion of the Court, necessary to remedy any default, or to resolve any dispute.

(5) The Supreme Court may, in a proceeding under this section, if it considers it appropriate to do so, make an order that the association be wound up or an order appointing a receiver or a receiver and manager of the property of the association.

(6) The Magistrates Court-

(a) may not make an order that an association be wound up or an order appointing a receiver or a receiver and manager of the property of an association; but

(b) must transfer a proceeding under this section to the Supreme Court if-

(i) the Magistrates Court has explored any possible avenues of achieving a negotiated settlement and a negotiated settlement has not occurred; and

- (ii) it appears to the Magistrates Court that an order that the association be wound up or an order appointing a receiver or a receiver and manager of the property of the association may be an appropriate order in the proceeding.

(7) The Magistrates Court may, in a proceeding under this section, on its own initiative or on an application by a party to the proceeding-

- (a) transfer the proceeding to the Supreme Court on the ground that the proceeding raises a complex question or matter of general importance;
- (b) despite section 41 of the *Magistrates Court Act 1991*, reserve a question of law for determination by the Supreme Court.

(8) Where a proceeding has been transferred under this section, it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Court to which it is transferred.

(9) The Supreme Court may not make an order under this section that an association be wound up if it is of the opinion that the winding up of the association would unfairly prejudice members affected by conduct of the association that is oppressive or unreasonable.

(10) If an order is made under this section that the association be wound up, the provisions of this Act relating to the winding up of an incorporated association apply, with such modifications, additions or exclusions as may be necessary, as if the order had been made on an application duly filed in the Supreme Court by the association.

(11) If an order is made under this section appointing a receiver or a receiver and manager of the property of the association, any matter relevant to receivers or receivers and managers is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any provisions of the *Corporations Act 2001* of the Commonwealth that are relevant to receivers or receivers and managers, subject to such modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(12) The Magistrates Court and Supreme Court may decline to hear a proceeding taken under this section if it considers that it would be more appropriate for the matter in dispute to be dealt with in another court or a tribunal constituted by law.

(13) If an order under this section makes any alteration to the rules of an association, then, despite anything in any other provision of this Act but subject to the provisions of the order, the association does not have power, without the leave of the Court that made the order, to make any further alteration to the rules inconsistent with the provisions of the order but, subject to this section, the alteration has effect as if it had been duly made by resolution of the association.

(14) An office copy of any order made on an application under this section must be lodged by the applicant with the Commission within 14 days after the making of the order.

Maximum penalty: \$750.

(15) For the purposes of this section-

- (a) an association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable if-
 - (i) it has taken action, or proposes to take action, to expel a member from the association in circumstances in which the action was, or would be, oppressive or unreasonable; or

- (ii) it has engaged, or proposes to engage, in conduct that was, or would be, oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or was, or would be, contrary to the interests of the members as a whole; or
- (iii) the rules of the association contain, or are proposed to be altered so that they will contain, provisions that are oppressive or unreasonable;

(b) a reference to engaging in conduct includes a reference to refusing or failing to take action.

Examination of persons concerned with associations

62. (1) In this section, a reference, in relation to an association, to a prescribed person, is to be construed as a reference to a liquidator or provisional liquidator of the association or to any other person authorised by the Commission to make applications under this section or to make an application under this section in relation to that association.

(2) Where it appears to the Commission or to a prescribed person that-

- (a) a person who has taken part or been concerned in the formation, management, administration or winding up of, or has otherwise taken part or been concerned in affairs of, an association has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that association; or
- (b) a person may be capable of giving information in relation to the formation, management, administration or winding up of, or otherwise in relation to affairs of, an association,

the Commission or prescribed person may apply to the Supreme Court for an order under this section in relation to the person.

(3) Where an application is made under subsection (2) in relation to a person, the Court may, if it thinks fit, order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath or affirmation on any matters relating to the formation, management, administration or winding up of, or otherwise relating to affairs of, the association concerned.

(4) An examination under this section must be held in private except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in public.

(5) The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present), as it thinks fit.

(6) A person who is ordered under subsection (3) to attend before the Court must not, without reasonable excuse-

- (a) fail to attend as required by the order; or
- (b) fail to attend from day to day until the conclusion of the examination.

Maximum penalty: \$10 000 or imprisonment for two years.

(7) A person attending before the Court for examination pursuant to an order made under subsection (3) must not refuse or fail to take an oath or make an affirmation.

Maximum penalty: \$10 000 or imprisonment for two years.

(8) A person attending before the Court for examination pursuant to an order made under subsection

(3) must not refuse or fail to answer a question that he or she is directed by the Court to answer.

Maximum penalty: \$10 000 or imprisonment for two years.

(9) A person attending before the Court for examination pursuant to an order made under subsection (3), if directed by the Court to produce any books in his or her possession or under his or her control relevant to the matters on which he or she is to be, or is being, examined, must not refuse or fail to comply with the direction.

Maximum penalty: \$10 000 or imprisonment for two years.

(10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

(11) A person attending before the Court for examination pursuant to an order made under subsection (3) must not make any statement that is false or misleading in a material particular.

Maximum penalty: \$10 000 or imprisonment for two years.

(12) A person is not excused from answering a question put to him or her at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him or her but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, the answer is not admissible in evidence against him or her in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given by him or her at an examination under this section to be recorded in writing and may require him or her to sign that written record.

(14) Subject to subsection (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules of the Court, may be used in evidence in any legal proceedings against the person.

(15) An examination under this section may, if the Court so directs and subject to the rules of the Court, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

(16) A person ordered to attend before the Court or another court for examination under this section may, at his or her own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to him or her such questions as the Court, or the other court (as the case may be) considers just for the purpose of enabling him or her to explain or qualify any answers or evidence given by him or her.

(17) The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

(18) Where the Court that made the order under subsection (3) for an examination is satisfied that the order for the examination was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

Orders against persons concerned with associations

62A. (1) In this section, a reference to a prescribed person, in relation to an association, is to be construed as a reference to a liquidator or provisional liquidator of the association or to any other person authorised by the Commission to make applications under this section or to make an application under this section in relation to that association.

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(2) Subject to subsection (3), where, on application by the Commission or a prescribed person, the Supreme Court is satisfied that-

- (a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to an association; and
- (b) the association has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

(3) The Court may not make an order against a person under subsection (2) unless the Court has given the person the opportunity-

- (a) to give evidence himself or herself; and
- (b) to call witnesses to give evidence; and
- (c) to adduce other evidence in relation to the matters to which the application relates; and
- (d) to employ, at his or her own expense, a solicitor, or a solicitor and counsel, to put to him or her, or to any other witness, such questions as the Court considers just for the purpose of enabling him or her to explain or qualify any answers or evidence given by him or her.

(4) The orders that may be made under subsection (2) against a person include-

- (a) an order directing the person to pay money or transfer property to the association; and
- (b) an order directing the person to pay to the association the amount of the loss or damage.

(5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Civil proceedings not to be stayed

62B. No civil proceeding under this Act may be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

Form and evidentiary value of books

62C. (1) A book that is required by this Act to be kept or prepared may be kept or prepared-

- (a) by making entries in a bound or looseleaf book; or
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the Commission.

(2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless-

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
- (b) a reproduction of those matters is kept in a written form approved by the Commission.

(3) An association must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the association.

(4) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, to be taken to be a reproduction of those matters.

Continuing offences

62D. (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence, and is liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done, notwithstanding that any period within which, or time before which, the act is required to be done, has expired or passed.

Proceedings for offences

62E. (1) An offence against this Act that is not punishable by imprisonment is a summary offence.

(2) An offence against this Act that is punishable by imprisonment is, subject to subsection (3), an indictable offence.

(3) Where-

(a) proceedings for an offence against this Act that is punishable by imprisonment are brought in a court of summary jurisdiction; and

(b) the prosecutor requests the court to hear and determine the proceedings,

the offence is to be taken to be a summary offence and must be heard and determined as such.

(4) A court of summary jurisdiction may not-

(a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding two years; or

(b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in aggregate, exceed five years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) A prosecution for an offence against this Act-

(a) may be commenced-

(i) by the Commission; or

(ii) by an officer or employee of the Commission; or

(iii) with the consent of the Minister, by any other person; and

(b) must be commenced within three years after the date on which the offence is alleged to have

been committed or such further period as the Minister may, in a particular case, allow.

(7) A document apparently signed by the Minister and stating-

- (a) that the Minister consents to a particular prosecution; or
- (b) that the Minister allows a specified extension of the period for commencing a particular prosecution,

is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(8) In any proceedings for an offence against this Act, an allegation in the complaint that the complainant is an officer or employee of the Commission is, in the absence of proof to the contrary, to be accepted as proved.

Evidentiary provision

63. (1) An apparently genuine document purporting to be under the seal of the Commission and to be a certificate of incorporation of an association is to be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the incorporation of the association on the date specified in the certificate.

(2) An apparently genuine document purporting to be a copy of a document registered by, or lodged with, the Commission under this Act or the repealed Act and to be certified by the Commission as a true copy of such a document is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of that document.

(3) The reference in subsection (2) to a document that has been certified by the Commission includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

(4) An apparently genuine document purporting to be a copy of, or extract from, a record kept by an incorporated association and to be verified by an officer of the association authorised by the committee of the association for the purpose is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of, or extract from, that record.

(5) An apparently genuine document purporting to bear the common seal of an incorporated association is to be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the incorporated association.

(6) In any proceedings-

- (a) a certificate purporting to be under the seal of the Commission and certifying that at a date or during a period specified in the certificate an association, or no association (as the case may be), was incorporated under this Act or the repealed Act, by a name specified in the certificate, is to be accepted, in the absence of proof to the contrary, as proof of the matters so certified; and
- (b) a certificate purporting to be under the seal of the Commission and certifying that an incorporated association has, or has not, complied with a requirement of this Act as to the filing or lodging of any document or return or the giving of any notice is to be accepted, in the absence of proof to the contrary, as proof of the matters so certified; and
- (c) a certificate purporting to be under the seal of the Commission and certifying that a specified incorporated association has altered its name in the manner specified in the certificate, including the dates on which the alterations were registered by the Commission, is to be accepted, in the absence of proof to the contrary, as proof of the matters so certified; and

- (d) a certificate purporting to be under the seal of the Commission and certifying that a specified incorporated association has been or is being wound up, including the date on which the winding up commenced and (if relevant) the date on which the association was dissolved, is to be accepted, in the absence of proof to the contrary, as proof of the matters so certified; and
- (e) a certificate purporting to be under the seal of the Commission and certifying that specified incorporated associations amalgamated to form an incorporated association specified in the certificate, including the date of incorporation of the amalgamated association, is to be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

(7) In any proceedings for an offence against this Act, an allegation in the complaint-

- (a) that an association is or was at a specified time incorporated under this Act; or
- (b) that an association is or was at a specified time a prescribed association; or
- (c) that the defendant is or was at a specified time an officer of an association named in the complaint; or
- (d) that any meeting of the members of an association required by a specified provision of this Act to be held has not been held as required by that provision,

is, in the absence of proof to the contrary, to be accepted as proved.

Service upon incorporated associations

64. Service of any process, notice or other document may be effected on an incorporated association-

- (a) by serving the process, notice or other document personally on the public officer or a member of the committee of the association; or
- (b) by serving the process, notice or other document by post on the public officer; or
- (c) by leaving the process, notice or other document at the address of the public officer with any person apparently over the age of 18 years.

Use of abbreviation "Inc."

65. For the purposes of this Act, the abbreviation "Inc." may be used in place of the word "Incorporated".

Fees in respect of lodging documents

66. (1) Where a fee is payable to the Commission for or in respect of the lodging of a document with the Commission under this Act and the document is submitted without payment of the fee, the document is to be taken not to have been lodged until the fee has been paid to the Commission.

(2) Notwithstanding subsection (1), the Commission may-

- (a) waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable under this Act; and
- (b) refund, in whole or in part, any fee paid under this Act.

Regulations

67. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) those regulations may-

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- (a) prescribe model rules with a view to their adoption by incorporated associations or associations intending to apply for incorporation under this Act; and
- (b) prescribe forms for the purposes of this Act; and
- (c) prescribe, and provide for the payment of, fees; and
- (d) authorise the destruction of specified classes of documents lodged with the Commission under this Act or the repealed Act; and
- (e) impose a fine not exceeding \$1 250 for contravention of, or non-compliance with, a regulation.

APPENDIX

LEGISLATIVE HISTORY

Repeals

The *Associations Incorporation Act 1985* repealed the *Associations Incorporation Act 1956*.

Transitional Provisions

(Transitional provisions from Associations Incorporation (Miscellaneous) Amendment Act 1992, Sched. 1)

(1) The provisions of Division 2 of Part 4 of the principal Act as in force immediately before the commencement of this Act continue to apply to an incorporated association in relation to a financial year of the association that commenced before the commencement of this Act.

(2) The provisions of Division 2 of Part 4 of the principal Act as amended by this Act apply to an incorporated association in relation to a financial year of the association that commences after the commencement of this Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 36, 1992, Sched. 2
Section 2:	repealed by 36, 1992, Sched. 2
Section 3(1):	definition of "accounts" substituted by 36, 1992, s. 3(a) definition of "authorised person" inserted by 36, 1992, s. 3(b) definition of "beneficiary" inserted by 36, 1992, s. 3(b) definition of "body corporate" inserted by 36, 1992, s. 3(b); substituted by 23, 2001, s. 9(a) definition of "committee" repealed by 36, 1992, s. 3(c) definition of "financial year" amended by 36, 1992, Sched. 2; substituted by 29, 1997, s. 3 definition of "gross receipts" inserted by 36, 1992, s. 3(d) definition of "insolvent under administration" amended by 36, 1992, Sched. 2 definition of "officer" substituted by 36, 1992, s. 3(e) definition of "prescribed association" inserted by 36, 1992, s. 3(e) definition of "putative" spouse" inserted by 36, 1992, s. 3(e) definition of "special resolution" substituted by 100, 1985, s. 3; amended by 36, 1992, s. 3(f), (g) definition of "total receipts and payments" inserted by 36, 1992, s. 3(h)
Section 3(2):	amended by 36, 1992, s. 3(i)
Section 3(3) and (4):	amended by 36, 1992, Sched. 2
Section 3(5):	amended by 36, 1992, s. 3(j); repealed by 23, 2001, s. 9(b)
Section 3(6):	inserted by 36, 1992, s. 3(k); amended by 23, 2001, s. 9(c)
Section 3A:	inserted by 23, 2001, s. 10
Section 4:	substituted by 36, 1992, s. 4
Section 5:	amended by 36, 1992, Sched. 2
Section 6(1):	amended by 36, 1992, Sched. 2
Section 6(2):	amended by 29, 1997, s. 4(a)
Section 6(2a):	inserted by 29, 1997, s. 4(b)
Section 7:	substituted by 36, 1992, s. 5

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Section 7(5):	amended by 29, 1997, s. 21 (Sched.)
Section 8:	repealed by 36, 1992, s. 5
Sections 9 and 10:	amended by 36, 1992, Sched. 2
Section 11(1) and (3):	amended by 36, 1992, Sched. 2
Section 12:	amended by 36, 1992, Sched. 2
Section 13(1):	amended by 36, 1992, s. 6(a), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 13(2):	amended by 36, 1992, s. 6(b), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 14(1):	amended by 36, 1992, s. 7(a), (b), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 14(2):	amended by 36, 1992, s. 7(c), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 14(3):	amended by 36, 1992, Sched. 2
Section 14(4):	amended by 36, 1992, s. 7(d), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 15(1):	amended by 36, 1992, Sched. 2
Section 15(2):	amended by 36, 1992, s. 8
Section 17:	substituted by 36, 1992, s. 9
Section 17(1):	amended by 29, 1997, s. 21 (Sched.)
Section 18(5):	amended by 36, 1992, s. 10(a)
Section 18(6):	amended by 36, 1992, s. 10(b), (c), Sched. 2
Section 18(7):	amended by 36, 1992, s. 10(d)
Section 19(2):	amended by 36, 1992, s. 11, Sched. 2
Section 20(1), (3) and (4):	amended by 36, 1992, Sched. 2
Section 21(2):	substituted by 36, 1992, s. 12
Section 22(1):	amended by 36, 1992, s. 13(a)
Section 22(2):	amended by 36, 1992, s. 13(b), Sched. 2
Section 22(3), (4), (6) - (8):	amended by 36, 1992, Sched. 2
Section 22(9):	inserted by 36, 1992, s. 13(c)
Section 23:	redesignated as s. 23(1) by 36, 1992, s. 14
Section 23(2):	inserted by 36, 1992, s. 14
Section 23A:	inserted by 36, 1992, s. 15
Section 23A(1)(c)(iv):	repealed by 29, 1997, s. 5
Section 24(1):	substituted by 36, 1992, s. 16
Section 24(2):	substituted by 36, 1992, s. 16; amended by 29, 1997, s. 21 (Sched.)
Section 24(3):	amended by 29, 1997, s. 6
Section 24(4) and (5):	amended by 36, 1992, Sched. 2
Section 24(7):	inserted by 100, 1985, s. 4
Section 24A:	inserted by 29, 1997, s. 7
Section 25:	amended by 36, 1992, Sched. 2; 33, 1999, Sched. (item 5)
Section 28:	amended by 36, 1992, Sched. 2
Section 29(2) and (3):	amended by 36, 1992, Sched. 2
Section 30:	substituted by 36, 1992, s. 17
Section 30(1) - (3):	amended by 29, 1997, s. 21 (Sched.)
Section 31(1):	amended by 36, 1992, s. 18(a), (b), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 31(2):	amended by 36, 1992, s. 18(c)
Section 31(3):	amended by 36, 1992, Sched. 2
Section 32(1):	amended by 36, 1992, s. 19(a), (b), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 32(2):	substituted by 36, 1992, s. 19(c)
Section 33:	repealed by 36, 1992, s. 20
Section 34:	repealed by 36, 1992, s. 21
Part 4 Division 2 heading:	amended by 29, 1997, s. 8
Section 35:	substituted by 36, 1992, s. 21

Section 35(1):	amended by 29, 1997, s. 21 (Sched.)
Section 35(2):	amended by 29, 1997, ss. 9(a), 21 (Sched.); 23, 2001, s. 11
Section 35(4):	amended by 29, 1997, s. 9(b)
Section 35(5):	amended by 29, 1997, s. 9(c)-(f)
Section 35(7):	amended by 29, 1997, s. 21 (Sched.)
Section 36(1):	amended by 36, 1992, s. 22(a)
Section 36(3):	substituted by 36, 1992, s. 22(b); amended by 29, 1997, s. 21 (Sched.)
Section 37:	substituted by 36, 1992, s. 23
Section 37(2):	amended by 29, 1997, s. 21 (Sched.)
Section 37(3):	amended by 23, 2001, s. 12
Section 37(3)(d):	repealed by 29, 1997, s. 10(a)
Section 37(4):	amended by 29, 1997, s. 10(b)
Section 37A:	inserted by 36, 1992, s. 23
Section 39(1):	amended by 36, 1992, s. 24(a)
Section 39(2):	amended by 36, 1992, s. 24(b)
Section 39(3):	repealed by 36, 1992, s. 24(c)
Section 39(4):	amended by 36, 1992, s. 24(d)

Divisions 3A and 3B of Part 4 comprising ss. 39A - 39D and headings inserted by 36, 1992, s. 25

Section 39A(1) - (4):	amended by 29, 1997, s. 21 (Sched.)
Section 39C(3):	amended by 29, 1997, s. 21 (Sched.)
Section 40:	amended by 36, 1992, Sched. 2
Part 5 heading:	amended by 36, 1992, s. 26
Part 5 Division 1 heading:	inserted by 29, 1997, s. 11
Section 40A:	inserted by 36, 1992, s. 27; substituted by 23, 2001, s. 13
Section 40B:	inserted by 29, 1997, s. 12; substituted by 23, 2001, s. 13
Section 41:	substituted by 36, 1992, s. 27
Section 41(2):	amended by 29, 1997, s. 13; 57, 2000, s. 4; substituted by 23, 2001, s. 14
Section 41A:	inserted by 36, 1992, s. 27
Section 41B:	inserted by 36, 1992, s. 27; substituted by 29, 1997, s. 14
Sections 41C and 41D:	inserted by 29, 1997, s. 14
Section 41D(1):	inserted by 29, 1997, s. 14; amended by 23, 2001, s. 15
Section 41E:	inserted by 29, 1997, s. 14; amended by 23, 2001, s. 16
Section 42(3):	amended by 36, 1992, s. 28(a)
Section 42(4):	amended by 36, 1992, Sched. 2
Section 42(5):	inserted by 36, 1992, s. 28(b)
Section 43(1):	substituted by 36, 1992, s. 29
Section 43(1a):	inserted by 36, 1992, s. 29
Section 43(2) and (4):	amended by 36, 1992, Sched. 1
Section 43A:	inserted by 29, 1997, s. 15
Section 44(3):	inserted by 36, 1992, s. 30
Section 44A:	inserted by 36, 1992, s. 31
Section 45(1):	repealed by 36, 1992, Sched. 2
Section 45(3):	amended by 36, 1992, Sched. 2
Section 46(3):	amended by 100, 1985, s. 5
Section 46(4) - (7):	amended by 36, 1992, Sched. 2
Sections 47 - 49:	amended by 36, 1992, Sched. 2

Division 2 of Part 5 comprising ss. 49AA - 49AF and heading inserted by 29, 1997, s. 16

Section 49AA(4):	definition of "relevant day" amended by 23, 2001, s. 17
Section 49AF(2):	amended by 23, 2001, s. 18

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Section 49A:	inserted by 36, 1992, s. 32
Section 49A(3):	amended by 29, 1997, s. 21 (Sched.)
Section 49B:	inserted by 36, 1992, s. 32
Section 50(1):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 3(a))
Section 50(2a):	inserted by 36, 1992, s. 33; repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 3(b))
Section 50(3):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 3(c))
Section 50(4):	amended by 36, 1992, Sched. 2; 4, 2000, s. 9(1) (Sched. 1 cl. 3(d))
Section 50(5):	amended by 36, 1992, Sched. 2; amended in pursuance of the <i>Acts Republication Act 1967</i>
Section 51:	amended by 100, 1985, s. 6; substituted by 36, 1992, s. 34
Section 51(2) and (7):	amended by 29, 1997, s. 21 (Sched.)
Section 52:	repealed by 36, 1992, s. 35
Section 53:	substituted by 36, 1992, s. 36
Section 53(5):	amended by 29, 1997, s. 21 (Sched.)
Section 53A:	inserted by 29, 1997, s. 17
Section 54:	amended by 36, 1992, s. 37, Sched. 2; 29, 1997, s. 21 (Sched.)
Section 55:	substituted by 36, 1992, s. 38
Section 55(4):	amended by 29, 1997, s. 21 (Sched.)
Section 56(1) and (3):	amended by 36, 1992, Sched. 2
Section 56(4):	substituted by 36, 1992, s. 38(a); amended by 29, 1997, s. 21 (Sched.)
Section 56(5):	amended by 36, 1992, s. 38(b), Sched. 2; 29, 1997, s. 21 (Sched.)
Section 57:	substituted by 36, 1992, s. 40
Section 57(1) and (2):	amended by 29, 1997, s. 21 (Sched.)
Section 58:	repealed by 36, 1992, s. 41; inserted by 29, 1997, s. 18
Section 58A:	inserted by 29, 1997, s. 18
Section 59(2):	amended by 36, 1992, s. 42, Sched. 2; 29, 1997, s. 21 (Sched.)
Section 60:	amended by 36, 1992, s. 43, Sched. 2; 29, 1997, s. 21 (Sched.)
Section 61:	amended by 36, 1992, s. 44, Sched. 2; 29, 1997, s. 21 (Sched.); substituted by 65, 2000, s. 3
Section 61(11):	substituted by 23, 2001, s. 19
Section 62:	substituted by 36, 1992, s. 45
Section 62(6) - (9) and (11):	amended by 29, 1997, s. 21 (Sched.)
Sections 62A - 62E:	inserted by 36, 1992, s. 45
Section 63(1), (2), (4) and (5):	amended by 36, 1992, Sched. 2
Section 63(6):	amended by 36, 1992, Sched. 2; 29, 1997, s. 19
Section 63(7):	inserted by 36, 1992, s. 46
Section 66(1):	amended by 36, 1992, Sched. 2
Section 67(2):	amended by 36, 1992, s. 47; 29, 1997, s. 21 (Sched.)
Schedule:	inserted by 36, 1992, s. 48 (Sched. 3); repealed by 29, 1997, s. 20

