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Version No. 063
Associations Incorporation Act 1981
Act No. 9713/1981


Version incorporating amendments as at 12 December 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART I—PRELIMINARY	1
1. Short title and commencement	1
2. <i>Repealed</i>	1
3. Definitions	1
PART II—INCORPORATION	9
4. Authority to apply for incorporation	9
5. Application for incorporation	10
6. Rules of association	11
7. Certificate of incorporation	12
8. Vesting of property	13
9. Application for making of recordings in the Register	14
10. Application to bring companies etc. under this Act	18
11. Incorporation of company etc.	23
PART III—NAMES AND REGISTERED ADDRESSES	25
12. Name of association	25
12A. Name to appear on business documents	25
13. Change of name	26
13A. Registered address of incorporated association	28
PART IV—EFFECTS OF INCORPORATION	29
14. Interpretation	29
14A. Rights of members under rules	29
14B. Grievance procedure	31
15. Rights and liabilities of members	31
16. Powers of incorporated association	31
17. Ultra vires transactions	33
18. Disposal of trust property	34
19. Confirmation of contracts and authentication and execution of documents	35

<i>Section</i>	<i>Page</i>
20. Ratification of contracts made before incorporation of association	36
21. Purposes and rules	43
22. Alteration of rules	43
22A. Rules to be made available to members	44
PART V—MANAGEMENT	45
23. First committee of incorporated association	45
24. First public officer	45
25. Public officer	45
26. Public officer may hold other offices	46
27. Removal of public officer and vacancy in office	46
28. Address of public officer	47
29. Special resolution	47
29A. Duties of committee members	49
29B. Disclosure of interest	49
29C. Voting on contract in which committee member has interest	51
PART VI—GENERAL MEETINGS AND ACCOUNTS	52
30. Annual general meeting	52
30A. Accounting records	56
30B. Accounts of prescribed associations	56
PART VII—AMALGAMATION	58
31. Amalgamation of incorporated associations	58
PART VIIA—TRANSFER OF INCORPORATION	61
31A. Definition	61
31AA. Voluntary transfer of incorporation	61
31AB. Direction to transfer incorporation	62
31AC. Notice to Registrar	63
31B. Validity of contracts	63
31C. Effect of transfer of incorporation	64
PART VIII—WINDING UP AND CANCELLATION	66
Division 1—Voluntary winding up	66
32. Definitions	66
33. Voluntary winding up	66
33A. Distribution of assets on voluntary winding up in accordance with special resolution	67
33B. Distribution of assets on voluntary winding up without special resolution relating to assets	69

<i>Section</i>	<i>Page</i>
33C. Certain assets not to be distributed on voluntary winding up	70
33D. Application to Supreme Court by persons aggrieved under a voluntary winding up	70
33E. Distribution of assets of incorporated association subject to trusts	70
Division 2—Winding up by the court	71
34. Winding up by the court	71
Division 3—Winding up on certificate of Registrar	72
35. Winding up on certificate of Registrar	72
36. Procedure before certification	73
36A. Review of certificate	74
36B. Procedure for winding up on certificate	74
36C. Costs of winding up	75
Division 4—Application of Corporations Legislation	75
36D. Declaration of applied Corporations legislation matter	75
Division 5—Cancellation of incorporation	79
36E. Cancellation of incorporation	79
36F. Vesting of property after cancellation	80
37. Reinstatement of cancelled association	82
PART VIIIA—POWERS OF INSPECTION	83
37A. Definition	83
37B. <i>Repealed</i>	83
37C. Inspector's identity card	83
37D. Inspectors may require certain persons to appear, answer questions and produce documents	84
37E. Inspector's powers of entry	85
37F. Search warrant	86
37G. Announcement before entry	88
37H. Details of warrant to be given to occupier	88
37I. Seizure of documents or things not mentioned in the warrant	89
37J. Power of inspector to require information or documents	89
37K. Functions of inspectors in relation to relevant documents	90
37L. Offence—failing to comply with requirements of inspector	91
37M. Protection from incrimination	92
37N. Privilege	92
37O. Police aid for inspectors	93
37P. Report on investigation	93
37Q. Secrecy	93

<i>Section</i>	<i>Page</i>
PART IX—MISCELLANEOUS	95
38. Registrar of Incorporated Associations	95
38A. Registrar may enter into arrangements or agreements	95
38B. Delegation by Minister	95
39. Register	95
39A. Corrections of register	97
39B. Restriction of personal information	97
39C. Rights of review	98
40. Inspection of register	99
40A. Duplicate certificate of incorporation	99
41. Notice of register etc.	99
42. Authority of public officer etc.	100
43. Translation of instruments	100
44. Evidentiary provisions	101
45. Payment of fees on lodging documents	102
45A. Method of lodgment	102
45B. Approval of special lodging arrangements	103
45C. Signatures	105
45D. Waiver or refund of fees	105
46. Incorrect etc. documents lodged with Registrar	106
47. Copies or extracts of records to be admitted in evidence	107
48. Service of documents	107
49. False or misleading statements	107
49A. Retention of documents	109
50. Penalties	109
50A. Continuing offences	110
50B. Penalty notices	112
50C. Application of Fair Trading Act 1999	116
51. Incorporated association not to trade etc.	117
52. Offence for using certain names	119
53. Incorporated association excluded from Corporations legislation	119
53A. Exemption from stamp duty	120
54. Regulations	120
55. Transitional provisions	123
PART X—<i>Repealed</i>	123
—————	
SCHEDULE—Matters to be Provided for in the Rules of an Incorporated Association	125
	

<i>Section</i>	<i>Page</i>
ENDNOTES	127
1. General Information	127
2. Table of Amendments	128
3. Explanatory Details	131

Version No. 063

Associations Incorporation Act 1981

Act No. 9713/1981

Version incorporating amendments as at 12 December 2005

An Act to make Provision for the Incorporation of certain Associations, for the Regulation of certain Affairs of Incorporated Associations, to amend the **Evidence Act 1958** and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the **Associations Incorporation Act 1981**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

* * * * *

S. 2
repealed by
No. 69/1987
s. 13(1).

3. Definitions

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

(1) In this Act, unless inconsistent with the context or subject-matter—

S. 3(1) def. of "accounting records" inserted by No. 57/1997 s. 4(1).

"accounting records" include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) documents and records that record those entries; and
- (c) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up;

S. 3(1) def. of "accounts" inserted by No. 57/1997 s. 4(1).

"accounts" 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—

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

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

* * * * *

S. 3(1) def. of "Administrative Appeals Tribunal" inserted by No. 57/1997 s. 4(1), repealed by No. 101/1998 s. 24(1)(a).

"association" means an association, society, club, institution or body formed or carried on for any lawful purpose and that has not less than five members;

* * * * *

S. 3(1) def. of "books" repealed by No. 57/1997 s. 4(2).

"committee" in relation to an association or incorporated association means the committee of, or other body having the management of, the association or incorporated association;

"CPA Australia" means CPA Australia A.C.N. 008 392 452;

S. 3(1) def. of "CPA Australia" inserted by No. 8/2003 s. 3(a).

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

"financial year" in relation to an incorporated association means—

- (a) a period of twelve months, or such other period (whether longer or shorter than twelve months) not exceeding eighteen months as the incorporated association resolves, commencing on the date of incorporation of the association; and
- (b) each period of twelve months, or such other period (whether longer or shorter than twelve months) not exceeding eighteen months as the incorporated association resolves, commencing at the expiration of the previous financial year of the incorporated association;

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

"inspector" means an inspector appointed under the **Fair Trading Act 1999**;

"land" includes an estate or interest in land;

"machine copy", in relation to a document, means a copy made of the document by any machine in which or process by which an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

"model rules" means the rules prescribed under section 54;

S. 3(1) def. of
"inspector"
inserted by
No. 17/1999
s. 21(1).

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

"personal information" has the same meaning as in section 3 of the **Information Privacy Act 2000**;

S. 3(1) def. of "personal information" inserted by No. 8/2003 s. 3(a).

"prescribed" means prescribed by this Act or the regulations;

"prescribed association" means an incorporated association—

S. 3(1) def. of "prescribed association" inserted by No. 57/1997 s. 4(1).

- (a) that has gross receipts in that association's previous financial year in excess of \$200 000 or such other amount as is prescribed by regulation; or
- (b) that has gross assets in excess of \$500 000 or such other amount as is prescribed by regulation; or
- (c) that is prescribed or of a class prescribed by regulation;

"property" includes real and personal property and any estate or interest in any real or personal property;

"public officer" in relation to an incorporated association means the person who is for the time being the public officer of the incorporated association under Part V;

"Registrar" means the Registrar of Incorporated Associations and includes any Deputy or Assistant Registrar of Incorporated Associations;

"relevant documents" means records or other documents, however compiled, recorded or stored, that relate to the incorporation and management of an incorporated association, including membership records, accounts, accounting records and documents

S. 3(1) def. of "relevant documents" inserted by No. 57/1997 s. 4(1).

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

relating to transactions, dealings, business or property of the association;

S. 3(1) def. of "reproduction" amended by No. 8/2003 s. 3(b).

"reproduction" in relation to a document, means a machine copy of the document or a print made from a negative of the document or an electronic copy of the document;

"special resolution" means a resolution of an incorporated association passed in accordance with section 29;

"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;
- (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive 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 photo-sensitive material (being photo-sensitive 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;

S. 3(1) def. of "Tribunal" inserted by No. 101/1998 s. 24(1)(b).

"Tribunal" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

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- (2) For the purpose of this Act, an association or incorporated association shall not be deemed to trade or to secure pecuniary profit for its members or to be formed or carried on for the purpose of trading or securing pecuniary profit for its members by reason only of any one or more of the following circumstances—
- (a) that the association or incorporated association itself makes a pecuniary profit, unless that profit or any part of it is divided among or received by the members or some of them;
 - (b) that the association or incorporated association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal purpose of the association or incorporated association and, where the transactions are with the public, the transactions—
 - (i) are not substantial in number or value in relation to the other activities of the association or incorporated association; or
 - (ii) consist of admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organized for the promotion of the purposes of the association or incorporated association;
 - (c) that the association or incorporated association is established for the protection or regulation of a trade, business, industry or calling in which the members are engaged or interested, if the association or incorporated association itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling;
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Associations Incorporation Act 1981
Act No. 9713/1981

Part I—Preliminary

s. 3

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- (d) that the members of the association or incorporated association are entitled to divide its assets among them on its dissolution;
 - (e) that any member of the association or incorporated association derives pecuniary benefit from the association by way of bona fide payment of remuneration;
 - (f) that any member of the association or incorporated association derives from it any pecuniary benefit to which he would be entitled if he were not a member of the association or incorporated association;
 - (g) that the members of the association or incorporated association compete for trophies or prizes in contests directly related to the purposes of the association or incorporated association;
 - (h) that the members of the association or incorporated association derive pecuniary profit through enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes; or
 - (i) that the incorporated association makes any payment of pecuniary profit to a member being another incorporated association having the same or similar purpose as the first incorporated association.

S. 3(2)(h)
inserted by
No. 57/1997
s. 4(3).

S. 3(2)(i)
inserted by
No. 57/1997
s. 4(3).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 4

PART II—INCORPORATION

4. Authority to apply for incorporation

(1) Where a majority of the members of an association—

S. 4
amended by
No. 10236
s. 4(a).

(a) authorize a person who has attained the age of 18 years and who is resident in the State to incorporate the association under this Act;

S. 4(1)(a)
amended by
No. 73/1996
s. 6(1).

(b) approve a proposed statement of purposes of the proposed incorporated association; and

(c) approve proposed rules of the proposed incorporated association that comply with section 6 or approve the adoption of the model rules as the rules of the proposed incorporated association—

that person may make application to the Registrar for the incorporation of the association and perform all such acts and do all such things as may be necessary for securing the incorporation of the association under this Act, notwithstanding anything to the contrary which may be contained in the constitution or rules (if any) of the association.

(2) A majority of the members of an association shall be deemed to have given the authority and approvals referred to in sub-section (1) if, at a meeting of the association of which not less than 21 days notice has been given to all members of the association a majority of the votes cast at that meeting, whether personally or, where proxies are allowed, by proxy, are votes in favour of a motion to give that authority and those approvals.

S. 4(2)
inserted by
No. 10236
s. 4(b).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 5

5. Application for incorporation

S. 5
amended by
No. 35/2000
s. 3(b).

An application for the purposes of section 4 shall be in the form approved by the Registrar and—

(a) shall state—

(i) the proposed name of the incorporated association, being a name under which an association may be incorporated in accordance with section 12;

S. 5(a)(ii)
repealed by
No. 8/2003
s. 4(a).

* * * * *

(ii) the place or places where the association was formed and is carried on;

(iii) the name and address in Victoria of the applicant; and

(iv) such other particulars as are prescribed;

S. 5(b)
amended by
No. 8/2003
s. 4(b).

(b) shall be accompanied by a copy of the statement of purposes of the proposed incorporated association that has been approved by the association;

S. 5(c)
substituted by
No. 10236
s. 8(1)(a).

(c) shall be accompanied by—

(i) a copy of the proposed rules of the proposed incorporated association, being rules that comply with section 6 and have been approved by the association;

(ii) a statement that the association has approved the adoption of the model rules as the rules of the proposed incorporated association; or

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 6

- (iii) a statement that the association has approved the adoption of the model rules as the rules of the proposed incorporated association with the changes specified in the statement;
- (d) shall be accompanied by particulars of any trusts relating to the association and a copy of any deed or other instrument creating or embodying those trusts;
- (e) shall include a statement from the applicant certifying that—
 - (i) the applicant has the authority under section 4 to make the application on behalf of the association; and
 - (ii) the particulars contained in the application are true and correct; and
 - (iii) copies of any documents accompanying the application are true copies of those documents; and
- (f) shall be accompanied by the prescribed fee.

S. 5(e)
amended by
Nos 10236
s. 8(1)(b),
35/2000
s. 3(a),
substituted by
No. 8/2003
s. 4(c).

6. Rules of association

The rules of an incorporated association or proposed incorporated association comply with this section if—

- (a) they make provision, subject to and in accordance with this Act, whether by the adoption of the model rules or otherwise, for—
 - (i) the several matters that are specified in the Schedule; and
 - (ii) such other matters (if any) as are prescribed; and

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 7

- (b) they are divided into paragraphs which are designated by letters in alphabetical order or are numbered consecutively.

S. 7
substituted by
No. 57/1997
s. 5.

7. Certificate of incorporation

S. 7(1)
amended by
No. 35/2000
s. 3(c).

- (1) Subject to sub-section (2), if an application is made in accordance with section 5, the Registrar must grant a certificate of incorporation of the association in the form approved by the Registrar and containing the prescribed particulars.
- (2) The Registrar may refuse to incorporate an association or proposed association if the Registrar is satisfied that incorporation of the association or proposed association under this Act would be inappropriate or inconvenient—
- (a) by reason of the Registrar's assessment of—
- (i) the likely scale or nature of the activities of the association or proposed association; or
 - (ii) the likely value or nature of the property of the association or proposed association; or
 - (iii) the extent or nature of the dealings which the association or proposed association has, or is likely to have, with the public; or
- (b) for any other prescribed reason.
- (3) The Registrar must notify the applicant in writing of a decision to refuse to grant a certificate of incorporation and the reasons for that refusal.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 8

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- (4) The person who made the application to the Registrar under section 5 may within 28 days after receiving notice of a decision of the Registrar to refuse to grant a certificate of incorporation apply to the Tribunal for review of the decision.

S. 7(4)
amended by
No. 101/1998
s. 24(2)(a).

8. Vesting of property

- (1) Upon the granting of a certificate of incorporation of an association, all property held by a person on trust or otherwise for or on behalf of the association or for any of its purposes is, subject to this section, vested in the incorporated association.
- (2) Where property vests in an incorporated association under this section—
- (a) the incorporated association shall not, except as provided by this Act, deal with the property contrary to the provisions of any trust affecting the property immediately before the incorporation of the association;
- (b) the persons who immediately before the property was so vested held the property on trust are not, after the property has been delivered or transferred to the incorporated association, liable or accountable for the property and are not bound to see to the application, distribution or appropriation of the property; and
- (c) the property is so vested subject to any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant, contract or liability to which the property was subject immediately before it was so vested.

S. 8(2)(c)
amended by
No. 10236
s. 8(1)(c).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 9

- (3) The receipt of the public officer of an incorporated association is sufficient discharge to a trustee delivering or transferring property to the incorporated association under this section as to the property delivered or transferred.

9. Application for making of recordings in the Register

- (1) Where—

- (a) land under the operation of the **Transfer of Land Act 1958** vests in an incorporated association by reason of the operation of section 8(1) of this Act; and
- (b) the registered proprietor has not executed an instrument as directed by section 59 of the **Transfer of Land Act 1958** giving effect to that vesting—

the incorporated association may make an application in the prescribed form to the Registrar for the making of any recordings in the Register that are necessary or expedient in consequence of the vesting of land in the incorporated association.

- (2) An application under sub-section (1) shall be accompanied by—

- (a) the certificate of, or other evidence of, incorporation of the incorporated association;
- (b) a declaration by the public officer of the incorporated association to the effect that the land is held in trust for or on behalf of the incorporated association or for any of its purposes;
- (c) the certificate of title; and

S. 9(1)
amended by
No. 18/1989
s. 13(Sch. 2
item 5(a)).

S. 9(2)(c)
substituted by
No. 18/1989
s. 13(Sch. 2
item 5(b)).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 9

(d) the prescribed fee.

(3) If—

- (a) land that is not under the **Transfer of Land Act 1958** vests in an incorporated association by reason of the operation of section 8(1) of this Act; and
- (b) the person who, immediately before the land so vested, held the land has not executed a conveyance of that land to the incorporated association—

S. 9(3)
amended by
Nos 69/1987
s. 4, 18/1989
s. 13(Sch. 2
item 5(c)),
substituted by
No. 85/1998
s. 24(Sch.
item 5).

the incorporated association may make an application under Part II of the **Transfer of Land Act 1958** to bring the land under that Act by the creation of a folio of the Register in respect of the land and that Part applies to an application under that Part except to the extent that this section provides for matters in that Part.

- (4) An application under sub-section (3) for bringing land under the operation of the **Transfer of Land Act 1958** shall be accompanied by—
- (a) the certificate of, or other evidence of, incorporation of the incorporated association;
 - (b) a declaration by the public officer of the incorporated association to the effect that the land is held in trust for or on behalf of the incorporated association or for any of its purposes;
 - (c) any documents or evidences of title to the land that are in the possession or under the control of the incorporated association; and
 - (d) the prescribed fee.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 9

S. 9(5)(b)
amended by
No. 18/1989
s. 13(Sch. 2
item 5(d)).

- (5) Where an application is made under sub-section (1) or (3) to the Registrar, the Registrar shall cause notice of the application to be given—
- (a) by publication at least once in a newspaper circulating generally in the State; and
 - (b) personally or by post to each person who appears from the Register to be affected by the application.

S. 9(6)
amended by
No. 18/1989
s. 13(Sch. 2
item 5(e)).

- (6) A notice under this section shall specify a time (being not less than 30 days) after the expiration of which the Registrar may, unless a caveat is lodged forbidding such action, make the recordings referred to in sub-section (1) or bring the land under the operation of the **Transfer of Land Act 1958** as the case may be.

S. 9(7)
amended by
No. 18/1989
s. 13(Sch. 2
item 5(f)(i)(ii)).

- (7) A person claiming any estate or interest in the land to which an application under sub-section (1) or (3) relates may, before the making of the recordings referred to in sub-section (1) or the creation of the folio of the Register, as the case may be, lodge a caveat with the Registrar in the form or to the effect of the prescribed form forbidding the making of the recordings or the bringing of the land under the **Transfer of Land Act 1958**.
- (8) The Registrar upon lodgment of a caveat under sub-section (7) shall notify the applicant of the caveat and shall not proceed with the application until the caveat has been withdrawn or has lapsed as provided in sub-section (10) or until a judgment or order in the matter has been obtained from the Supreme Court.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 9

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- (9) The applicant may, if he thinks fit, summon the caveator to attend before the Supreme Court to show cause why any caveat lodged under sub-section (7) should not be removed and the Supreme Court may make such order in the matter either ex parte or otherwise and as to costs as the Supreme Court thinks fit.
- (10) After the expiration of 30 days after the lodgment of a caveat, the caveat shall be deemed to have lapsed unless the caveator has within that time commenced proceedings in a court of competent jurisdiction to establish his title to the estate or interest specified in the caveat and has given written notice thereof to the Registrar or has obtained and served on the Registrar an injunction or order of the Supreme Court restraining him from making the recordings referred to in sub-section (1) or bringing the land under the **Transfer of Land Act 1958**.
- (11) A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest.
- (12) In this section "**Registrar**" means the Registrar of Titles under the **Transfer of Land Act 1958** and includes any Deputy Registrar of Titles and any Assistant Registrar of Titles.
- (13) Subject to this Act, the **Transfer of Land Act 1958** applies to an application made under this section and so applies as if the application were an instrument within the meaning of that Act.

S. 9(10)
amended by
No. 18/1989
s. 13(Sch. 2
item 5(g)).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 10

10. Application to bring companies etc. under this Act

S. 10(1)
amended by
Nos 9761
s. 3,14/1995
ss 4, 5,
84/1996
s. 467(Sch. 6
item 3.1),
57/1997
s. 6(4)(a)(b),
44/2001
s. 3(Sch.
item 7.1).

- (1) A company limited by guarantee within the meaning of the Corporations Act that is taken to be registered in Victoria or a co-operative, society, association, institution or body formed, or incorporated or registered under the **Co-operatives Act 1996** or the **Industrial and Provident Societies Act 1958** or any Act relating to the incorporation, formation or registration of co-operatives, societies, associations, institutions or bodies (whether before or after the commencement of this Act) may apply for incorporation under this Act if—

S. 10(1)(a)
amended by
No. 57/1997
s. 6(4)(a).

- (a) the company, co-operative, society, association, institution or body has—
- (i) in the case of a company, passed a special resolution approving the application; or
 - (ii) in any other case, resolved in accordance with its rules that the application be made;

S. 10(1)(b)
amended by
No. 57/1997
s. 6(4)(a).

- (b) the purposes of the company, co-operative, society, association, institution or body are purposes for which an incorporated association may lawfully be carried on; and

S. 10(1)(c)
amended by
No. 57/1997
s. 6(4)(a).

- (c) the company, co-operative, society, association, institution or body has rules that comply with this Act or, upon incorporation under this Act, that will so comply, whether by reason of the adoption of new rules or the model rules or the alteration of its articles of association or former rules.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 10

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- (2) A company, co-operative, society, association, institution or body that intends to make an application under sub-section (1) may, notwithstanding anything to the contrary in any other Act, make an alteration of its articles of association or rules, or adopt new rules or the model rules, to have effect from the date on which a certificate of incorporation is granted to it under this Act as if it were an incorporated association and the articles or rules were the rules of an incorporated association.
- S. 10(2)
amended by
No. 57/1997
s. 6(4)(a).
- (3) An application by a company, co-operative, society, association, institution or body under sub-section (1) shall be in the form approved by the Registrar and—
- S. 10(3)
amended by
Nos 57/1997
s. 6(4)(a),
35/2000
s. 3(b).
- (a) shall state—
- (i) its proposed name upon incorporation, being a name under which an association may be incorporated in accordance with section 12;
- * * * * *
- S. 10(3)(a)(ii)
repealed by
No. 8/2003
s. 5.
- (iii) the name and address in Victoria of a member who has attained the age of 18 years and who is resident in the State and who has been nominated as the first public officer of the proposed incorporated association;
- S. 10(3)(a)(iii)
amended by
No. 73/1996
s. 6(1).
- (b) shall be accompanied by—
- S. 10(3)(b)
amended by
No. 9940
s. 2(a)(b).
- (i) its certificate of, or other document evidencing its incorporation, formation or registration;

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 10

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- (ii) a statement of purposes as proposed to be in force upon its incorporation under this Act;
- S. 10(3)(b)(iii)**
substituted by
No. 10236
s. 8(1)(d).
- (iii) a copy of its articles of association or rules as proposed to be in force upon its incorporation under this Act, being rules that comply with section 6, or a statement that its rules will be the model rules or the model rules with the changes specified in the statement;
- S. 10(3)(b)(iiia)**
inserted by
No. 10236
s. 8(1)(e),
amended by
No. 57/1997
s. 6(4)(a).
- (iiia) particulars of any trust relating to the company, co-operative, society, institution, association or body and a copy of any deed or other instrument creating or embodying those trusts;
- (iv) the name, address and occupation of each director, or member of its committee or other governing body; and
- S. 10(3)(b)(v)**
inserted by
No. 9940
s. 2(b).
- (v) the prescribed fee; and
- (c) shall contain such other particulars (if any) as are prescribed.
- S. 10(3A)**
inserted by
No. 57/1997
s. 6(1).
- (3A) The person nominated as the first public officer of the proposed incorporated association may perform all such acts and do all such things as may be necessary for securing the incorporation of the company, co-operative, society, association, institution or body as an association under this Act, despite anything to the contrary which may be contained in the constitution or rules (if any) of the company, co-operative, society, association, institution or body.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 10

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- (4) Subject to sub-section (4A), if an application is made in accordance with this section, the Registrar must—
- (a) grant a certificate of incorporation under this Act; and
 - (b) give notice of the grant of the certificate of incorporation—
 - (i) in the case of the incorporation of a company as an association, to the Australian Securities and Investments Commission; and
 - (ii) in the case of the incorporation of a co-operative, society, association, institution or other body, as an association, to the Registrar or other person having responsibilities under an Act in relation to the registration of the co-operative, society, association, institution or other body; and
 - (c) cause a notice of the grant of the certificate of incorporation to be published in the Government Gazette.
- (4A) The Registrar may refuse to incorporate a company, co-operative, society, association, institution or body under this Act if the Registrar is satisfied—
- (a) that the company, co-operative, society, association, institution or body is carried on for the purpose of trading or securing pecuniary profit for its members; or
 - (b) that that incorporation would be inappropriate or inconvenient by reason of the Registrar's assessment of—
 - (i) the likely scale or nature of the activities of proposed association; or

S. 10(4) substituted by No. 57/1997 s. 6(2).

S. 10(4)(b)(i) amended by No. 35/2000 s. 4.

S. 10(4A) inserted by No. 57/1997 s. 6(2).

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 10

- (ii) the likely value or nature of the property of the proposed association; or
- (iii) the extent or nature of the dealings which the proposed association is likely to have with the public; or

(c) that any other prescribed reason for refusal exists.

S. 10(4B)
inserted by
No. 57/1997
s. 6(2).

(4B) The Registrar must notify the applicant in writing of a decision to refuse to grant a certificate of incorporation and the reasons for that refusal.

S. 10(4C)
inserted by
No. 57/1997
s. 6(2),
amended by
No. 101/1998
s. 24(2)(a).

(4C) The person who made the application to the Registrar under this section may within 28 days after receiving notice of a decision of the Registrar to refuse to grant a certificate of incorporation apply to the Tribunal for review of the decision.

S. 10(5)
amended by
No. 57/1997
s. 6(4)(a).

(5) The incorporation of a company, co-operative, society, association, institution or body under this section does not affect the identity of the company, co-operative, society, association, institution or body which shall be deemed to be the same body before and after the incorporation and no act, matter or thing shall be affected or abated by the incorporation and, in particular, any right or claim subsisting by or against the company, co-operative, society, association, institution or body immediately before its incorporation under this section may be continued by or against the incorporated association in its former name or commenced by or against the incorporated association in the name of the incorporated association.

Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 11

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| <p>(6) Section 3(2) applies for the purposes of the interpretation of the reference in sub-section (4A) to trading or securing pecuniary profit as if a reference in section 3(2) to an association were a reference to a company, co-operative, society, association, institution or body.</p> | <p>S. 10(6)
amended by
No. 57/1997
s. 6(3)(4)(a).</p> |
| <p>(7) Sections 8 and 9 apply upon the granting of a certificate of incorporation under this section of a co-operative, society, association, institution or body that immediately before the issue of that certificate was not a body corporate as if a reference in those sections to an association were a reference to the co-operative, society, association, institution or body.</p> | <p>S. 10(7)
amended by
No. 57/1997
s. 6(4)(a).</p> |
| <p>(8) A reference in this section to a company, co-operative, society, association, institution or body does not include a reference to a trade union registered under the Trade Unions Act 1958.</p> | <p>S. 10(8)
amended by
No. 57/1997
s. 6(4)(a).</p> |

11. Incorporation of company etc.

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| <p>(1) Upon the incorporation of a company, co-operative, society, association, institution or body, under section 10—</p> <p style="margin-left: 2em;">(a) the company, co-operative, society, association, institution or body shall be dissolved and none of the provisions of the Companies Act 1961 the Corporations Law of Victoria¹, the Co-operatives Act 1996 or the Industrial and Provident Societies Act 1958 or other Acts relating to its incorporation, formation or registration, as the case may be, shall, after its incorporation under that section, apply to the company, co-operative, society, association, institution or body;</p> | <p>S. 11(1)
amended by
No. 57/1997
s. 6(4)(a).</p> <p>S. 11(1)(a)
amended by
Nos 9761
s. 3, 14/1995
ss 4, 5,
84/1996
s. 467(Sch. 6
item 3.2),
57/1997
s. 6(4)(a).</p> |
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Associations Incorporation Act 1981
Act No. 9713/1981

Part II—Incorporation

s. 11

S. 11(1)(b)
amended by
No. 57/1997
s. 6(4)(a).

(b) the Commissioner for Corporate Affairs, Registrar or other person having responsibility for the registration of the company, co-operative, society, association, institution or body under another Act, may cancel that registration; and

S. 11(1)(c)
amended by
No. 57/1997
s. 6(4)(a).

(c) the property of the company, co-operative, society, association, institution or body vests in the incorporated association subject to—

(i) any trust; and

S. 11(1)(c)(ii)
amended by
No. 10236
s. 8(1)(f).

(ii) any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant, contract or liability—

to which the property was subject immediately before it so vested.

(2) Nothing in this section affects the operation in relation to an incorporated association of the provisions of any other Act relating to the registration under that other Act of persons or bodies carrying on business of a particular kind or engaging in other activities of a particular kind.

Associations Incorporation Act 1981
Act No. 9713/1981

Part III—Names and Registered Addresses

s. 12

PART III—NAMES AND REGISTERED ADDRESSES

Pt 3 (Heading)
amended by
No. 57/1997
s. 7.

12. Name of association

- (1) Except with the consent of the Minister, an association shall not be incorporated under a name that is in the opinion of the Registrar undesirable or is a name, or a name of a kind, that the Minister has for the purposes of this Act directed the Registrar not to accept for registration.
- (2) An incorporated association shall have the word "Incorporated" as the last word in its name, whether or not within brackets.
- (3) The description of an incorporated association shall not be deemed to be inadequate or incorrect by reason only of the use of the abbreviation "Inc." in place of the word "Incorporated".

12A. Name to appear on business documents

S. 12A
inserted by
No. 57/1997
s. 8.

- (1) The name of an incorporated association must appear in legible characters—
 - (a) on its common seal (if any); and
 - (b) in all notices, advertisements and other official publications of the incorporated association; and
 - (c) in all its business documents.

S. 12A(1)(a)
amended by
No. 8/2003
s. 7(a).

Associations Incorporation Act 1981
Act No. 9713/1981

Part III—Names and Registered Addresses

s. 13

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- (2) The registration number of an incorporated association specified in its certificate of incorporation must appear in legible characters—
- (a) in all notices, advertisements and other official publications of the incorporated association; and
 - (b) in all its business documents.
- (3) If sub-section (1) or (2) is contravened, the incorporated association is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
- (4) In this section "**business document**" in relation to an incorporated association, means a document that is issued, signed or endorsed by or on behalf of the incorporated association and is—
- (a) a business letter, statement of account, invoice or order for goods or services; or
 - (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
 - (c) a receipt or letter of credit issued by the incorporated association; or
 - (d) a document of a class prescribed as a class of business documents.

13. Change of name

- (1) An incorporated association may by special resolution and with the approval of the Registrar change its name.
- (2) Where an incorporated association has passed a special resolution for the change of its name, the public officer of the incorporated association may make application to the Registrar for his approval to the change of name.

Associations Incorporation Act 1981
Act No. 9713/1981

Part III—Names and Registered Addresses

s. 13

(3) An application under sub-section (2) shall be in the form approved by the Registrar and containing the prescribed particulars and—

S. 13(3)
amended by
No. 35/2000
s. 3(c).

(a) shall be made within the prescribed period after the date of the meeting of the incorporated association at which the special resolution was passed;

* * * * *

S. 13(3)(b)
repealed by
No. 10236
s. 8(1)(g).

(c) shall be accompanied by such verification of the application as is prescribed; and

(d) shall be accompanied by the prescribed fee.

(4) Where an application is made under this section, the Registrar shall not approve a change of name of an incorporated association unless the proposed new name is a name under which an association could be incorporated under this Act.

(5) Where an application is made under this section and the Registrar approves the change of name of an incorporated association, the Registrar shall issue a new certificate of incorporation.

S. 13(5)
substituted by
No. 10236
s. 8(1)(h).

(5A) If the name of an incorporated association is a name under which it ought not, by reason of section 12(1), to have been incorporated or to which by reason of section 13(4), it ought not to have been changed, the Registrar may by notice in writing given to the incorporated association direct it to change its name.

S. 13(5A)
inserted by
No. 10236
s. 8(1)(h).

(5B) A notice to an incorporated association under sub-section (5A) has effect as if it were a special resolution of the incorporated association.

S. 13(5B)
inserted by
No. 10236
s. 8(1)(h).

Associations Incorporation Act 1981
Act No. 9713/1981

Part III—Names and Registered Addresses

s. 13A

- (6) A change of name of an incorporated association pursuant to this Act does not operate—
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity of the body corporate constituted by the incorporated association or its continuity as a body corporate;
 - (c) to affect the property, or the rights or obligations, of the incorporated association;
or
 - (d) to render defective any legal proceedings by or against the incorporated association—
- and any legal proceedings that might have been continued or commenced by or against the association by its former name may be continued or commenced by or against it by its new name.

S. 13A
inserted by
No. 57/1997
s. 9.

13A. Registered address of incorporated association

- (1) An incorporated association must have a registered address which may be the address of the public officer.
- (2) An incorporated association that changes its registered address must notify the Registrar in the form approved by the Registrar no later than 14 days after that change.
- (3) If an incorporated association fails to comply with this section, the incorporated association and each member of the committee of the incorporated association is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

S. 13A(2)
substituted by
No. 8/2003
s. 6.

PART IV—EFFECTS OF INCORPORATION

14. Interpretation

- (1) On and from the date specified in a certificate of incorporation of an association granted under this Act, but subject to this Act and the rules of the incorporated association—
- (a) in the case of a certificate granted under section 7, the persons who were the members of the association immediately before that date;
 - (b) in the case of a certificate granted under section 10, the persons who were the members of the company, society, association, institution or body immediately before that date; and
 - (c) in the case of a certificate granted under section 31, the persons who were the members of either of the incorporated associations that made the application under that section immediately before that date—
- together with such other persons as from time to time become members of the incorporated association, are an incorporated association by the name set out in the certificate.

- (2) An incorporated association has perpetual succession, may have a common seal, has power to acquire or hold (whether on trust or absolutely) and dispose of property and is capable of suing and being sued.

S. 14(2)
amended by
No. 8/2003
s. 7(b).

14A. Rights of members under rules

- (1) The rules of an incorporated association constitute the terms of a contract between the incorporated association and its members for the time being.

S. 14A
inserted by
No. 10236
s. 5.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 14A

S. 14A(2)
amended by
No. 57/1997
s. 10.

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- (2) The Magistrates' Court may, on the application of an incorporated association, or a member of an incorporated association, make an order—
- (a) giving directions for the performance and observance of the rules of the incorporated association by any person who is under an obligation to perform or observe those rules; or
 - (b) declaring and enforcing the rights or obligations of members of the incorporated association between themselves or the rights or obligations of the incorporated association and any member between themselves.

(3) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the incorporated association.

S. 14A(4)
amended by
No. 57/1997
s. 10.

- (4) The Magistrates' Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of opinion that—
- (a) the issue raised in the application is trivial;
 - (b) having regard to the importance of the issue, the nature of the incorporated association, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application; or
 - (c) the unreasonable or improper conduct of a party has been responsible for the making of the application, or has added to the cost of the proceedings.
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 14B

14B. Grievance procedure

- (1) The rules of an incorporated association must set out a grievance procedure for dealing with any dispute under the rules between—
 - (a) a member and another member; or
 - (b) a member and the incorporated association.
- (2) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (3) The grievance procedure must allow for natural justice to be applied.

S. 14B
inserted by
No. 57/1997
s. 11.

15. Rights and liabilities of members

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

S. 15(1)
amended by
No. 57/1997
s. 12.

16. Powers of incorporated association

- (1) An incorporated association may, unless its statement of purposes or rules otherwise provide—
 - (a) invest and deal with moneys of the incorporated association not immediately required in such manner as is from time to time thought fit;

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 16

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- (b) raise or borrow money upon such terms and in such manner as it thinks fit;
 - (c) secure the repayment of moneys so raised or borrowed or the payment of a debt or liability of the incorporated association by giving mortgages, charges or securities upon or over all or any of the property of the incorporated association; and
 - (d) do all such other things as are incidental or conducive to the attainment of the purposes and the exercise of the powers of the incorporated association.
- (2) Subject to sub-section (3), an incorporated association may, unless its statement of purposes or rules otherwise provide—
- (a) act as trustee; and
 - (b) accept and hold upon trust real and personal property.
- (3) Notwithstanding sub-section (2), an incorporated association does not have power as trustee of a trust to do any act or thing that, if done by the incorporated association otherwise than as trustee, would contravene the provisions of this Act or the statement of purposes or the rules of the incorporated association.
- (4) The public officer of an incorporated association shall, within fourteen days after the incorporated association becomes a trustee of a trust, lodge with the Registrar particulars of the trust and a copy of any deed or other instrument creating or embodying that trust.

S. 16(4)
amended by
Nos 10236
s. 8(1)(i),
57/1997 s. 13.

17. Ultra vires transactions

- (1) No act of an incorporated association (including the entering into of an agreement by the incorporated association), and no conveyance or transfer of property to or by an incorporated association is invalid by reason only of the fact that the incorporated association was without capacity or power to do the act or to execute or take the conveyance or transfer.
- (2) Any such lack of capacity or power may be asserted or relied upon only in—
 - (a) proceedings against the incorporated association by a member of the incorporated association to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the incorporated association;
 - (b) proceedings by the incorporated association, or by a member of the incorporated association, against the present or a former public officer of the association; or
 - (c) an application by the Registrar to wind up the incorporated association.
- (3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (a) of sub-section (2) is being, or is to be, performed or made pursuant to any contract to which the incorporated association is a party, the court in which the proceedings are brought may, if all the parties to the contract are parties to the proceedings and if the court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the incorporated association or to the other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 18

that may result from the action of the court in setting aside and restraining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

18. Disposal of trust property

S. 18(1)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 4)).

(1) In any case where property is held by an incorporated association upon trust and the trust has come wholly or partly to an end then, notwithstanding that the deed or other instrument creating or embodying the trust or the rules of the incorporated association do not contain any power to dispose of the property or forbid the disposal of the property, the public officer of the incorporated association may, with the authority of the committee of the incorporated association, apply to the Minister for authority to dispose of the whole or part of the property.

S. 18(2)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 4)).

(2) Where an application is made under sub-section (1), the Minister may, in any case in which he thinks it proper so to do, by writing under his hand—

- (a) authorize the disposal of the property or part of the property specified by him; and
- (b) direct the manner in which the proceeds arising from the disposal of the property or part shall be dealt with.

S. 18(3)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 4)).

(3) Upon the grant and in pursuance of the authority or direction of the Minister under sub-section (2), it shall be lawful for an incorporated association to dispose of property or part of property, free from any trusts and to deal with the proceeds arising from the disposal.

19. Confirmation of contracts and authentication and execution of documents

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of an incorporated association may make, vary or discharge a contract in the name of or on behalf of the incorporated association in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharging of a contract in accordance with sub-section (1) is effectual in law and binds the incorporated association and other parties to the contract.
- (3) A contract or other document executed or purporting to have been executed under the common seal of an incorporated association is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.
- (4) This section does not prevent an incorporated association from making, varying or discharging a contract under its common seal.
- (5) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.
- (6) A document or proceeding requiring authentication by an incorporated association may be authenticated by the signature of the public officer of the incorporated association and need not be authenticated under the common seal of the incorporated association.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

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- (7) An incorporated association may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the incorporated association and under his seal binds the incorporated association and has the same effect as if it were under the common seal of the incorporated association.
- (8) The authority of an agent or attorney empowered pursuant to sub-section (7), as between the incorporated association and a person dealing with him continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his authority has been given to the person dealing with him.

20. Ratification of contracts made before incorporation of association

- (1) In this section—
- (a) a reference to a non-existent incorporated association purporting to enter into a contract shall be construed as a reference to—
 - (i) a person executing a contract in the name of an incorporated association, where no such incorporated association exists; or
 - (ii) a person purporting to enter into a contract as agent or trustee for a proposed incorporated association;
 - (b) a reference to a person who purports to execute a contract on behalf of a non-existent incorporated association shall be construed as a reference to a person who executes a

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

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- contract or purports to enter into a contract as mentioned in sub-paragraph (i) or (ii) of paragraph (a);
- (c) a reference, in relation to the purported entry into a contract by a non-existent incorporated association, to the incorporation of the association shall be construed as a reference to—
- (i) where a person has executed a contract in the name of an incorporated association and no such incorporated association exists—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the incorporated association in the name of which the person executed the contract; or
 - (ii) where a person has purported to enter into a contract as agent or trustee for a proposed incorporated association—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the proposed incorporated association.
- (2) Where—
- (a) a non-existent incorporated association purports to enter into a contract; and
 - (b) the association is incorporated within a reasonable time after the contract is purported to be entered into—
- the incorporated association may, within a reasonable time after it is incorporated, ratify the contract.
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

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- (3) Where an incorporated association ratifies a contract as provided by sub-section (2), the incorporated association is bound by, and entitled to the benefit of, that contract as if the association had been incorporated before the contract was entered into and had been party to that contract.
- (4) Where a non-existent incorporated association purports to enter into a contract and—
- (a) the association is not incorporated within a reasonable time after the contract is purported to be entered into; or
 - (b) the association is incorporated within such a reasonable time but does not ratify the contract within a reasonable time after the association is incorporated—

the other party or each of the other parties to the contract may, subject to sub-sections (6) and (9), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent incorporated association an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the incorporated association if—

- (c) where the association has not been incorporated as mentioned in paragraph (a)—the association had been incorporated and had ratified the contract as provided by sub-section (2); or
- (d) where the association has been incorporated as mentioned in paragraph (b)—the incorporated association had ratified the contract as provided by sub-section (2)—

and the contract had been discharged by reason of a breach of the contract constituted by the refusal

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

or failure of the incorporated association to perform any obligations under the contract.

(5) Where—

(a) proceedings are brought to recover damages under sub-section (4) in relation to a contract purported to be entered into by a non-existent incorporated association; and

(b) the association has been incorporated—

the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following orders—

(c) an order directing the incorporated association to transfer or pay to any party to the contract who is named in the order, any property, or an amount not exceeding the value of any benefit, received by the incorporated association as a result of the (c) contract;

(d) an order that the incorporated association pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

(6) Where, in proceedings to recover damages under sub-section (4) in relation to a contract purported to be entered into by a non-existent incorporated association, the court in which the proceedings are brought makes an order under paragraph (c) of sub-section (5), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

(7) Where—

- (a) a non-existent incorporated association purports to enter into a contract;
- (b) the association is incorporated and ratifies the contract as provided by sub-section (2);
- (c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the incorporated association to perform all or any of its obligations under the contract; and
- (d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the incorporated association for damages for breach of the contract—

the court in which the proceedings are brought may, subject to sub-section (9), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the incorporated association to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the incorporated association has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

- (8) Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent incorporated association, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, consent to the first-mentioned person being exempted from any liability in relation to the contract.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

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- (9) Where a person has, as provided by sub-section (8), consented to another person being exempted from liability in relation to a contract that the other person purported to execute on behalf of a non-existent incorporated association—
- (a) notwithstanding sub-section (4), that first-mentioned person is not entitled to recover damages from that other person in relation to that contract; and
 - (b) a court shall not, in proceedings under sub-section (7), order that other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the incorporated association has been, or may be, found liable to pay to that first-mentioned person.
- (10) If—
- (a) a non-existent incorporated association purports to enter into a contract;
 - (b) the association is incorporated; and
 - (c) the incorporated association and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract—

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

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 20

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- (11) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by a court under this section) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this section, in relation to the contract.
- (12) Where—
- (a) a person purports to enter into a contract as trustee for a proposed incorporated association; and
 - (b) the association is incorporated within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the association is incorporated—
- then, notwithstanding any rule of law or equity, the trustee does not have any right of indemnity against the incorporated association in respect of the contract.
- (13) For the purposes of this section, a contract may be ratified by an incorporated association in the same manner as a contract may be made by an incorporated association under section 19 and the provisions of section 19 have effect as if—
- (a) the references in that section to making a contract were references to ratifying a contract; and
 - (b) the reference in sub-section (3) of that section to a contract executed, or purporting to have been executed, under the common seal of an incorporated association were a reference to a contract ratified, or purporting to have been ratified, under the common seal of an incorporated association.
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21. Purposes and rules

- (1) The purposes of an incorporated association are the purposes stated in the statement of purposes that accompanied the application for its incorporation under this Act as altered by the incorporated association from time to time in accordance with this Part.
- (2) The rules of an incorporated association are—
 - (a) where the application for the incorporation of the association was accompanied by a copy of rules that complied with section 6—those rules as altered by the incorporated association from time to time in accordance with this Part; and
 - (b) in any other case, the model rules, so far as applicable and as altered from time to time by the incorporated association in accordance with this Part.
- (3) Where, in relation to any matter in relation to which the model rules make provision but the rules of the incorporated association do not make provision, the provision of the model rules shall, in relation to that matter, be deemed to be included in the rules of the incorporated association.
- (4) A purpose or rule of an incorporated association is of no effect if it is inconsistent with this Act or contrary to law.

22. Alteration of rules

- (1) Subject to section 51, an incorporated association may, by special resolution, alter its statement of purposes or its rules.

S. 22(1)
amended by
No. 10236
s. 7(2)(b).

Associations Incorporation Act 1981
Act No. 9713/1981

Part IV—Effects of Incorporation

s. 22A

S. 22(2)
substituted by
No. 57/1997
s. 14.

(2) An alteration of the statement of purposes or the rules of an incorporated association does not take effect unless and until it is approved by the Registrar.

S. 22(3)
substituted by
No. 57/1997
s. 14.

(3) An application for the approval of an alteration must—

- (a) be made by the public officer; and
- (b) be made in a form approved by the Registrar; and
- (c) be accompanied by the prescribed fee; and
- (d) be made within 28 days after the alteration was passed by special resolution; and
- (e) give notice of the special resolution and set out particulars of the alteration; and
- (f) be accompanied by a declaration signed by at least 2 members of the committee of the incorporated association to the effect that the special resolution was passed in accordance with the Act; and
- (g) in the case of an alteration of the rules, be accompanied by a consolidated copy of the rules of the incorporated association, including the alteration.

S. 22(4)
substituted by
No. 57/1997
s. 14.

(4) The Registrar must approve that alteration unless the Registrar is satisfied that the alteration is contrary to this Act or the regulations.

S. 22A
inserted by
No. 57/1997
s. 15.

22A. Rules to be made available to members

An incorporated association must make a copy of its rules available for inspection at any reasonable time by a member at the request of that member.

PART V—MANAGEMENT

23. First committee of incorporated association

Unless the rules of an incorporated association otherwise provide, the first members of the committee of the incorporated association are the persons who were the members of the committee of the association immediately before the association was incorporated.

24. First public officer

S. 24
substituted by
No. 8/2003
s. 8.

- (1) The first public officer of an incorporated association is—
 - (a) the person upon whose application the association was incorporated; or
 - (b) if the application provides for a different person, that person.
- (2) A person cannot be the first public officer of an incorporated association unless the person—
 - (a) consents to being named as the first public officer; and
 - (b) has attained the age of 18 years; and
 - (c) is resident in the State.

25. Public officer

- (1) Where the office of public officer of an incorporated association at any time becomes vacant, the committee of the incorporated association shall, within fourteen days after the vacancy arises, appoint a person to fill the vacancy.
- (2) A person is incapable of being appointed as a public officer of an incorporated association unless—

Associations Incorporation Act 1981
Act No. 9713/1981

Part V—Management

s. 26

S. 25(2)(a)
amended by
Nos 69/1987
s. 5(1),
73/1996
s. 6(2).

(a) he has attained the age of eighteen years; and

(b) he is resident in the State.

S. 25(2A)
inserted by
No. 69/1987
s. 5(2),
repealed by
No. 73/1996
s. 6(3).

* * * * *

S. 25(2B)
inserted by
No. 69/1987
s. 5(2),
repealed by
No. 73/1996
s. 6(3).

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(3) The acts of a public officer are not invalid by reason only of any defect that may be discovered in his appointment or qualification.

26. Public officer may hold other offices

The public officer of an incorporated association may, unless its rules otherwise provide, hold any other office in the incorporated association.

27. Removal of public officer and vacancy in office

- (1) An incorporated association may remove a public officer from his office.
- (2) The office of public officer of an incorporated association becomes vacant if the person holding that office—
 - (a) dies;
 - (b) resigns his office by writing under his hand addressed to the committee of the incorporated association;

Associations Incorporation Act 1981
Act No. 9713/1981
Part V—Management

s. 28

- (c) is removed from office;
- (d) becomes bankrupt or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his estate for their benefit;
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (f) ceases to be resident in this State.

S. 27(2)(f)
amended by
No. 69/1987
s. 5(3)(a).

* * * * *

S. 27(2)(g)
repealed by
No. 69/1987
s. 5(3)(b).

28. Address of public officer

- (1) The public officer of an incorporated association shall, within fourteen days after his appointment, give notice in writing in the form approved by the Registrar and containing the prescribed particulars to the Registrar of his appointment and of his full name and address in Victoria, together with the prescribed fee (if any).

S. 28(1)
amended by
No. 35/2000
s. 3(c).

* * * * *

S. 28(2)
repealed by
No. 57/1997
s. 16.

29. Special resolution

- (1) For the purpose of this Act a resolution of an incorporated association is a special resolution if it is passed in accordance with this section.

S. 29
amended by
No. 10236
s. 8(2)(a),
substituted by
No. 57/1997
s. 17.

Associations Incorporation Act 1981
Act No. 9713/1981
Part V—Management

s. 29

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- (2) A special resolution is passed at a meeting if—
- (a) of the entitled members of the incorporated association who vote in person or (if proxies are allowed) by proxy at the meeting, not less than three quarters vote in favour of the resolution; and
 - (b) any additional requirements of the rules of the incorporated association relating to the passing of a special resolution have been met.

S. 29(2A)
inserted by
No. 8/2003
s. 9.

- (2A) If, in the opinion of the Registrar it is not practicable for a resolution to be passed in the manner specified in sub-section (2)(a), the resolution may be passed in a manner specified by the Registrar.

S. 29(2B)
inserted by
No. 8/2003
s. 9.

- (2B) An incorporated association may apply to the Registrar for approval to pass a special resolution otherwise than in the manner specified in sub-section (2)(a).
- (3) A resolution is not to be considered to have been passed as a special resolution under sub-section (2) unless not less than 21 days notice has been given in accordance with the rules to all of the entitled members of the incorporated association specifying the intention to propose the resolution as a special resolution.
- (4) At any meeting at which a special resolution is submitted, a declaration by the chairperson that the resolution has been carried is conclusive proof of the fact unless a poll is demanded.
- (5) In this section "**entitled member**" means a member of the incorporated association who is entitled under the rules of the incorporated association to vote.
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29A. Duties of committee members

S. 29A
inserted by
No. 57/1997
s. 18.

- (1) A member or former member of the committee of an incorporated association must not knowingly or recklessly make improper use of information acquired by virtue of his or her position in the incorporated 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 incorporated association.

Penalty: 60 penalty units.

- (2) A member of the committee of an incorporated association must not knowingly or recklessly make improper use of his or her position in the incorporated 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 detriment to the incorporated association.

Penalty: 60 penalty units.

- (3) If a person is found guilty of an offence against this section, the court, in addition to imposing any penalty, may order the person to pay a sum specified by the court to the incorporated association as compensation.

- (4) An order made under sub-section (3) must be taken to be a judgment debt due by the offender to the incorporated association and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

29B. Disclosure of interest

S. 29B
inserted by
No. 57/1997
s. 18.

- (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 incorporated association—

Associations Incorporation Act 1981
Act No. 9713/1981

Part V—Management

s. 29B

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- (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 in the statement submitted under section 30(3) by the incorporated association to its members at the next annual general meeting of the incorporated association.

Penalty: 10 penalty units.

- (2) Sub-section (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 incorporated association; or
 - (b) that the member of the committee is a member of a class of persons for whose benefit the incorporated 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 incorporated association.
 - (3) If 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 incorporated 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.
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Associations Incorporation Act 1981
Act No. 9713/1981
Part V—Management

s. 29C

29C. Voting on contract in which committee member has interest

S. 29C
inserted by
No. 57/1997
s. 18.

- (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 incorporated association must not take part in any decision of the committee with respect to that contract but may, subject to the provisions of this Part, take part in any deliberations with respect to that contract.

Penalty: 10 penalty units.

- (2) Sub-section (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 incorporated 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 incorporated association.
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Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30

PART VI—GENERAL MEETINGS AND ACCOUNTS

30. Annual general meeting

(1) An incorporated association shall, at least once in each calendar year, convene a general meeting, to be called an annual general meeting, of its members.

(2) An incorporated association may hold its first annual general meeting at any time within the period of eighteen months after its incorporation.

S. 30(2A)
inserted by
No. 57/1997
s. 19(1).

(2A) The second and any subsequent annual general meeting must be held within 5 months after the end of the financial year of the incorporated association.

S. 30(3)
amended by
No. 57/1997
s. 19(2).

(3) At the annual general meeting of an incorporated association, the incorporated association shall submit to its members a statement containing the particulars of the following—

(a) the income and expenditure of the incorporated association during its last financial year;

(b) the assets and liabilities of the incorporated association at the end of its last financial year;

(c) the mortgages, charges and securities of any description affecting any of the property of the incorporated association at the end of its last financial year; and

S. 30(3)(d)
amended by
No. 57/1997
s. 19(3).

(d) in respect of each trust of which the incorporated association was trustee during a period, being the whole or any part of the last financial year of the incorporated association—

(i) the income and expenditure of the trust during that period;

Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30

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- (ii) the assets and liabilities of the trust during that period; and
- (iii) the mortgages, charges and securities of any description affecting any of the property of the trust at the end of that period; and
- (e) any trust, held on behalf of the incorporated association by a person or body other than the incorporated association, in which funds or assets of the incorporated association are placed. **S. 30(3)(e) inserted by No. 57/1997 s. 19(3).**
- (3A) The statements submitted under sub-section (3) must— **S. 30(3A) inserted by No. 57/1997 s. 19(4).**
- (a) give a true and fair view of the financial position of the incorporated association during and at the end of its last financial year; and
- (b) in the case of a prescribed association, be accompanied by the accounts audited in accordance with section 30B.
- (3B) At, or as soon as practicable after, the conclusion of the annual general meeting of an incorporated association a committee member must certify, in the form approved by the Registrar, that— **S. 30(3B) inserted by No. 8/2003 s. 10(1).**
- (a) the committee member attended the annual general meeting; and
- (b) the statement referred to in sub-section (3) was submitted to the members of the incorporated association at the annual general meeting.
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Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30

S. 30(4)
substituted by
No. 69/1987
s. 6,
amended by
Nos 57/1997
s. 19(5)(b),
35/2000
s. 3(b).

(4) The public officer of an incorporated association must, within one month after the date of the annual general meeting of the incorporated association or, if the annual general meeting is not held within the period within which it is required by this section to be held, within one month after the last day of that period, give to the Registrar a statement in the form approved by the Registrar—

S. 30(4)(a)
amended by
No. 35/2000
s. 3(d).

(a) containing the particulars referred to in sub-section (3) and any other prescribed particulars; and

S. 30(4)(aa)
inserted by
No. 57/1997
s. 19(5)(a),
amended by
No. 8/2003
s. 10(2).

(aa) in the case of a prescribed association, accompanied by a copy of the accounts audited in accordance with section 30B and a copy of the auditor's report referred to in section 30B(1A); and

S. 30(4)(b)
substituted by
No. 8/2003
s. 10(3).

(b) if the meeting has been held, containing a statement from the public officer that the certificate referred to in sub-section (3B) has been completed and signed by a committee member who attended the annual general meeting and that the certificate is being kept by the incorporated association; and

(c) if the meeting has been held, accompanied by a statement of the terms of any resolution passed at that meeting concerning that statement; and

(d) accompanied by the prescribed fee (if any).

Penalty: 5 penalty units.

S. 30(4A)
inserted by
No. 8/2003
s. 10(4).

(4A) The incorporated association must keep the statement referred to in sub-section (3) and the certificate referred to in sub-section (3B) for at least 7 years after the date of submission or signature (as required).

Penalty: 20 penalty units.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30

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- (5) The Registrar may, on the application of the public officer of an incorporated association accompanied by the prescribed fee, in his discretion, extend, or further extend, the period for holding a general meeting or giving a statement under sub-section (4). **S. 30(5) amended by No. 10236 s. 8(2)(b).**
- (6) An application for an extension under sub-section (5) may be made, and the power of the Registrar under that sub-section may be exercised, notwithstanding that the period sought to be extended has expired. **S. 30(6) amended by No. 10236 s. 8(2)(c).**
- (7) The Registrar may, by notice in writing given to an incorporated association, exempt the incorporated association either generally or in relation to a specified year from complying with the provisions of sub-section (4) and may, by notice in writing under his hand given to an incorporated association, revoke any general exemption given under this sub-section to the incorporated association.
- (7A) An incorporated association must make available for inspection by its members a copy of the trust deed of any trust referred to in a statement under sub-section (3)(e). **S. 30(7A) inserted by No. 57/1997 s. 19(6).**
- (8) Where an incorporated association fails to comply with the provisions of this section, the incorporated association and each member of the committee or other body having the management of the incorporated association is guilty of an offence and liable to a penalty not exceeding 5 penalty units. **S. 30(8) amended by Nos 10236 s. 8(2)(d), 57/1997 s. 19(7).**

Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30A

S. 30A
inserted by
No. 57/1997
s. 20.

30A. Accounting records

An incorporated association must maintain adequate and accurate accounting records of the financial transactions of the incorporated association.

Penalty: 5 penalty units.

S. 30B
inserted by
No. 57/1997
s. 20.

30B. Accounts of prescribed associations

(1) A prescribed association must, after the end of each financial year of the incorporated association cause its accounts to be audited by—

- (a) a registered company auditor; or
- (b) a firm of registered company auditors; or
- (c) a person who is a member of CPA Australia or the Institute of Chartered Accountants in Australia; or
- (d) any other person who is approved by the Registrar as an auditor of the accounts of the incorporated association for the purposes of this section.

Penalty: 10 penalty units.

S. 30B(1)(c)
amended by
No. 8/2003
s. 11(1).

S. 30B(1A)
inserted by
No. 8/2003
s. 11(2).

(1A) A person who audits the accounts of a prescribed association must provide the association with a written report of the audit.

(2) A person may not be appointed as auditor of the accounts of the incorporated association for the purposes of this section if the person is—

- (a) a member of the committee of the incorporated association; or
- (b) an employer or employee of a member of that committee; or

Associations Incorporation Act 1981
Act No. 9713/1981

Part VI—General Meetings and Accounts

s. 30B

- (c) a member of the same partnership as a member of that committee; or
- (d) an employee of the incorporated association.

- (2A) The Registrar may grant approval to a suitably qualified person or class of suitably qualified persons (other than a person referred to in sub-section (2)) to audit the accounts of a prescribed association or a class of prescribed associations.
- (3) A prescribed association must keep all accounting records of the incorporated association for a period of 7 years after the completion of the transactions to which they relate.

S. 30B(2A)
inserted by
No. 8/2003
s. 11(3).

Penalty: 5 penalty units.

- (4) An incorporated association may apply in writing to the Registrar for an exemption from the requirements of sub-section (1).
- (5) The Registrar may grant the exemption subject to any conditions the Registrar thinks fit.
- (6) The Registrar may at any time, by notice in writing, vary or revoke an exemption under this section.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VII—Amalgamation

s. 31

PART VII—AMALGAMATION

31. Amalgamation of incorporated associations

- (1) Any two or more incorporated associations may apply to be incorporated as an amalgamated incorporated association.
- (2) An application shall not be made under sub-section (1) unless the terms of amalgamation and the statement of purposes and the proposed rules of the amalgamated incorporated association are approved by a special resolution of each of the incorporated associations.
- (3) An application under sub-section (1) may be made by the public officers of the incorporated associations in the form approved by the Registrar and shall—
 - (a) be accompanied by a copy of the proposed statement of purposes of the incorporated association to be formed by the amalgamation;
 - (b) be accompanied by—
 - (i) a copy of the proposed rules of the incorporated association to be formed by the amalgamation, being rules that comply with section 6 and have been approved by the incorporated associations;
 - (ii) a statement that the incorporated associations have approved the adoption of the model rules as the rules of the incorporated association to be formed by the amalgamation; or
 - (iii) a statement that the incorporated associations have approved the adoption of the model rules as the rules

S. 31(3)
amended by
No. 35/2000
s. 3(b).

S. 31(3)(b)
substituted by
No. 10236
s. 8(2)(e),
amended by
No. 69/1987
s. 13(2).

Associations Incorporation Act 1981
Act No. 9713/1981

Part VII—Amalgamation

s. 31

of the incorporated association to be formed by the amalgamation with the changes specified in the statement;

- (c) be accompanied by a notice in the form approved by the Registrar and containing the prescribed particulars of the passing of the special resolutions referred to in subsection (2);

S. 31(3)(c) amended by No. 35/2000 s. 3(c).

- (d) set out—

(i) the name of the incorporated association to be formed by the amalgamation, being a name under which an association may be incorporated in accordance with section 12;

- (ia) the name and address in Victoria of a person who has attained the age of 18 years and who is resident in the State and who has been nominated as the first public officer of the incorporated association to be formed by the amalgamation;

S. 31(3)(d)(ia) inserted by No. 10236 s. 8(2)(f), amended by No. 73/1996 s. 6(1).

* * * * *

S. 31(3)(d)(ii) repealed by No. 8/2003 s. 12.

(iii) such other particulars as may be prescribed; and

- (e) be accompanied by the prescribed fee.

- (4) If the Registrar is satisfied that each of the incorporated associations making the application has complied with the provisions of this Act and of the regulations and that the proposed statement of purposes and the proposed rules of the incorporated association to be formed by the

S. 31(4) substituted by No. 10236 s. 8(2)(g).

Associations Incorporation Act 1981
Act No. 9713/1981

Part VII—Amalgamation

s. 31

amalgamation are not contrary to this Act or the regulations, the Registrar shall—

- (a) grant a certificate of incorporation of the association formed by the amalgamation; and
 - (b) cancel the incorporation of each of the first-mentioned incorporated associations.
- (5) Upon the grant of a certificate of incorporation under this section, the property of each incorporated association that was a party to the amalgamation vests in the incorporated association formed by the amalgamation on and after the amalgamation and by reason of this Act without the necessity for any conveyance, transfer or assignment.
- (6) Any property vested in an incorporated association by reason of sub-section (5) is so vested subject to—
- (a) any trust; and
 - (b) any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant contract or liability—
- to which the property was subject immediately before it so vested.
- (7) All debts and liabilities, whether certain or contingent, of an incorporated association that was a party to the amalgamation existing at the date of the grant of the certificate of incorporation of the incorporated association formed by the amalgamation, shall, by reason of this Act, become and be the debts and liabilities of the incorporated association formed by the amalgamation.

S. 31(6)(b)
amended by
No. 10236
s. 8(2)(h).

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIA—Transfer of Incorporation

s. 31A

PART VIIA—TRANSFER OF INCORPORATION

Pt 7A
(Heading)
inserted by
No. 10236 s. 6,
substituted by
No. 57/1997
s. 21.

Pt 7A
(ss 31A–31C)
inserted by
No. 10236 s. 6.

31A. Definition

In this Part "prescribed body corporate"
means—

S. 31A
inserted by
No. 10236
s. 6,
amended by
No. 14/1995
s. 4,
substituted by
No. 57/1997
s. 22.

(a) a company within the meaning of the
Corporations Act that is taken to be
registered in Victoria; or

S. 31A(a)
substituted by
No. 44/2001
s. 3(Sch.
item 7.2).

(b) a co-operative under the **Co-operatives Act
1996**; or

(c) any body corporate that is incorporated,
registered or otherwise established under a
law applying in Victoria or in any place
outside Victoria and that is prescribed for the
purposes of this section.

31AA. Voluntary transfer of incorporation

An incorporated association may apply to
become registered or incorporated as a
prescribed body corporate.

S. 31AA
inserted by
No. 57/1997
s. 22.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIA—Transfer of Incorporation

s. 31AB

S. 31AB
inserted by
No. 57/1997
s. 22.

31AB. Direction to transfer incorporation

- (1) Subject to sub-section (2), the Registrar may, by notice to the incorporated association, direct an incorporated association to apply to become registered or incorporated as a prescribed body corporate within the period (being not less than 6 months) specified in the notice and subject to any conditions specified in the notice.
- (2) The Registrar may only give a direction under sub-section (1) if the Registrar is satisfied that the continued incorporation of the incorporated association under this Act would be inappropriate or inconvenient—
 - (a) by reason of the Registrar's assessment of—
 - (i) the scale or nature of the activities of the incorporated association; or
 - (ii) the value or nature of the property of the incorporated association; or
 - (iii) the extent or nature of the dealings which the incorporated association has with the public; or
 - (b) for any other prescribed reason.
- (3) Before giving a direction under sub-section (1), the Registrar must—
 - (a) give a notice to the incorporated association stating—
 - (i) the Registrar's intention to direct the incorporated association to apply for incorporation or registration as a prescribed body corporate; and
 - (ii) the grounds for the proposed direction; and

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIA—Transfer of Incorporation

s. 31AC

- (iii) that the direction will be made if an answer showing cause to the contrary is not received within 2 months after the date of the notice; and
- (b) give the incorporated association a reasonable opportunity to show cause why the direction should not be given.
- (4) An incorporated association may apply to the Tribunal for review of a direction under subsection (1). S. 31AB(4) amended by No. 101/1998 s. 24(2)(b)(i).
- (5) An application for review must be made within 28 days after the notice of the direction is received by the incorporated association. S. 31AB(5) amended by No. 101/1998 s. 24(2)(b)(ii).
- (6) Any direction of the Registrar under subsection (1) for an incorporated association to become registered as a prescribed body corporate within the meaning of section 31A(a) that is in force immediately before the commencement of item 7.2 of the Schedule to the **Corporations (Consequential Amendments) Act 2001** has effect on and after that commencement as if it referred to a prescribed body corporate within the meaning of that section as amended by that item. S. 31AB(6) repealed by No. 101/1998 s. 24(2)(b)(iii), new s. 31AB(6) inserted by No. 44/2001 s. 3(Sch. item 7.3).

31AC. Notice to Registrar

An incorporated association must notify the Registrar in writing of its transfer of incorporation within 14 days after it is registered or incorporated as a prescribed body corporate.

S. 31AC inserted by No. 57/1997 s. 22.

31B. Validity of contracts

A contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only that the incorporated association fails to comply with a direction of the Registrar under this Part.

S. 31B inserted by No. 10236 s. 6, amended by No. 57/1997 s. 23.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIA—Transfer of Incorporation

s. 31C

31C. Effect of transfer of incorporation

S. 31C
inserted by
No. 10236
s. 6.

S. 31C(1)
amended by
No. 14/1995
s. 4,
substituted by
No. 57/1997
s. 24(1).

S. 31C(2)
substituted by
No. 57/1997
s. 24(2).

S. 31C(3)
amended by
No. 57/1997
s. 24(3).

- (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to the registration or incorporation of the incorporated association as a prescribed body corporate.
- (2) Subject to this section, on a transfer of incorporation by an incorporated association, the incorporated association ceases to be incorporated under this Act.
- (3) The transfer of incorporation by an incorporated association does not affect the identity of the association which shall be deemed to be the same body before and after the transfer of incorporation and no act, matter or thing shall be affected or abated by the transfer of incorporation and, in particular, any claim by or against the incorporated association subsisting immediately before the transfer of incorporation may be continued by or against the prescribed body corporate formed by the transfer of incorporation in the name of the incorporated association or commenced by or against the prescribed body corporate so formed in the name of the prescribed body corporate.
- (4) Without limiting the generality of sub-section (3), nothing in sub-section (2)—
 - (a) affects any right, privilege, obligation or liability acquired or incurred under this Act;
 - (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIA—Transfer of Incorporation

s. 31C

(c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment—

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

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 32

Pt 8 (Heading and ss 32–37) amended by Nos 9761 s. 3, 10236 ss 7(2)(c)–(f), 8(2)(i)–(m), 110/1986 s. 140(2), 14/1995 s. 4, substituted as Pt 8 (Headings and ss 32–37) by No. 57/1997 s. 25.

Pt 8 Div. 1 (Heading and ss 32, 33) substituted as Pt 8 Div. 1 (Heading and ss 32–33E) by No. 57/2000 s. 3.

S. 32 substituted by No. 57/2000 s. 3.

S. 33 substituted by No. 57/2000 s. 3.

PART VIII—WINDING UP AND CANCELLATION

Division 1—Voluntary winding up

32. Definitions

In this Division—

"**assets**" in relation to an incorporated association, means the assets remaining after satisfaction of the debts and liabilities of the incorporated association and the costs, charges and expenses of the winding up;

"**winding up date**" in relation to an incorporated association, means the date on which that incorporated association resolves by special resolution to be wound up voluntarily.

33. Voluntary winding up

An incorporated association may be wound up voluntarily if the association so resolves by special resolution.

33A. Distribution of assets on voluntary winding up in accordance with special resolution

S. 33A
inserted by
No. 57/2000
s. 3.

- (1) An incorporated association may, on or after the date on which it resolves by special resolution to be wound up voluntarily, pass a special resolution relating to the distribution of assets of the incorporated association on that winding up.
- (2) Subject to sub-section (3), if an incorporated association passes a special resolution under sub-section (1), the assets of the incorporated association must be dealt with or disposed of in accordance with that special resolution.
- (3) A special resolution referred to in sub-section (1) that provides for the distribution of the assets of the incorporated association to any of the members of the association, or has the effect of distributing the assets of the incorporated association to any of the members of the incorporated association, is of no effect if—
 - (a) on the winding up date, or at any time in the period of 5 years immediately before that date, the rules of the incorporated association prohibited the distribution of the assets of the incorporated association to any of the members of the incorporated association on a voluntary winding up; or
 - (b) on the winding up date the rules of the incorporated association contained provisions referred to in section 51(4)(a)(ii).
- (4) Sub-section (3)(a) does not apply to a special resolution if—
 - (a) at any time in the period of 5 years immediately before the winding up date, the rules of the incorporated association were altered to provide for the distribution of the

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 33A

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- assets of the incorporated association to any of the members of the association; and
- (b) the incorporated association had the consent of the Minister under section 51(6) to alter the rules of the association in that manner.
- (5) Sub-section (3)(a) does not apply to a special resolution if—
- (a) that special resolution deals with or disposes of the assets of the association by distributing the assets to a specified member of the association that is a body corporate; and
- (b) the rules or constitution of that body corporate prohibit the disposition or distribution of the assets or property of the body corporate to the members of the body corporate on a voluntary winding up.
- (6) The public officer of an incorporated association must, within 28 days after the passing of a special resolution under sub-section (1), lodge with the Registrar—
- (a) notice in a form approved by the Registrar of the special resolution; and
- (b) a statutory declaration signed by at least 2 members of the committee to the effect that—
- (i) the special resolution was passed in accordance with this Act; and
- (ii) all statements and documents required to be lodged with the Registrar under this Act have been lodged by the incorporated association or are lodged with the notice.
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Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 33B

**33B. Distribution of assets on voluntary winding up
without special resolution relating to assets**

S. 33B
inserted by
No. 57/2000
s. 3.

- (1) Subject to sub-section (2), if a special resolution under section 33A is not passed by the incorporated association, the assets must—
 - (a) if the rules of the incorporated association do not otherwise provide, be divided amongst the members of the association in equal shares; and
 - (b) if the rules otherwise provide, be dealt with in accordance with the rules.
- (2) If on the winding up date, or at any time in the period of 5 years immediately before that date—
 - (a) the rules of the incorporated association prohibited the distribution of the assets of the incorporated association to any of the members of the incorporated association on a voluntary winding up; and
 - (b) the rules of the incorporated association were altered to provide for such a distribution—

the assets of the incorporated association must be dealt with or disposed of in accordance with the rules of the association as if the rules had not been so altered.
- (3) Despite sub-section (2), the assets of an incorporated association may be dealt with or disposed of in accordance with the rules of the association if—
 - (a) the rules of the association provide that the assets be dealt with or disposed of in a manner that distributes the assets to a specified member of the incorporated association that is a body corporate; and

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 33C

- (b) the rules or constitution of that body corporate prohibit the disposition or distribution of the assets or property of the body corporate to the members of the body corporate on a voluntary winding up.

S. 33C
inserted by
No. 57/2000
s. 3.

33C. Certain assets not to be distributed on voluntary winding up

- (1) Despite sections 33A and 33B, an asset or part of an asset of the incorporated association that consists of property supplied by a government department or public authority, including the unexpended portion of a grant must be returned to the department or authority that supplied it or to a body nominated by the department or authority.
- (2) Sub-section (2) does not apply if a contract or agreement between the incorporated association and the government department or public authority makes express provision to the contrary.

S. 33D
inserted by
No. 57/2000
s. 3.

33D. Application to Supreme Court by persons aggrieved under a voluntary winding up

Any person aggrieved by the operation of this Division in relation to the assets of an incorporated association may apply to the Supreme Court which may make any orders relating to the disposal of the assets that it thinks fit.

S. 33E
inserted by
No. 57/2000
s. 3.

33E. Distribution of assets of incorporated association subject to trusts

This Division applies subject to any trust affecting the assets or any of the assets of the incorporated association.

Division 2—Winding up by the court

34. Winding up by the court

S. 34
substituted by
No. 57/1997
s. 25.

- (1) The Supreme Court may order the winding up of an incorporated association if—
 - (a) the incorporated association has by special resolution resolved that it be wound up by the court; or
 - (b) the incorporated association suspends its operations for a whole year; or
 - (c) the incorporated association is unable to pay its debts; or
 - (d) the incorporated association has traded (except in accordance with section 51) or secured pecuniary profit for its members; or
 - (e) the incorporated association has, as trustee, traded (except in accordance with section 51) or secured pecuniary profit for the members of the incorporated association; or
 - (f) the incorporated association has engaged in activities outside the scope of its statement of purpose; or
 - (g) the court is of the opinion that it is just and equitable that the incorporated association should be wound up.
- (2) An application to the court for the winding up of an incorporated association must be made by—
 - (a) the incorporated association; or
 - (b) a member or creditor of the incorporated association; or
 - (c) the Registrar.

Division 3—Winding up on certificate of Registrar

35. Winding up on certificate of Registrar

S. 35
substituted by
No. 57/1997
s. 25.

- (1) An incorporated association may be wound up on the certificate of the Registrar if the necessary grounds for the taking of that action exist, as referred to in sub-section (2).
- (2) The necessary grounds for taking that action exist if the Registrar certifies—
 - (a) that the number of members is reduced to less than 5; or
 - (b) that the incorporated association is not in operation; or
 - (c) that the incorporated association has traded (except in accordance with section 51) or secured pecuniary profit for its members; or
 - (d) that the incorporated association has, as trustee, traded (except in accordance with section 51) or secured pecuniary profit for the members of the incorporated association; or
 - (e) that the incorporated association has not given to the Registrar statements in accordance with section 30(4) in respect of each of the preceding 2 years; or
 - (f) that incorporation of the incorporated association has been obtained by mistake or fraud; or
 - (g) that the incorporated association exists for an illegal purpose; or
 - (h) that the incorporated association has, after notice from the Registrar of any breach of this Act or the regulations or of the rules of the incorporated association, failed to

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36

remedy the breach within the time specified in the notice; or

- (i) that the incorporated association has failed to comply with a direction of the Registrar under section 31AB within the period specified in the notice under that section; or

- (ia) that the incorporated association has failed to become registered or incorporated as a prescribed body corporate within 6 months after the period specified in a notice under section 31AB; or

- (j) that in the opinion of the Registrar, circumstances exist which, in the public interest, justify the winding up of the incorporated association.

- (3) The Registrar must not certify under this section as to any matter unless the matter has been proved to the Registrar's satisfaction.

36. Procedure before certification

- (1) Before giving a certificate under section 35, the Registrar must—

- (a) give a notice to the incorporated association stating—

- (i) the Registrar's intention to give that certificate; and
- (ii) the grounds for giving the certificate; and
- (iii) that the certificate will be given if an answer showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later; and

S. 35(2)(ia)
inserted by
No. 35/2000
s. 5.

S. 36
substituted by
No. 57/1997
s. 25.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36A

S. 36(1)(b)
amended by
No. 35/2000
s. 12.

(b) give the incorporated association a reasonable opportunity to show cause why the certificate should not be given.

(2) A notice under sub-section (1) must be given by—

(a) sending it by prepaid letter addressed to the registered address of the incorporated association; and

(b) publishing it in a newspaper circulating generally in the State.

S. 36A
inserted by
No. 57/1997
s. 25.

36A. Review of certificate

(1) An incorporated association may apply to the Supreme Court to review a decision of the Registrar to give a certificate under section 35.

(2) An application under sub-section (1) must be made within 28 days after the certificate is given.

S. 36B
inserted by
No. 57/1997
s. 25.

36B. Procedure for winding up on certificate

(1) A winding up on a certificate of the Registrar commences—

(a) at the end of 28 days after the certificate is given unless an application is made under section 36A; or

(b) if an application is made under section 36A and the Supreme Court upholds the decision to give the certificate, on the determination of the application.

(2) On the commencement of the winding up, the Registrar may appoint a person to be the liquidator of the incorporated association.

(3) The liquidator need not be a registered liquidator under the Corporations Act.

S. 36B(3)
amended by
No. 44/2001
s. 3(Sch.
item 7.4).

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36C

- (4) The liquidator must within 10 days give notice of his or her appointment in the Government Gazette.
- (5) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Registrar.
- (6) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

36C. Costs of winding up

The reasonable costs of a winding up under this Division are payable out of the property of the incorporated association.

S. 36C
inserted by
No. 57/1997
s. 25.

Division 4—Application of Corporations Legislation

Pt 8 Div. 4
(Heading and
s. 36D)
inserted by
No. 57/1997
s. 25,
substituted by
No. 44/2001
s. 3(Sch.
item 7.5).

36D. Declaration of applied Corporations legislation matter

S. 36D
substituted by
No. 44/2001
s. 3(Sch.
item 7.5).

- (1) The winding up of an incorporated association under Division 1 or 3 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 5.5 (Voluntary winding up) and 5.6 (Winding up generally) of the Corporations Act, subject to the following modifications—
 - (a) the modifications referred to in subsection (3); and
 - (b) in the case of a winding up under Division 3, the provisions of Part 5.6 of the Corporations Act apply as if—

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36D

- (i) section 513B were omitted;
- (ii) after paragraph (b) of section 532(1) there were inserted—

"or

- (c) a person appointed by the Registrar as a liquidator of an incorporated association.";
- (iii) paragraph (c) of section 532(2) were omitted;
- (iv) in section 542(3), for paragraphs (b) and (c) there were substituted—

"(b) in the case of a winding up on the certificate of the Registrar—as the Registrar directs."; and

- (ba) in the case of a winding up under Division 1, the provisions of Part 5.6 of the Corporations Act apply as if, after section 532(1)(b), there were inserted—

"; or

- (c) in the case of an incorporated association with gross assets of \$10 000 or less or any higher amount that is prescribed, a person appointed by the incorporated association who is—
 - (i) a member of CPA Australia; or
 - (ii) a member of the Institute of Chartered Accountants in Australia; or
 - (iii) a person, or a member of a class of persons, approved by the Registrar whom the Registrar is satisfied has the requisite skills and experience to act as a liquidator of incorporated

S. 36D(1)(ba)
inserted by
No. 8/2003
s. 13.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36D

associations generally or for a specified incorporated association or class of incorporated associations."; and

- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note: Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

- (2) The winding up of an incorporated association (other than by a voluntary winding up) by the Court under Division 2 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 5.7 (Winding up bodies other than companies) of the Corporations Act, subject to the following modifications—
- (a) the modifications referred to in subsection (3); and
- (b) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note: Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36D

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- (3) The following modifications to the text of the Corporations Act apply for the purposes of subsections (1) and (2)—
- (a) a reference to a company or body is to be read as a reference to an incorporated association;
 - (b) a reference to the directors of a company is to be read as a reference to the members of the committee of an incorporated association;
 - (c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association;
 - (d) a reference to the principal place of business of a company is to be read as a reference to the registered address of an incorporated association;
 - (e) a reference to a company carrying on business or having a place of business is to be read as a reference to an incorporated association pursuing its objects;
 - (f) a reference to ASIC is to be read as a reference to the Registrar;
 - (g) a reference to a document in the prescribed form is to be read as a reference to a document in the corresponding form prescribed under the Corporations Act with all necessary modifications;
 - (h) a reference to the Court is to be read as a reference to the Supreme Court;
 - (i) a reference to the lodgement of a document is to be read as a reference to lodgement of that document with the Registrar;
-

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36E

- (j) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;
- (k) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;
- (l) a reference to an officer of a company is to be read as a reference to a member of the committee of an incorporated association and, where applicable, a reference to a past officer is a reference to a past member of the committee of an incorporated association;
- (m) a reference in sections 495, 542(1), 547 and 548 to a contributory of a company is to be read as a reference to a member of an incorporated association.

Division 5—Cancellation of incorporation

36E. Cancellation of incorporation

- (1) The Registrar may, by notice published in the Government Gazette, cancel the incorporation of an incorporated association which has been wound up or has commenced to be wound up.
- (2) The cancellation of incorporation does not affect the winding up of the association.
- (3) If the Registrar is of the opinion that any other incorporated association is not in operation he or she may, by notice, require the incorporated association to show good cause why its incorporation should not be cancelled.

S. 36E
inserted by
No. 57/1997
s. 25.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36F

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- (4) A notice under sub-section (3) must—
 - (a) be served on the incorporated association at its registered address; or
 - (b) if service cannot reasonably be effected, be published in a newspaper circulating generally in the State.
 - (5) If, on the expiration of 28 days after the notice is given under sub-section (3), the Registrar is satisfied that the incorporation of the association should be cancelled, the Registrar may, by notice published in the Government Gazette, cancel that incorporation.
 - (6) The Registrar must send notice of the cancellation of incorporation to the registered address of the incorporated association.
 - (7) Despite the cancellation of incorporation, the liability (if any) of the public officer, any member of the committee or any member of the incorporated association continues and may be enforced as if the incorporation had not been cancelled.

S. 36F
inserted by
No. 57/1997
s. 25.

36F. Vesting of property after cancellation

- (1) If the incorporation of an association is cancelled under this Division—
 - (a) the property of the incorporated association vests in the Registrar; and
 - (b) the Registrar may—
 - (i) give any directions as he or she thinks just for or with respect to the payment of the debts and liabilities of the incorporated association, the distribution of its assets and the winding up of its affairs; and

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36F

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- (ii) appoint a person for the purpose of investigating the affairs of the incorporated association with a view to the realisation of its assets, payment of debts, discharge of its liabilities, distribution of its assets and winding up of its affairs; and
 - (iii) if the Registrar is not able to arrange for the distribution of any property vested in him or her under this section, sell or otherwise dispose of or deal with that property; and
 - (iv) deduct any costs incurred by the Registrar under this section in relation to the incorporated association from the sale or disposal of the property vested in him or her; and
 - (v) do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of his or her powers under this section.
- (2) This section does not apply to an incorporated association which had been wound up or commenced to be wound up before the cancellation.
 - (3) The Registrar must pay into the Consolidated Fund any amount received from the sale or disposition of property under sub-section (1)(b)(iii), after deduction of costs.
 - (4) Any person who claims an entitlement to any money paid into the Consolidated Fund under this section may apply to the Supreme Court for an order for payment of that amount to the person.
-

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 37

- (5) Any amount ordered to be paid to a person under sub-section (4) shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).

S. 37
substituted by
No. 57/1997
s. 25.

37. Reinstatement of cancelled association

S. 37(1)
substituted by
No. 8/2003
s. 14.

- (1) If the Registrar is satisfied that the incorporation of an association should not have been cancelled, the Registrar may reinstate the association as an incorporated association.
- (2) If a person is aggrieved by the cancellation of the incorporation of an association, the Supreme Court, on an application made by the person at any time within 15 years after the cancellation, may if satisfied that it is just that the incorporation of the association be reinstated, order the Registrar to reinstate the incorporation of the association.
- (3) The order may be subject to any directions and conditions the Supreme Court thinks fit (including directions in relation to the retransfer of property vested in the Registrar under section 36F).
- (4) On the reinstatement of the incorporation of an association under this section, the incorporated association is to be taken to have continued in existence as if its incorporation had not been cancelled.
- (5) On the reinstatement of the incorporated association under sub-section (1), any property which may have vested in the Registrar under section 36F is re-vested in the incorporated association.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37A

PART VIIIA—POWERS OF INSPECTION

37A. Definition

In this Part, "**legal practitioner**" means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**.

Pt 8A
(Heading and
ss 37A–37Q)
inserted by
No. 57/1997
s. 26.

S. 37A
inserted by
No. 57/1997
s. 26,
repealed by
No. 17/1999
s. 21(2),
new s. 37A
inserted by
No. 18/2005
s. 18(Sch. 1
item 7).

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S. 37B
inserted by
No. 57/1997
s. 26,
repealed by
No. 17/1999
s. 21(2).

37C. Inspector's identity card

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S. 37C
inserted by
No. 57/1997
s. 26.

S. 37C(1)(2)
repealed by
No. 17/1999
s. 21(3).

- (3) An inspector must produce his or her identity card on request on applying for admission to any premises.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37D

S. 37D
inserted by
No. 57/1997
s. 26.

37D. Inspectors may require certain persons to appear, answer questions and produce documents

- (1) For the purpose of ascertaining whether the provisions of this Act and the regulations have been complied with, an inspector may by notice in the prescribed form—
 - (a) require an incorporated association to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the incorporated association; and
 - (b) require any person who is involved in the activities of an incorporated association to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the incorporated association; and
 - (c) require any person who is involved in the activities of an incorporated association—
 - (i) to attend before the inspector at a time and place specified in the notice; and
 - (ii) to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the incorporated association.
- (2) A person is to be considered to be involved in the activities of an incorporated association if the person—
 - (a) is or has been an officer or employee of, or an agent, banker, legal practitioner, auditor or other person acting in any capacity for or on behalf of, the incorporated association (including an incorporated association that is

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37E

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- in the course of being wound up or has had its incorporation cancelled); or
- (b) is a person who has any relevant documents relating to the incorporated association in his or her possession or control; or
 - (c) is a person who was a party to the creation of any relevant documents relating to the incorporated association.
- (3) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.

37E. Inspector's powers of entry

S. 37E
inserted by
No. 57/1997
s. 26.

- (1) An inspector may enter any place and may search for and seize any relevant documents or anything that the inspector believes on reasonable grounds to be connected with an offence against this Act that is found on or in the place, if the entry, search and seizure are made—
 - (a) with the consent of the occupier after the inspector has—
 - (i) informed the occupier of the purpose of the search; and
 - (ii) informed the occupier that anything seized during the search may be used in evidence in court; and
 - (iii) informed the occupier that the occupier may refuse to give consent to the entry and search; and
 - (iv) produced his or her identity card for inspection; or
 - (b) in accordance with a warrant issued under section 37F.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37F

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- (2) If an occupier consents to an entry and search, the inspector who requested consent must ask the occupier to sign an acknowledgment in the prescribed form stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized in the search may be used in evidence in court; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (3) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment immediately.
- (4) If, in any proceeding, an acknowledgment is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to an entry and search.

S. 37F
inserted by
No. 57/1997
s. 26.

37F. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to a particular place if—
- (a) an incorporated association or person does not comply with a requirement of an inspector under section 37D within the time specified in the notice; or
 - (b) there are reasonable grounds for suspecting that there may be at that place any document or thing that may be evidence of the commission of an offence against this Act or the regulations.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37F

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- (2) The magistrate may issue the search warrant if the magistrate is satisfied by the evidence on oath, whether oral or by affidavit, of an inspector that there are reasonable grounds for suspecting that there is or may be within the next 28 days, at that place—
- (a) a relevant document; or
 - (b) a document or thing that may be evidence of the commission of an offence against this Act or the regulations.
- (3) A search warrant under this section authorises the inspector named in the warrant and any assistants the inspector considers necessary—
- (a) to enter the place specified in the warrant, if necessary by force; and
 - (b) to search for and seize—
 - (i) a relevant document named or described in the warrant; or
 - (ii) a document or thing named or described in the warrant and which the inspector believes on reasonable grounds, to be connected with an offence.
- (4) A search warrant issued under this section must state—
- (a) the purpose for which the search is required and the nature of the offence suspected; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
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Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37G

- (d) a day not being later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989**.
- (6) Except as provided by this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 37G
inserted by
No. 57/1997
s. 26.

37G. Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the inspector has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) An inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

S. 37H
inserted by
No. 57/1997
s. 26.

37H. Details of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises where a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person; and
- (b) give to the person a copy of the warrant.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37I

37I. Seizure of documents or things not mentioned in the warrant

S. 37I
inserted by
No. 57/1997
s. 26.

If, in the course of executing a search warrant, an inspector finds a document or thing that he or she believes on reasonable grounds to be—

- (a) connected with the offence, although not the document or thing named or described in the warrant; or
- (b) connected with another offence against this Act—

and the inspector believes, on reasonable grounds, that it is necessary to seize that document or thing in order to prevent its concealment, loss or destruction, the warrant is deemed to authorise the inspector to seize the document or thing.

37J. Power of inspector to require information or documents

S. 37J
inserted by
No. 57/1997
s. 26.

An inspector who—

- (a) exercises a power of entry under this Part; and
- (b) produces his or her identity card for inspection by a person—

may, to the extent that it is reasonably necessary to determine compliance with this Act, require the person to give information to the inspector, orally or in writing, to produce documents to the inspector and to give reasonable assistance to the inspector.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37K

s. 37K
inserted by
No. 57/1997
s. 26.

37K. Functions of inspectors in relation to relevant documents

- (1) An inspector has the following powers in relation to relevant documents produced to the inspector pursuant to a requirement made under this Part—
 - (a) power to take possession of the documents or secure them against interference;
 - (b) power to make copies, or take extracts from, the documents;
 - (c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate;
 - (d) power to retain possession of the documents for such reasonable period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.
- (2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37L

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- (4) An inspector must not take possession of a document apparently in the possession or custody of a person unless the inspector makes out and tenders to the person a written receipt—
- (a) identifying the document; and
 - (b) stating the name of the inspector and the reason why the document is being seized.

37L. Offence—failing to comply with requirements of inspector

S. 37L
inserted by
No. 57/1997
s. 26.

- (1) A person must not refuse or fail, without reasonable excuse, to comply with a requirement of an inspector under this Part to produce relevant documents or to give reasonable assistance to the inspector.

Penalty: 60 penalty units.

- (2) A person must not—
- (a) give information to an inspector that the person knows to be false or misleading in a material particular; or
 - (b) produce a document that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

- (3) A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Act.

Penalty: 60 penalty units.

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37M

S. 37M
inserted by
No. 57/1997
s. 26.

37M. Protection from incrimination

A person may refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Part if the giving of the information, the production of the document or the doing of that other thing would tend to incriminate the person.

S. 37N
inserted by
No. 57/1997
s. 26.

37N. Privilege

- (1) A legal practitioner is entitled to refuse to comply with a requirement under section 37D or 37J relating to a relevant document if—
 - (a) the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner; or
 - (b) the legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.
- (2) The legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.
- (3) The legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is an incorporated association in the course of being wound up) the liquidator agrees to the legal practitioner complying with the requirement.
- (4) If the legal practitioner refuses to comply with the requirement, he or she must immediately furnish in writing to the Registrar—

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 37O

- (a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner); and
- (b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Penalty: 60 penalty units.

37O. Police aid for inspectors

S. 37O
inserted by
No. 57/1997
s. 26.

- (1) An inspector may call to his or her aid a member of the police force if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions as an inspector.
- (2) A member of the police force has, while acting in aid of an inspector, all the functions of an inspector.

37P. Report on investigation

S. 37P
inserted by
No. 57/1997
s. 26.

As soon as practicable after completing an investigation under this Part, an inspector must give a written report on the result of the investigation to the Registrar.

37Q. Secrecy

S. 37Q
inserted by
No. 57/1997
s. 26.

- (1) An inspector must not disclose information acquired in the course of an investigation under this Part except—
 - (a) for the purpose of conducting the investigation and making a report of the investigation; or
 - (b) as permitted by sub-section (2); or
 - (c) for the purpose of any proceedings under this Act; or

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIIIA—Powers of Inspection

s. 36Q

(d) with the consent of the person to whom the information relates.

Penalty: 60 penalty units.

(2) An inspector may disclose information acquired in the course of an investigation—

(a) to a member of the police force, if the inspector reasonably suspects that an offence has been committed; or

(b) to a court or tribunal; or

(c) to a person appointed as the liquidator of the incorporated association.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 38

PART IX—MISCELLANEOUS

38. Registrar of Incorporated Associations

Subject to the **Public Administration Act 2004**, there shall be a Registrar of Incorporated Associations and such Deputy or Assistant Registrars as are required for the purposes of this Act.

S. 38
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 16).

38A. Registrar may enter into arrangements or agreements

The Registrar may enter into arrangements or agreements with any person or body to act as the agent of the Registrar in the carrying out of his or her functions except any function under section 7(2), 10(4A), 31AB, 35 or 36E.

S. 38A
inserted by
No. 57/1997
s. 27.

38B. Delegation by Minister

The Minister may, by instrument, delegate to the Registrar the power of the Minister to give consent under section 12(1).

S. 38B
inserted by
No. 35/2000
s. 6.

39. Register

(1) The Registrar must keep a register of incorporated associations open for public inspection in the form determined by the Registrar.

S. 39(1)
substituted by
Nos 10236
s. 8(2)(n),
8/2003 s. 15.

(1A) The purposes of keeping the register are—

- (a) to enable members of the public to have access to information about the purposes, rules, contact details and public officers of incorporated associations in Victoria;
- (b) to enable members of the public to have access to the annual returns of incorporated associations in Victoria.

S. 39(1A)
inserted by
No. 8/2003
s. 15.

Associations Incorporation Act 1981
Act No. 9713/1981
Part IX—Miscellaneous

s. 39

S. 39(1B)
inserted by
No. 8/2003
s. 15.

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- (1B) The register must include details of the following in relation to each incorporated association—
- (a) incorporated association number issued by the Registrar;
 - (b) incorporated association name;
 - (c) previous names of the incorporated association and the dates they were current;
 - (d) current registered address and date registered;
 - (e) previous registered address and date registered;
 - (f) current postal address;
 - (g) current status of incorporation;
 - (h) date incorporated or cancelled;
 - (i) name and date of appointment of current public officer;
 - (j) name and date of appointment of previous public officer;
 - (k) date on which the financial year of the incorporated association ends;
 - (l) copy of each annual return lodged and date of lodgment;
 - (m) date of last annual general meeting;
 - (n) whether or not the incorporated association is a prescribed association;
 - (o) copy of current statement of purposes and date approved;
 - (p) copy of current rules and date approved;
 - (q) any business name that has been registered;
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 39A

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- (r) Australian Business Number (if any) issued under the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth issued to the incorporated association;
 - (s) any information prescribed by the regulations as forming part of the register.
- (2) Subject to the **Public Records Act 1973**, the Registrar may, if in his opinion it is no longer necessary or desirable to retain it, destroy or dispose of any document a transparency of which has been incorporated with the register kept under this section.

39A. Corrections of register

S. 39A
inserted by
No. 35/2000
s. 7.

- (1) The Registrar may correct any error or omission in the Register by—
 - (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) omitting an entry—

if he or she decides that the correction is necessary.

- (2) The Registrar must not omit an entry in the register unless satisfied that the whole of the entry was included in error.

39B. Restriction of personal information

S. 39B
inserted by
No. 8/2003
s. 16.

- (1) A person whose personal information is held on the register of incorporated associations may apply to the Registrar to restrict public access to some or all of that personal information.
- (2) If the Registrar is satisfied that exceptional circumstances exist justifying the restriction of public access to that person's personal information, the Registrar may restrict public access to some or all of that personal information.

- (3) The restriction of public access under sub-section (2) may be for the period and on the conditions that the Registrar thinks fit.
- (4) If the Registrar is satisfied that it is in the public interest that restricted personal information be released to a person who applies for it, the Registrar may release some or all of the information to the person on any condition that the Registrar thinks fit.
- (5) If the Registrar decides to release restricted personal information, the Registrar must give written notice of the decision to the person whose restricted personal information is to be released.
- (6) The Registrar must not release restricted personal information until 28 days after giving written notice of the decision to release the information to the person whose restricted personal information is to be released.

S. 39C
inserted by
No. 8/2003
s. 16.

39C. Rights of review

- (1) A person whose interests are affected by a decision of the Registrar under section 39B may apply to the Tribunal for review of that decision.
- (2) An application for review under sub-section (1) must be lodged with the Tribunal within 28 days after—
 - (a) notice of the decision was given; or
 - (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 40

40. Inspection of register

(1) A person may—

- (a) inspect the register referred to in section 39 on payment of the prescribed fee (if any);
- (b) inspect prescribed documents or documents of a prescribed class kept by the Registrar relating to an incorporated association on payment of the prescribed fee (if any);
- (c) obtain, on payment of the prescribed fee, a certified copy of a document that the person may inspect under paragraph (b); and
- (d) obtain, on payment of the prescribed fee, a copy of a document that the person may inspect under paragraph (b).

S. 40(1) amended by No. 10236 s. 8(2)(o)(i).

S. 40(1)(c) inserted by No. 10236 s. 8(2)(o)(ii).

S. 40(1)(d) inserted by No. 10236 s. 8(2)(o)(ii).

(2) If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the register is produced for inspection, a person is not entitled pursuant to sub-section (1) to require the production of the original of that document.

S. 40(2) amended by No. 69/1987 s. 7.

40A. Duplicate certificate of incorporation

A person may, on payment of the prescribed fee, obtain a certified duplicate of a certificate of incorporation of an incorporated association.

S. 40A inserted by No. 10236 s. 8(2)(p).

41. Notice of register etc.

A person has notice of a fact or matter noted on the register kept under this Act or of a document held by the Registrar and available for inspection in accordance with this Act—

- (a) if he has actual notice of that fact, matter or document; or

- (b) if he has been put upon enquiry as to the existence of the fact, matter or document and has deliberately abstained from inquiry or further inquiry when he might reasonably have expected the inquiry or further inquiry to reveal the fact, matter or document.

42. Authority of public officer etc.

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

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

43. Translation of instruments

- (1) Where under this Act a person gives to or lodges with the Registrar any instrument or a copy of any instrument and the instrument is not written in the English language, the person shall at the same time give to or lodge with the Registrar a certified translation of the instrument into the English language.
- (2) In this section—
- "certified"** in relation to the translation of a document, means certified by a statement in writing to be a correct translation of the document into the English language;
- "instrument"** includes any rules, trust or other document.

44. Evidentiary provisions

- (1) The Registrar may, by writing under his hand, certify—
- (a) that, on a date specified in the certificate, an incorporated association was, or was not, an incorporated association;
 - (aa) that a requirement of this Act specified in the certificate—
 - (i) had or had not been complied with at a date or within a period specified in the certificate; or
 - (ii) had been complied with at a date specified in the certificate but not before that date;
 - (b) that, on a date specified in the certificate, a person specified in the certificate was, or was not, the public officer of an incorporated association specified in the certificate;
 - (ba) that, on a date specified in the certificate, the registered address of a specified incorporated association last notified under this Act to the Registrar was the address specified in the certificate;
 - (c) that, on a date specified in the certificate, the address of the public officer of a specified incorporated association last notified under this Act to the Registrar was the address specified in the certificate; and
 - (d) that a copy of the statement of purposes or rules of, or trusts relating to, an incorporated association is a true copy of the statement of purposes, rules or trusts as at a date specified in the certificate—

S. 44(1)(aa)
inserted by
No. 69/1987
s. 8.

S. 44(1)(ba)
inserted by
No. 57/1997
s. 28.

S. 44(1)(d)
substituted by
No. 10236
s. 8(2)(q).

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 45

and such a certificate is prima facie evidence of the matters stated in the certificate.

- (2) A certificate of incorporation of an association granted under section 7, 10 or 31 is conclusive evidence of the incorporation of the association under this Act.
- (3) A copy of a document relating to an incorporated association certified by the Registrar as a true copy is admissible in evidence as of equal validity with the original document.

S. 44(3)
inserted by
No. 10236
s. 8(2)(r).

45. Payment of fees on lodging documents

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

S. 45A
inserted by
No. 57/1997
s. 29.

45A. Method of lodgment

- (1) Subject to section 45, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission.
- (2) If the Registrar receives from a person a copy of a document under sub-section (1), the Registrar may require that person to produce and lodge the original of the document.
 - (2A) The Registrar may require a person to produce and lodge the original of any document an incorporated association is required to keep under this Act.
 - (2B) Sub-sections (2) and (2A) do not apply to any document—
 - (a) created by a person using software approved by the Director of Consumer Affairs Victoria

S. 45A(2)
substituted by
No. 8/2003
s. 17.

S. 45A(2A)
inserted by
No. 8/2003
s. 17.

S. 45A(2B)
inserted by
No. 8/2003
s. 17.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 45B

and lodged on an Internet site operated by the State; and

(b) forwarded by electronic transmission to the Registrar.

- (2C) A person must comply with a requirement of the Registrar under sub-section (2) or (2A) within 28 days after the person received the request from the Registrar or such longer time as determined by the Registrar.

S. 45A(2C)
inserted by
No. 8/2003
s. 17.

Penalty: 5 penalty units.

- (3) If the person does not comply with a requirement of the Registrar within the period specified in sub-section (2C), the person is to be taken not to have lodged the document.

S. 45A(3)
substituted by
No. 8/2003
s. 17.

- (4) An incorporated association must keep the original of any document lodged with the Registrar, whether lodged in electronic or other form, for a period of 7 years after the date of lodging.

S. 45A(4)
inserted by
No. 8/2003
s. 17.

Penalty: 20 penalty units.

- (2) If the Registrar receives from a person a copy of a document under sub-section (1), the Registrar may require that person to produce and lodge the original within the time specified by the Registrar.

- (3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have lodged the document.

45B. Approval of special lodging arrangements

S. 45B
inserted by
No. 35/2000
s. 8.

- (1) Despite the requirements of this Act, the Registrar, by written notice, may give approval for a special arrangement for the electronic transmission or lodging of copies of documents under this Act to—

Associations Incorporation Act 1981
Act No. 9713/1981
Part IX—Miscellaneous

s. 45B

- (a) the public officer; or
 - (b) a specified agent on behalf of a specified person or persons or class of persons.
- (2) An approval may provide an exemption (or a partial exemption) for the person or persons for or on behalf of whom the documents are lodged or the public officer or agent from specified provisions of this Act relating to the authentication or signature of documents and the lodging of documents.
- (3) The Registrar may grant or refuse an approval to a person who applies in writing for that approval.
- (4) The Registrar may vary or cancel an approval by written notice.
- (5) The Registrar may impose any condition on an approval under this section including a condition that the Registrar will refuse to accept a document for lodgement unless he or she is satisfied that a majority of the Committee for the time being of the association proposed to be incorporated or the incorporated association has given written authorisation to the public officer or other person specified in the approval—
- (a) to sign copies of specified documents for or on behalf of the person or persons who would otherwise be required by or under this Act to sign the documents;
 - (b) to lodge with the Registrar copies of specified documents for or on behalf of the person who would otherwise be required by or under this Act to lodge the documents.
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- (6) The Registrar must note on the register kept under section 39 details of any authorisations required under sub-section (5).
 - (7) A document required to be lodged by a person under this Act is deemed to be signed by the person or persons required to sign the document if a copy of the document is signed on the person's or persons' behalf by a person authorised in accordance with sub-section (5) to so sign the copy of the document.
 - (8) Sub-section (7) does not relieve any person who would otherwise be required to sign the document from signing the original document.

45C. Signatures

S. 45C
inserted by
No. 35/2000
s. 8.

- (1) Despite any other provision of this Act if the Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document the Registrar may accept the document without its being signed by that person but the person is not relieved of the requirement to sign the document.
- (2) If a document has been received by the Registrar for the purposes of lodgement under this Act or the regulations made under this Act, it is sufficient compliance with a requirement for the document to be signed if the original document is signed.

45D. Waiver or refund of fees

S. 45D
inserted by
No. 8/2003
s. 18.

The Registrar may, in a particular case or class of cases—

- (a) waive or reduce fees that would otherwise be payable under this Act; or
- (b) refund, in whole or in part, fees paid under this Act.

46. Incorrect etc. documents lodged with Registrar

If the Registrar is of opinion that a document submitted for lodgment with the Registrar—

- (a) contains matter contrary to law;
- (b) contains matter that, in a material particular, is false or misleading in the form and context in which it is included;
- (c) by reason of an omission or misdescription has not been duly completed;
- (ca) is illegible in any part;

S. 46(ca)
inserted by
No. 57/1997
s. 30.

- (cb) if submitted in electronic form, is not readily accessible by the Registrar so as to be useable by the Registrar;
- (d) does not comply with the requirements of this Act; or
- (e) contains an error, alteration or erasure—

the Registrar may refuse to register or receive the document and may request—

- (f) that the document be appropriately amended or completed and resubmitted;
- (g) that a fresh document be submitted in its place; or

S. 46(a)
amended as
s. 46(f) by
No. 10236
s. 8(2)(s).

S. 46(b)
amended as
s. 46(g) by
No. 10236
s. 8(2)(s).

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 47

(h) where the document has not been duly completed, that a supplementary document in the form approved by the Registrar be lodged.

S. 46(c) amended as s. 46(h) by No. 10236 s. 8(2)(s), amended by No. 35/2000 s. 3(b).

47. Copies or extracts of records to be admitted in evidence

S. 47 amended by No. 10236 s. 8(2)(t), substituted by No. 57/1997 s. 31.

- (1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record relating to affairs of an incorporated association is admissible in evidence as if it were the original record or the relevant part of the original record.
- (2) A copy of or extract from a record is not admissible in evidence under sub-section (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.
- (3) For the purposes of sub-section (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

48. Service of documents

A document may be served on an incorporated association by addressing it to the incorporated association and leaving it at, or by sending it by post to, the registered address of the incorporated association last notified under this Act to the Registrar.

S. 48 amended by No. 57/1997 s. 32.

49. False or misleading statements

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 49

S. 49(1)
amended by
No. 57/1997
s. 33(1).

- (1) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Registrar or in a declaration made under this Act or in a document submitted to a general meeting of members of an incorporated association, makes or authorizes the making of a statement that to his knowledge is false or misleading in a material particular or omits or authorizes the omission of any matter or thing without which the document is to his knowledge misleading in a material respect, is guilty of an offence.

Penalty: 60 penalty units.

S. 49(2)
amended by
Nos 10236
s. 8(2)(u),
57/1997
s. 33(2).

- (2) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Registrar or in a declaration made under this Act or in a document submitted to a general meeting of members of an incorporated association—
- (a) makes or authorizes the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorizes the omission of any matter or thing without which the document would be misleading—

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: 60 penalty units.

- (3) For the purposes of sub-sections (1) and (2), where—
- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 49A

a document required by or for the purposes of this Act or required to be submitted to the Registrar; and

- (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is to the person's knowledge, misleading in a material respect—

the person shall be deemed to have authorized the making of the statement or the omission of the matter or thing.

49A. Retention of documents

If a public officer or other person has lodged a copy of a document under this Act signed by the public officer or other person in accordance with an approval under section 45B, the public officer or person who lodged the copy of the document must ensure that the original document signed by any person who is required to sign the document is kept so that it is able to be produced readily to the Registrar for not less than 7 years after the document was lodged with the Registrar.

Penalty: 30 penalty units.

S. 49A
inserted by
No. 35/2000
s. 10.

50. Penalties

- (1) A person who—
- (a) does an act or thing that he is forbidden to do by or under a provision of this Act;
- (b) does not do an act or thing that he is required or directed to do by or under a provision of this Act; or

S. 50
amended by
No. 69/1987
s. 9(1).

S. 50(1)
amended by
No. 57/1997
s. 33(3).

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 50A

(c) otherwise contravenes or fails to comply with a provision of this Act—

is, unless that provision or another provision of this Act provides that he is guilty of an offence, guilty of an offence by virtue of this section.

Penalty: 5 penalty units.

(2) Despite anything to the contrary in any other Act, proceedings for any offence against this Act may be commenced within three years after the commission of the alleged offence.

S. 50(2)
inserted by
No. 69/1987
s. 9(2).

50A. Continuing offences

(1) If—

(a) by or under a provision of this Act, an act or thing is required or directed to be done within a particular period or before a particular time; and

(b) failure to do the act or thing within that period or before that time constitutes an offence; and

(c) the act or thing is not done within that period or before that time—

then—

(d) the obligation to do the act or thing continues, despite the fact that that period has expired or that time has passed, and whether or not a person is convicted of an offence in relation to failure to do the act or thing, until the act or thing is done; and

(e) sub-section (3) applies.

(2) If—

(a) by or under a provision of this Act, an act or thing is required or directed to be done but neither a period within which, nor a time

S. 50A
inserted by
No. 69/1987
s. 10.

Associations Incorporation Act 1981
Act No. 9713/1981
Part IX—Miscellaneous

before which, the act or thing is to be done is specified; and

(b) failure to do the act or thing constitutes an offence; and

(c) a person is convicted or found guilty of an offence in relation to the failure to do the act or thing— **S. 50A(2)(c) amended by No. 8/2003 s. 19(a).**

then—

(d) the obligation to do the act or thing continues, despite the conviction or finding of guilt, until the act or thing is done; and **S. 50A(2)(d) amended by No. 8/2003 s. 19(b).**

(e) sub-section (3) applies.

(3) If—

(a) at a particular time a person is convicted or found guilty of an offence in relation to the failure to do the act or thing; and **S. 50A(3)(a) amended by No. 8/2003 s. 19(c).**

(b) the failure to do the act or thing continues after that time—

the person is, in relation to the failure, guilty of a further offence in respect of so much of the period throughout which the failure continues as elapses after that time.

(4) If a person is guilty by virtue of sub-section (3) of an offence in respect of a particular period, the penalty applicable to the offence is a fine not exceeding the amount obtained by multiplying one penalty unit by the number of days in that period. **S. 50A(4) amended by No. 8/2003 s. 19(d).**

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 50B

S. 50B
inserted by
No. 69/1987
s. 10,
amended by
No. 57/1989
s. 3(Sch.
item 10).

50B. Penalty notices

- (1) Where the Registrar has reasonable cause to believe that, whether before or after the commencement of section 9 of the **Associations Incorporation and Business Names (Amendment) Act 1987**, a person has committed a prescribed offence, the Registrar or a person authorised by the Registrar may, subject to subsection (2), serve on the person a notice in the prescribed form—
 - (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and
 - (b) setting out the prescribed penalty in respect of the prescribed offence; and
 - (c) stating—
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—
 - (A) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty; and
 - (B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
 - (C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 50B

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- penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Magistrates' Court Act 1989** may be used, against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
- (A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
- (B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Magistrates' Court Act 1989** may be used, against the person.
- (2) Sub-section (1) does not empower the Registrar or a person authorised by the Registrar—
- (a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 50B

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- (b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 50(2).
- (3) A notice under sub-section (1) may be served—
- (a) in the case of a natural person—
 - (i) personally; or
 - (ii) by post addressed to the last known address of the person; or
 - (b) in the case of an incorporated association, in accordance with section 48.
- (4) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence; or
 - (b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 50A applies in relation to the continued failure to do that act
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 50B

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- or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing; or
- (c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Magistrates' Court Act 1989** may be used, against the person in respect of the prescribed offence; or
- (d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Magistrates' Court Act 1989** may be used, against the person in respect of the prescribed offence.
- (5) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified
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in the notice—proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Magistrates' Court Act 1989** may be used, against the person in respect of the prescribed offence.

- (6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (7) Except as provided by sub-sections (4)(a) and (b) and (5)(a), this section does not affect the operation of any provision of this or any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.
- (8) In this section, "**authority**" includes a person.

50C. Application of Fair Trading Act 1999

- (1) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except sections 151A, 151B, 151C, 153 and 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
- (2) For the purposes of sub-section (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
 - (a) proceedings for an offence against a provision of this Act (except Part VIIIA); or
 - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by

S. 50C
inserted by
No. 103/2004
s. 79.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 51

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- sub-section (1)) against a person alleged to have contravened a provision of this Act (except Part VIIIA); or
- (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by sub-section (1)).

51. Incorporated association not to trade etc.

- (1) An incorporated association shall not—
- (a) trade;
 - (b) secure pecuniary profit for its members; or
 - (c) as trustee, trade or secure pecuniary profit for persons who are members of the incorporated association.

S. 51(1)
amended by
No. 57/1997
s. 33(4).

Penalty: 60 penalty units.

- (2) A member of an incorporated association who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly knowingly concerned in or party to the commission of an offence by the incorporated association against sub-section (1) shall be deemed to have committed that offence and is punishable accordingly.
- (3) The members of an incorporated association that are deemed to have committed an offence against this section are jointly and severally liable to any creditor of the incorporated association for all debts and liabilities incurred by it in or in consequence of the trading or securing of pecuniary profit for its members.

Associations Incorporation Act 1981
Act No. 9713/1981
Part IX—Miscellaneous

S. 51(4)
inserted by
No. 10236
s. 7(1).

- (4) The prohibition against trading contained in sub-section (1) does not apply to—
- (a) an incorporated association that complies with sub-section (6) and—
 - (i) the predominant purpose of which is charitable;
 - (ii) the rules of which contain provisions precluding any distribution of its assets, in the event of its winding-up or dissolution, otherwise than for a charitable purpose; and
 - (iii) the rules of which contain provision authorizing trading by the incorporated association in accordance with this section; or
 - (b) an incorporated association that is declared by Order of the Governor in Council published in the Government Gazette to be an incorporated association to which the prohibition against trading does not apply.

S. 51(5)
inserted by
No. 10236
s. 7(1).

- (5) An Order under sub-section (4)(b) may be made subject to such terms and conditions as the Governor in Council determines.

S. 51(6)
inserted by
No. 10236
s. 7(1).

- (6) If the rules of an incorporated association contain provisions referred to in sub-paragraphs (ii) and (iii) of sub-section (4)(a), the incorporated association shall not, without the consent of the Minister, alter—
- (a) the provision referred to in sub-paragraph (iii) of sub-section (4)(a); or
 - (b) the provisions referred to in sub-paragraph (ii) of sub-section (4)(a) if the rules as altered would be inconsistent with that sub-paragraph.

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 53

52. Offence for using certain names

Where a person or an association, society, club, institution or group of persons, not being a body corporate or an association incorporated under this or any other Act or under an Act or law of any other place, uses a name or title of which the word "Incorporated" or "Inc." or any abbreviation or imitation of either of those words forms part, the person, association, society, club, institution or group and each member of the association, society, club, institution or group is guilty of an offence.

Penalty: 10 penalty units.

S. 52
amended by
No. 57/1997
s. 33(5).

53. Incorporated association excluded from Corporations legislation

(1) An incorporated association is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent referred to in sub-section (2).

(2) Sub-section (1) does not apply—

- (a) if the incorporated association is a company under the Corporations Act—to the extent necessary for an association to be deregistered as a company under that Act;
- (b) if the incorporated association is authorised or directed under Part VIIA to become registered as a company under that Act—to the extent necessary for an association to be registered as a company under Chapter 5B of that Act.

S. 53
amended by
No. 9761
s. 3,
substituted by
No. 69/1987
s. 11,
amended by
No. 14/1995
s. 4,
substituted by
No. 44/2001
s. 3(Sch.
item 7.6).

S. 53(2)(a)
substituted by
No. 9/2002
s. 3(Sch.
item 1).

Note: This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to an incorporated association, other than as provided in

Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 53A

sub-section (2). Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to incorporated associations as laws of this State.

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

S. 53A
inserted by
No. 9940 s. 3.

53A. Exemption from stamp duty

An instrument for the conveyance or transfer of real property or any estate or interest in real property to give effect to the vesting of land in an incorporated association by reason of the operation of section 9 or 31 is exempt from stamp duty under the **Stamps Act 1958**.

54. Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorized or required to be prescribed by this Act.
- (2) Without limiting the generality of sub-section (1), the regulations may—

S. 54(2)(a)
amended by
No. 57/1997
s. 33(6).

- (a) prescribe penalties not exceeding 5 penalty units for a breach of the regulations;

S. 54(2)(aa)
inserted by
No. 69/1987
s. 12(1).

- (aa) prescribe forms for the purposes of this Act;

Associations Incorporation Act 1981
Act No. 9713/1981
Part IX—Miscellaneous

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| (ab) make provision for the verification by statutory declaration of statements in forms prescribed for the purposes of this Act; | S. 54(2)(ab) inserted by No. 69/1987 s. 12(1). |
| (ac) prescribe offences against this Act or the regulations for the purposes of section 50B; | S. 54(2)(ac) inserted by No. 69/1987 s. 12(1), substituted by No. 57/1997 s. 33(7). |
| (ad) in relation to each offence that is prescribed pursuant to this sub-section— | S. 54(2)(ad) inserted by No. 69/1987 s. 12(1). |
| (i) prescribe the particulars that are to be given in a notice served on a person under section 50B in relation to an offence; and | |
| (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 50B in relation to the offence; | |
| (b) make provision for the accounts to be kept and the financial statements to be prepared by incorporated associations or incorporated associations in a class of incorporated associations; | S. 54(2)(b) substituted by No. 57/1997 s. 34(1). |
| (ba) make additional provision for the audit of accounts of incorporated associations or incorporated associations in a class of incorporated associations; | S. 54(2)(ba) inserted by No. 57/1997 s. 34(1). |
| (bb) make provision for fees to be paid for the lodgment with the Registrar of applications, notices, statements and other | S. 54(2)(bb) inserted by No. 57/1997 s. 34(1). |
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Associations Incorporation Act 1981
Act No. 9713/1981

Part IX—Miscellaneous

s. 54

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- documents and for inspection or copying of documents held by the Registrar;
- S. 54(2)(bc) inserted by No. 35/2000 s. 11.
- (bc) make provision for the keeping of records of documents required under this Act in any form approved by the Registrar;
- (c) prescribe rules as model rules, being rules that make provision for the several matters that are specified in the Schedule, whether or not they make provision for other matters; and
- S. 54(2)(d) amended by Nos 14/1995 s. 6(a), 57/1997 s. 33(6).
- (d) prescribe fines not exceeding 5 penalty units payable, where the committee of an incorporated association so determines, to the incorporated association by a member who commits a breach of its rules.
- S. 54(3) inserted by No. 69/1987 s. 12(2).
- (3) The regulations—
- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstance; and
- (c) may apply, adopt or incorporate any statement of accounting standards or statement of accounting practice issued by any body at any time before the regulation is made.
- S. 54(3)(b) amended by No. 57/1997 s. 34(2).
- S. 54(3)(c) inserted by No. 57/1997 s. 34(2).
- (4) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of the Parliament in accordance with the requirements of section 23(2) of the **Subordinate Legislation Act 1994** which disallowance is deemed disallowance by Parliament for the purposes of that Act.
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55. Transitional provisions

- (1) If, immediately before the commencement of section 3 of the **Business Licensing Legislation (Amendment) Act 2003**, an application has been made to the Registrar for incorporation of an association but the Registrar had not decided to grant, or refuse to grant, a certificate of incorporation to the association, the Registrar must make his or her decision in accordance with this Act as in force immediately before the commencement of that section.
- (2) Section 37(1) as amended by section 14 of the **Business Licensing Legislation (Amendment) Act 2003** applies to an incorporated association that has been deregistered before, on or after the commencement of section 14 of that Act.

S. 55
inserted by
No. 8/2003
s. 20.

Associations Incorporation Act 1981
Act No. 9713/1981

s. 55

Pt 10
(Heading and
s. 55)
repealed by
No. 14/1995
s. 6(b).

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Associations Incorporation Act 1981
Act No. 9713/1981

Sch.

SCHEDULE

Ss 6, 54.

**MATTERS TO BE PROVIDED FOR IN THE RULES OF AN
INCORPORATED ASSOCIATION**

1. The qualifications (if any) for membership of the incorporated association.
2. The register of members of the incorporated association.
3. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
4. The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as "the committee") and—
 - (a) the election or appointment of members of the committee;
 - (b) the terms of office of members of the committee;
 - (c) the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;
 - (d) the filling of casual vacancies occurring on the committee;
 - (e) the quorum and procedure at meetings of the committee.
5. The quorum and procedure at general meetings of members of the incorporated association and whether members are entitled to vote by proxy at general meetings.
6. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
7. The sources from which the funds of the incorporated association are to be or may be derived.
8. The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association.
9. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
10. The manner of altering the statement of purposes of the incorporated association.
11. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

**Sch. item 5
amended by
No. 10236
s. 8(2)(v)(i).**

Associations Incorporation Act 1981
Act No. 9713/1981

Sch.

Sch. item 12
amended by
No. 8/2003
s. 21.

12. Provisions for the custody and use of the common seal (if any) of the incorporated association.

Sch. item 13
amended by
No. 57/1997
s. 35(1).

13. The custody of relevant documents and securities of the incorporated association.

Sch. item 14
amended by
No. 57/1997
s. 35(2).

14. The inspection by members of the incorporated association of relevant documents of the incorporated association.

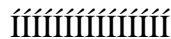
15. The disposition of any surplus assets on the winding up or dissolution of the incorporated association.

Sch. item 16
inserted by
No. 10236
s. 8(2)(v)(ii).

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

Sch. item 17
inserted by
No. 57/1997
s. 35(3).

17. The grievance procedures for settling disputes under the rules between the incorporated association and any of its members or between a member and any other member.



Associations Incorporation Act 1981
Act No. 9713/1981

Endnotes

ENDNOTES

1. General Information

The **Associations Incorporation Act 1981** was assented to on 5 January 1982 and came into operation on 1 July 1983: Government Gazette 25 May 1983 page 1238.

Associations Incorporation Act 1981
Act No. 9713/1981

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Associations Incorporation Act 1981** by Acts and subordinate instruments.

Companies (Consequential Amendments) Act 1982, No. 9761/1982

Assent Date: 13.7.82
Commencement Date: S. 2 on 30.3.82: s. 2(2); rest of Act on 1.7.82: s. 1(2)
Current State: All of Act in operation

Associations Incorporation (Amendment) Act 1983, No. 9940/1983

Assent Date: 13.9.83
Commencement Date: 13.9.83
Current State: All of Act in operation

Associations Incorporation (Miscellaneous Amendments) Act 1985, No. 10236/1985

Assent Date: 10.12.85
Commencement Date: 7.1.86: s. 2
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Associations Incorporation and Business Names (Amendment) Act 1987, No. 69/1987

Assent Date: 24.11.87
Commencement Date: 22.12.87: s. 2
Current State: All of Act in operation

Transfer of Land (Computer Register) Act 1989, No. 18/1989

Assent Date: 16.5.89
Commencement Date: 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Associations Incorporation (Amendment) Act 1995, No. 14/1995

Assent Date: 9.5.95
Commencement Date: 9.5.95: s. 2
Current State: All of Act in operation

Associations Incorporation Act 1981
Act No. 9713/1981

Endnotes

Miscellaneous Acts (Further Omnibus Amendments) Act 1996, No. 73/1996

Assent Date: 17.12.96
Commencement Date: Pt 3 (ss 5, 6) on 17.12.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Co-operatives Act 1996, No. 84/1996

Assent Date: 23.12.96
Commencement Date: S. 467(Sch. 6 item 3) on 1.10.97: Special Gazette (No. 122) 1.10.97 p. 1
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Associations Incorporation (Amendment) Act 1997, No. 57/1997

Assent Date: 28.10.97
Commencement Date: Ss 1, 2 on 28.10.97: s. 2(1); ss 3–35 on 1.7.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 5) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 24 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: S. 21 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: Ss 4–7, 11, 12 on 19.6.00: Government Gazette 15.6.00 p. 1248; ss 3, 9 on 30.7.01: Government Gazette 19.7.01 p. 1664; ss 8, 10 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Associations Incorporation Act 1981
Act No. 9713/1981

Endnotes

Associations Incorporation (Amendment) Act 2000, No. 57/2000

Assent Date: 8.11.00
Commencement Date: 9.11.00: s. 2
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 7) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 1) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Business Licensing Legislation (Amendment) Act 2003, No. 8/2003

Assent Date: 6.5.03
Commencement Date: Ss 14, 20 on 11.8.03: Government Gazette 24.7.03 p. 1859; ss 3–13, 15–19, 21 on 1.11.03: Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: S. 79 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 16) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 7) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Associations Incorporation Act 1981**

Associations Incorporation Act 1981
Act No. 9713/1981

Endnotes

3. Explanatory Details

¹ S. 11(1)(a): See regulation 4 of the Corporations (Ancillary Provisions) Regulations 2001, S.R. No. 63/2001.