

**DRAFT BILL FOR PUBLIC COMMENT**

**The Government proposes to introduce into Parliament a Bill to provide for the incorporation and regulation of certain associations, to repeal the *Associations Incorporation Act 1987* and for connected purposes.**

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

**Associations Incorporation Bill 2006**

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CONTENTS

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**Part 1 — Introductory**

- |    |   |   |
|----|---|---|
| 1. | Short title                             | 2 |
| 2. | Commencement                            | 2 |
| 3. | Terms used in this Act                  | 2 |
| 4. | Forms may include statutory declaration | 3 |
| 5. | Restriction on use of "Incorporated"    | 3 |

**Part 2 — Exclusion from  
Corporations legislation**

- |    |   |   |
|----|---|---|
| 6. | Incorporated associations excluded from<br>Corporations legislation | 5 |
| 7. | Exceptions to section 6   | 5 |

**Part 3 — Application for  
incorporation**

**Division 1 — Eligibility**

- |    |                                       |   |
|----|---------------------------------------|---|
| 8. | General eligibility for incorporation | 7 |
|----|---------------------------------------|---|

**Contents**

---

9.	Trading associations not eligible for incorporation	7
10.	Regulations may declare associations to be ineligible	8
	<b>Division 2 — Requirements for application</b>	
11.	Application to Commissioner	8
12.	Objects or purposes	8
13.	Application to include certain names and addresses	9
14.	Particulars of public officer	9
15.	Commissioner may require public notice of application to be given	9
16.	Request for refusal of incorporation	10
17.	Change of address of incorporated association	10
	<b>Part 4 — Incorporation and transfer of incorporation</b>	
	<b>Division 1 — Incorporation</b>	
18.	Incorporation of association	12
19.	Time to be allowed for the operation of section 16	12
20.	Refusal of incorporation if inappropriate or against public interest	13
21.	Regulations may prescribe further grounds for refusal	13
22.	Review of refusal	13
23.	Cessation of incorporation	14
24.	When incorporation may be reinstated	14
	<b>Division 2 — Effect of incorporation and related matters</b>	
25.	Effect of incorporation	15
26.	Powers of an incorporated association	15
27.	Power of incorporated association to act as trustee	16
28.	Manner in which contracts may be made	16
29.	Limitation of doctrine of <i>ultra vires</i>	17
30.	Liability of officers, trustees and members	17
31.	Authentication of documents	17
	<b>Division 3 — The corporate name</b>	
	<b>Subdivision 1 — Name restrictions</b>	
32.	Names that are offensive, misleading etc.	18
33.	Regulations may provide for name restrictions	18

34.	Review of Commissioner's decision about a name	18
	<b>Subdivision 2 — Conferral of name</b>	
35.	Name on incorporation	19
36.	Corporate name to appear on documents	19
	<b>Subdivision 3 — Change of name by amendment of rules</b>	
37.	Commissioner's approval required	19
38.	Criteria to be applied by Commissioner	20
39.	Issue of new certificate of incorporation	20
40.	Review of Commissioner's decision	20
41.	Commissioner may require public notice of application to be given	21
42.	Request for refusal of change of name	21
	<b>Subdivision 4 — Change of name by order of Commissioner</b>	
43.	Change of name where corporate name later determined to be inappropriate	22
44.	Commissioner to give notice of intention to change name	23
45.	Issue of new certificate of incorporation	23
46.	Review of Commissioner's proposal	23
	<b>Subdivision 5 — Savings and other provisions on change of name</b>	
47.	Corporate identity and other matters are not affected	24
	<b>Division 4 — Transfer of incorporation</b>	
48.	Definition	25
49.	Incorporated association may apply for incorporation under another law	25
50.	Commissioner may direct an incorporated association to apply for incorporation under another law	25
51.	Commissioner to give notice of intention	26
52.	Review of proposed direction or amendment	27
53.	Association to comply with direction	27
54.	Cancellation of incorporation under this Act	28
55.	Provisions about the transition to incorporation under another law	28

**Part 5 — Rules of incorporated associations**

**Division 1 — Effect of rules**

56. Effect stated 30

**Division 2 — Content of rules**

57. General requirements for content of rules 30  
58. Restriction on distribution of surplus property 30

**Division 3 — Model rules and rules of existing incorporated associations**

59. Model rules 31  
60. Automatic application of model rules 31  
61. Rules of associations existing at the commencement of this Act 32  
62. Copy of rules to be kept 33

**Division 4 — Amendment of rules**

63. Amendment of rules 33  
64. Commissioner to be notified of amendments 33  
65. Amendment of objects or purposes of incorporated association 34  
66. Commissioner may require public notice of application under section 65 35  
67. Request for refusal of change of name 35

**Division 5 — Provision of rules to members**

68. Inspection by members 36  
69. When member to receive copy of rules 36

**Part 6 — Management of incorporated associations**

**Division 1 — Management committee**

70. Management of incorporated association 37  
71. Duty of committee members to secure compliance by association 37  
72. Handing over of documents and records when membership of committee ceases 37

**Division 2 — Pecuniary interest of committee member in contract**

73. Definition 38

74.	Disclosure of interest	38
75.	Effect of disclosure	39
76.	Voting on a contract in which a committee member has a relevant interest	39
	<b>Division 3 — Public officer</b>	
77.	Incorporated association to have a public officer	40
78.	Requirements for holding office	40
79.	Vacancy in office	41
80.	Commissioner to be notified of appointment	41
81.	Role of public officer in service of documents on incorporated association	42
82.	Public officer to refer documents to the management committee	42
83.	Handing over of documents and records where person has ceased to be the public officer	43
	<b>Division 4 — Annual general meeting</b>	
84.	Annual general meeting	44
	<b>Division 5 — Special resolutions</b>	
85.	Requirements for special resolution	44
86.	Notice to be given	45
87.	Commissioner may determine other requirements	45
88.	Evidence of passing of resolution	46
	<b>Division 6 — Register of members</b>	
89.	Register to be maintained	46
90.	Inspection of register by member	46
91.	Commissioner may request copy of register	47
92.	Member may apply for copy of register	47
93.	Improper use of information in register	48
	<b>Division 7 — Record of office holders</b>	
94.	Record of office holders	48
95.	Inspection of record by member	49
96.	Member may request a copy of record	49
97.	Improper use of information	50
98.	Commissioner may ask apparent office holders to provide information	50

**Part 7 — Accounts and audit**

**Division 1 — Preliminary**

99.	Terms used in this Part	52
-----	-------------------------	----

**Division 2 — Accounts**

100.	Keeping of accounting records	53
101.	Retention of accounting records	54
102.	When annual financial statements to be prepared	54
103.	Financial statements to give true and fair account	54
104.	Presentation of financial statements and solvency statement at annual general meeting	55
105.	Information to be provided by annual return	56
106.	Lodgment of annual return with Commissioner	57

**Division 3 — Audit**

**Subdivision 1 — Auditors, qualifications and eligibility for appointment**

107.	Audit of tier 1 incorporated association	57
108.	Report of auditor of tier 1 incorporated association	58
109.	Audit of tier 2 incorporated association	58
110.	Audit of tier 3 incorporated association	59
111.	Restrictions on persons who may audit certain financial statements	60

**Subdivision 2 — Provisions relating to auditors of all incorporated associations**

112.	Access to records	60
113.	Entitlement to information	60
114.	Breaches of Act and rules to be noted in report	61
115.	Offences in relation to auditor	61
116.	Protection of auditor	61

**Subdivision 3 — Powers and duties of auditors of tier 2 and tier 3 incorporated associations**

117.	Terms used in this Subdivision	62
118.	Auditor to report on financial statements etc.	62
119.	Report to state whether statements properly drawn up	63
120.	Position where Australian Accounting Standards not complied with	63
121.	Report to identify material defects and omissions	64

122.	Report to cover adequacy of information and record keeping	64
123.	Auditor may attend general meeting and be heard	64
124.	Reporting of breaches of this Act to the Commissioner	65
125.	Removal of auditor to be reported	65
126.	Payment of auditor	66
	<b>Subdivision 4 — Special audits of financial affairs of incorporated association</b>	
127.	Commissioner may require special audit to be carried out	66
	<b>Part 8 — Amalgamation of incorporated associations</b>	
128.	Meaning of “new body”	68
129.	Application for incorporation of body formed by amalgamation	68
130.	What is to be included in the application	68
131.	Incorporation of the new body	69
132.	Review of decision to refuse application	70
133.	Vesting of property and liabilities in new body	70
	<b>Part 9 — Winding up and cancellation of incorporation</b>	
	<b>Division 1 — Preliminary</b>	
134.	Terms used in this Part	71
135.	Object of this Part	71
136.	Modifications of applied text of Corporations Act	72
	<b>Division 2 — Voluntary winding up of incorporated association that has property to be distributed</b>	
	<b>Subdivision 1 — Requirements for voluntary winding up</b>	
137.	When voluntary winding up may occur	72
138.	Notice to be given to the Commissioner	72
139.	Cancellation of incorporation	73
140.	Corporations Act may be applied by the regulations	74

**Contents**

---

	<b>Subdivision 2 — Distribution of surplus property on voluntary winding up</b>	
141.	Application of this Subdivision	74
142.	Duty of association	74
143.	Content and operation of distribution plan	74
144.	Position where conditions attached to grant	75
145.	Approval of distribution plan	75
146.	If necessary Commissioner may determine contents of plan	76
147.	Time limit for implementation of plan	76
148.	Review of Commissioner's decision	76
149.	Reporting to Commissioner	77
	<b>Subdivision 3 — Powers of Commissioner on default under Subdivision 2</b>	
150.	Grounds on which Commissioner may act	78
151.	Commissioner may require association to show cause	78
152.	How association may show cause	78
153.	Review of Commissioner's proposal	79
154.	Making of declaration by the Commissioner	79
155.	Effect of declaration	79
156.	Distribution of surplus property under this Subdivision	80
157.	Cancellation of incorporation	81
	<b>Division 3 — Cancellation of incorporation on application by association that has no debts or surplus property</b>	
158.	Application for cancellation	81
159.	Content of application	82
160.	Commissioner may grant application	82
161.	Review of decision to refuse application	83
162.	Liabilities not affected	83
	<b>Division 4 — Winding up by the Supreme Court</b>	
163.	Grounds on which winding up may be ordered	83
164.	By whom application may be made	83
165.	Application of Corporations Act	84
166.	Cancellation of incorporation	84



## **Part 10 — Certain remedial measures available to the Commissioner**

### **Division 1 — Cancellation of incorporation by the Commissioner on certain grounds**

167.	Grounds on which Commissioner may act	85
168.	Commissioner may require association to show cause	86
169.	How association may show cause	86
170.	Cancellation of incorporation	86
171.	Powers of Commissioner in respect of property	87
172.	Review of Commissioner's proposal to cancel incorporation	87

### **Division 2 — Direction by Commissioner to transfer undertaking**

173.	Commissioner may direct an incorporated association to transfer its undertaking to another body corporate	88
174.	Commissioner to give notice of intention	89
175.	Review of proposed direction or amendment	89
176.	Association to comply with direction	90
177.	Power of Commissioner if association fails to comply with direction	90
178.	Effect of order	91
179.	Cancellation of incorporation under this Act	92

### **Division 3 — Direction by Commissioner to convene general meeting**

180.	Commissioner may direct that general meeting be convened	93
181.	Review of direction	94
182.	Rights of Commissioner or a delegate at meeting convened under this Division	94

### **Division 4 — Appointment of statutory manager**

183.	Commissioner may appoint statutory manager	95
184.	Statutory manager has functions of management committee	95
185.	Duration of appointment	96
186.	Prerequisites to revocation of appointment	96

**Contents**

---

187.	Statutory manager to report to the Commissioner	97
188.	Remuneration and expenses of statutory manager	98
189.	Liability of statutory manager	99
190.	Additional powers of Commissioner	99
191.	Proceedings against association stayed	100

**Part 11 — Administration**

**Division 1 — General**

192.	Commissioner	102
193.	Delegation by Commissioner	102
194.	Regulations for the obtaining of information by the Commissioner	103
195.	Information officially obtained to be confidential	103
196.	Protection from liability for wrongdoing	104
197.	Judicial notice	104
198.	Evidentiary provisions	104

**Division 2 — Lodgment of documents with Commissioner**

199.	Keeping of documents by Commissioner	105
200.	Destruction of documents by Commissioner	106
201.	Inspection etc. of documents	106
202.	Commissioner's certification of document	106
203.	No constructive notice of contents of documents	107

**Division 3 — Powers of investigation**

204.	Terms used in this Division	107
205.	Authorised officers	108
206.	Commissioner may require certain persons to appear, answer questions and produce records	108
207.	Powers of entry, search and seizure	110
208.	Issue of search warrant	111
209.	Execution of search warrant	112
210.	Powers of authorised officers concerning records	113
211.	Failure to comply with a requirement and related provisions	113
212.	Legal professional privilege	113
213.	Self incrimination	114
214.	Persons assisting an authorised officer	114

**Division 4 — Infringement notices**

215.	Terms used in this Division	114
------	-----------------------------	-----

216.	Prescribed offences	115
217.	Modified penalties	115
218.	Giving of notice	115
219.	Contents of notice	115
220.	Extension of time	116
221.	Withdrawal of notice	116
222.	Benefit of paying modified penalty	116
223.	No admission implied by payment	117
224.	Application of penalties collected	117
225.	Designation of authorised officers	117

## **Part 12 — Miscellaneous**

226.	Jurisdiction of State Administrative Tribunal in respect of disputes	119
227.	False or misleading statements in documents	119
228.	Time limit for prosecutions	120
229.	Payment of fees on lodging documents	120
230.	Regulations	120
231.	Repeal	120
232.	Consequential amendments	121

## **Schedule 1 — Some circumstances that do not make an association ineligible for incorporation**

## **Schedule 2 — Vesting of property and liabilities on incorporation**

1.	Terms used in this Schedule	124
2.	Transfer of assets and liabilities and related provisions	124
3.	Trusts etc. not affected	125
4.	Notation of registers	125

**Schedule 3 — Content of rules of an incorporated association**

**Division 1 — Matters to be provided for in rules**

**Division 2 — Particular requirements for certain rules**

- |    |  |     |
|----|--|-----|
| 1. | Number of members who may call a general meeting   | 128 |
| 2. | Financial year of associations incorporated under this Act                                     | 128 |
| 3. | Transitional provisions as to financial year of associations incorporated under a repealed Act | 128 |

**Schedule 4 — Modifications to text of Parts 5.4 to 5.8 of the Corporations Act**

**Schedule 5 — Grounds on which an incorporated association may be wound up by the Supreme Court**

**Schedule 6 — Transitional provisions**

**Division 1 — Preliminary**

- |    |                |     |
|----|----------------|-----|
| 1. | Interpretation | 133 |
|----|----------------|-----|

**Division 2 — Existing incorporated associations**

- |    |                                   |     |
|----|-----------------------------------|-----|
| 2. | Incorporation continued           | 133 |
| 3. | Committee of existing association | 133 |

**Division 3 — Continuation of certain matters in progress**

- |     |   |     |
|-----|---|-----|
| 4.  | Existing applications for incorporation                         | 133 |
| 5.  | Rule alteration in progress                                     | 134 |
| 6.  | Applications under repealed section 18 or 19                    | 134 |
| 7.  | Applications for extension of time under repealed section 23(1) | 135 |
| 8.  | Applications for review made but not determined                 | 135 |
| 9.  | Voluntary winding up in progress                                | 135 |
| 10. | Notice given under repealed section 34(1)                       | 136 |

11.	Notice given under repealed section 35	136
	<b>Division 4 — Amendment of rules by existing incorporated associations and associations to which clause 4(3) applies</b>	
12.	Amendment of rules	136
13.	Rules of existing incorporated associations to which repealed Schedule 2 clause 4 applied	137
14.	Amendments may be made by management committee	137
15.	Liability of incorporated association if rules are not made compliant	138
16.	Act modifications pending amendment of rules	139
	<b>Division 5 — Other things to be done by existing incorporated associations and associations to which clause 4(3) applies</b>	
17.	Notification of address	139
18.	Appointment of public officer	140
19.	Keeping of register of members	140
	<b>Division 6 — Other provisions</b>	
20.	When accounts and audit provisions start to apply to existing incorporated associations	141
21.	Property vested under repealed section 36	141
22.	Constructive notice under section 189 of this Act	141
23.	Time limit under section 214 of this Act	142
24.	References in written laws	142
	<b>Division 7 — Further provision may be made</b>	
25.	Regulations	142
	<b>Schedule 7 — Consequential amendments</b>	
1.	<i>Children and Community Services Act 2004</i> amended	144
2.	<i>Criminal Procedure Act 2004</i> amended	144
3.	<i>Education Service Providers (Full Fee Overseas Students) Registration Act 1991</i> amended	144
4.	<i>Hale School Act 1876</i> amended	145
5.	<i>Law Society Public Purposes Trust Act 1985</i> amended	145

**Contents**

---

6.	<i>Liquor Licensing Act 1988</i> amended	145
7.	<i>School Education Act 1999</i> amended	146
8.	<i>Taxation Administration Act 2003</i> amended	146
9.	<i>Volunteers (Protection from Liability) Act 2002</i> amended	147
10.	References to “1895” amended to “2006” in various Acts	147
11.	References to “1987” amended to “2006” in various Acts	148

**Defined Terms**

Western Australia

## **Associations Incorporation Bill 2006**

**A draft for public comment of  
A Bill for**

**An Act to provide for the incorporation and regulation of certain associations, to repeal the *Associations Incorporation Act 1987* and for connected purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Introductory**

### **1. Short title**

This is the *Associations Incorporation Act 2006*.

### **2. Commencement**

5                      This Act comes into operation on a day to be fixed by proclamation.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

**“a repealed Act”** means —

10                      (a) the *Associations Incorporation Act 1987* repealed by section 231; or

                         (b) the *Associations Incorporation Act 1895* repealed by section 47 of the Act mentioned in paragraph (a);

15                      **“amend”**, in relation to the rules of an incorporated association, means replace, in whole or in part, add to or vary;

**“annual general meeting”** has the meaning given by section 84(1);

20                      **“approved”**, in relation to a form, means approved by the Commissioner for the purposes of the provision in which the term appears;

**“association”** includes society, club, institution or body;

**“Commissioner”** means the person for the time being designated as the Commissioner under section 192;

25                      **“Department”** means the department of the Public Service principally assisting in the administration of this Act;

**“financial year”** means the period provided for by or under Schedule 3 Division 2 item 2 or 3;

**“incorporated association”** means an association that is, or is taken to be, incorporated under this Act;



**“liability”** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person;

5       **“management committee”**, in relation to an incorporated association, means the management committee provided for by the rules of the association as required by Schedule 3 Division 1 item 5;

10       **“officer”** means a member of the management committee of an incorporated association;

**“property”** means any legal or equitable estate or interest in, or claim to, real or personal property of any description, whether present or future and whether vested or contingent, and includes —

15       (a) a thing in action; and

(b) money;

**“public officer”** means the person for the time being named or appointed to be the public officer of an incorporated association for the purposes of section 77(1);

20       **“special resolution”** means a resolution of an incorporated association passed in accordance with Part 6 Division 5;

**“the repealed Act”** means the *Associations Incorporation Act 1987* repealed by section 231.

#### 4.       **Forms may include statutory declaration**

25       A form approved by the Commissioner for the purposes of this Act may require that information or documents included in, attached to or given with the form be verified by a statutory declaration.

#### 5.       **Restriction on use of “Incorporated”**

30       A person must not carry on business or enter into a contract under any name or title of which “Incorporated” or any

abbreviation of that word is the final word or abbreviation  
unless the person is, or is taken to be, incorporated under this  
Act or some other law.

Penalty: a fine of \$10 000.

## **Part 2 — Exclusion from Corporations legislation**

### **6. Incorporated associations excluded from Corporations legislation**

5       The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies, other than the provisions specified in section 7 —

- (a) an incorporated association;
- 10       (b) any act or omission of any person, body or other entity in relation to an incorporated association.

### **7. Exceptions to section 6**

- (1) The provisions referred to in section 6 are —
- 15       (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations legislation; and
  - 20       (b) provisions that relate to registration as a company under Chapter 5B to the extent that an incorporated association is authorised or required under Part 4 Division 4 of this Act to become registered as a company under that Chapter; and
  - 25       (c) provisions that relate to the role of an incorporated association in the formation of a company; and
  - (d) provisions that relate to substantial holdings, by or involving an incorporated association, in a company; and
  - (e) provisions that confer or impose functions on an incorporated association as a member, or former member, of a corporation; and

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- 5
- (f) provisions that relate to dealings by an incorporated association in securities of a body corporate, other than securities of the incorporated association itself; and
- (g) provisions that confer or impose functions on an incorporated association in its dealings with a corporation, not being dealings in securities of the incorporated association; and
- 10
- (h) provisions that relate to securities of an incorporated association, other than debentures of or deposits with an incorporated association; and
- (i) provisions relating to financial markets and participants in financial markets; and
- 15
- (j) provisions relating to financial services licensees whose licence covers dealing in, or providing advice about, financial products; and
- (k) provisions relating to carrying on a financial services business; and
- 20
- (l) provisions relating to financial statements, and audit of financial statements, of financial services licensees whose licence covers dealing in, or providing advice about, financial products; and
- (m) provisions relating to clients of financial services licensees whose licence covers dealing in, or providing advice about, financial products; and
- 25
- (n) provisions relating to registers of interests in financial products.
- (2) The provisions specified in subsection (1) only apply to an incorporated association to the extent to which an incorporated association may engage in the activities covered by those
- 30
- provisions.

## **Part 3 — Application for incorporation**

### **Division 1 — Eligibility**

#### **8. General eligibility for incorporation**

- 5      (1) Without limiting section 20(1) or 21, an association is eligible to be incorporated under this Act if —
- (a) it is formed and carried on for one or more lawful purposes; and
  - 10      (b) it has 6 or more members who under its rules have the right to vote at its general meetings either in person or by proxy or postal vote; and
  - (c) it is not excluded by section 9 or regulations made for the purposes of section 10.
- (2) The incorporation of an association under this Act is valid even if the association was not eligible to be so incorporated.

#### 15      **9. Trading associations not eligible for incorporation**

- (1) An association is not eligible to be incorporated under this Act if it is formed or carried on for the purpose of —
- (a) trading; or
  - 20      (b) securing pecuniary profit for its members from its transactions.
- (2) For the purposes of subsection (1)(b) a pecuniary profit that by reason of a person's membership of an association is received by any other person is taken to be a pecuniary profit to the member by reason of the person's membership of that association.
- 25      (3) Schedule 1 sets out some circumstances that do not make an association ineligible under subsection (1).

**10. Regulations may declare associations to be ineligible**

An association is not eligible to be incorporated under this Act if it is an association that is —

- 5           (a) prescribed for the purposes of this section; or  
            (b) a member of a class of associations that is so prescribed.

**Division 2 — Requirements for application**

**11. Application to Commissioner**

- 10           (1) An application for the incorporation of an association must be made to the Commissioner in the approved form by a person duly authorised by the association to apply for incorporation.
- (2) An application must —
- (a) state the name of the association; and
- (b) specify its address (which may be the same as the residential address of the public officer); and
- 15           (c) comply with the other requirements of this Division and such other requirements as may be prescribed for the purposes of this paragraph.
- (3) An application must include a certificate given by the applicant that the applicant is authorised by the association to apply for incorporation.
- 20           (4) The applicant must provide the Commissioner with such information and documents as the Commissioner may in writing request.

**12. Objects or purposes**

- 25           (1) An application must set out the objects or purposes of the association.

- (2) The objects or purposes must include a provision in, or substantially in, the following terms —

The property and income of the association must be applied solely towards the promotion of the objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member of the association, except in good faith in the promotion of those objects or purposes.

**13. Application to include certain names and addresses**

An application must include a statement —

- (a) showing the full names and addresses of at least 6 members of the association who under its rules have the right to vote at its general meetings either in person or by proxy or postal vote; and
- (b) containing the signatures of each of those members.

**14. Particulars of public officer**

An application must —

- (a) give the name and the residential and postal addresses (which may be the same) of the person who is to be the first public officer of the association; and
- (b) show that the person named meets the requirements of section 78(1) and has consented to being the public officer.

**15. Commissioner may require public notice of application to be given**

- (1) The Commissioner may in writing require an applicant under section 11 to give public notice of the application —
  - (a) by advertisement in a manner determined by the Commissioner; or

- (b) in some other way that the Commissioner thinks appropriate,

or by notification under both of those paragraphs.

- 5 (2) For the purposes of section 16, the applicant must include in the public notice a statement in wording approved by the Commissioner showing —

- (a) that a written request, including the reasons for the request, may be given to the Commissioner by any person under section 16; and
- 10 (b) the period within which any request is to be received by the Commissioner.

**16. Request for refusal of incorporation**

- 15 (1) Where public notice is given under section 15 in respect of an association, any person may, in accordance with the terms of the notice, request the Commissioner to decline to incorporate the association under this Act.
- (2) A request under subsection (1) must include the reasons for the request.
- 20 (3) If the Commissioner refuses a request made under subsection (1), the person who made the request may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.
- (4) An application under subsection (3) must be made within —
  - (a) 28 days; or
  - 25 (b) such other period as is prescribed,after the person receives notice of the refusal.

**17. Change of address of incorporated association**

If an incorporated association changes its address —

- (a) as specified under section 11(2) or 130(1)(b); or



- (b) as notified under Schedule 6 clause 17; or
- (c) as previously notified under this section,

the public officer of the association must, within 14 days after the change occurs, give notice of the change to the Commissioner.

5

Penalty: a fine of \$1 000.

## **Part 4 — Incorporation and transfer of incorporation**

### **Division 1 — Incorporation**

#### **18. Incorporation of association**

If, on an application made in accordance with Part 3, the  
Commissioner is of the opinion that —

- (a) the association is eligible to be incorporated under this Act; and
- (b) the name of the association is appropriate having regard to section 32 and regulations made for the purposes of section 33; and
- (c) there is no reason why the application should be refused under section 20 or regulations made for the purposes of section 21,

the Commissioner must, subject to this Division, incorporate the association by the issue to the association of a certificate of incorporation in the approved form.

#### **19. Time to be allowed for the operation of section 16**

- (1) The Commissioner is not to incorporate an association until —

- (a) the time during which any request might be made under section 16 has expired; and
- (b) any request made under that section has been finally refused.

- (2) For the purposes of subsection (1) a request under section 16 has been finally refused if the request is refused by the Commissioner and either —

- (a) the time for making an application for review under section 16(3) has expired without such an application being made; or

- (b) any application for review made under section 16(3) —
  - (i) has resulted in the Commissioner's refusal being confirmed; or
  - (ii) has been dismissed or struck out.

5     **20. Refusal of incorporation if inappropriate or against public interest**

- (1) The Commissioner must not incorporate an association if in the Commissioner's opinion —
  - 10       (a) it is more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law; or
  - (b) the incorporation of the association is against the public interest.
- 15     (2) The grounds on which the Commissioner may form the opinion that subsection (1)(a) or (b) applies include without limitation —
  - (a) the likely scale or nature of the activities of the association; or
  - 20       (b) the likely value or nature of the property of the association; or
  - (c) the extent or nature of the dealings which the association is likely to have with the public.

**21. Regulations may prescribe further grounds for refusal**

25     The Commissioner may also refuse an application for incorporation on any ground prescribed for the purposes of this section.

**22. Review of refusal**

- (1) If the Commissioner refuses an application for incorporation under section 20 or regulations made for the purposes of

section 21 the applicant may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

- (2) An application under subsection (1) must be made within —
- (a) 28 days; or
  - (b) such other period as is prescribed,
- after the person receives notice of the refusal.

**23. Cessation of incorporation**

An incorporated association ceases to be incorporated under this Act —

- (a) on the automatic cancellation of the association's incorporation by operation of section 54(1) or 131(3); or
- (b) on the day specified by the Commissioner in an instrument of cancellation made in respect of the association under section 139(1), 157(1), 160(1), 166(1) or 179(2) or Schedule 6 clause 9(3); or
- (c) if section 170 applies, on the day provided for by section 170(3).

**24. When incorporation may be reinstated**

- (1) This section applies if the Commissioner is satisfied that the incorporation of an association was cancelled under a provision mentioned in section 23(b) or (c) —
- (a) as a result of an error; or
  - (b) as a result of a fraud by a member of the association; or
  - (c) for the avoidance of a liability arising from an act, matter or circumstance that occurred during the time when the association was incorporated.
- (2) Where this section applies, the Commissioner may, by instrument published in the *Gazette*, reinstate the incorporation of the association.

- (3) If the Commissioner exercises the power conferred by subsection (2) in respect of an association, the incorporation of the association is taken to have continued as if it had not been cancelled.

5       **Division 2 — Effect of incorporation and related matters**

**25.       Effect of incorporation**

- (1) On the incorporation of an association under this Act, the association —
- 10           (a) becomes a body corporate with perpetual succession and a common seal; and
- (b) may sue or be sued in its corporate name.
- (2) Schedule 2 has effect in relation to an association on its incorporation.

**26.       Powers of an incorporated association**

- 15       Subject to this Act and to its rules, an incorporated association may do all things necessary or convenient for carrying out its objects or purposes, and in particular, may —
- (a) acquire, hold, deal with, and dispose of any property; and
- 20           (b) open and operate bank accounts; and
- (c) invest its money —
- (i) as trust funds may be invested under Part III of the *Trustees Act 1962*; or
- (ii) in any other manner authorised by the rules of
- 25           the association;
- and
- (d) borrow money on such terms and conditions as the association thinks fit; and

- 5
- (e) give such security for the discharge of liabilities incurred by the association as the association thinks fit; and
  - (f) appoint agents to transact any business of the association on its behalf; and
  - (g) enter into any other contract it considers necessary or desirable.

**27. Power of incorporated association to act as trustee**

10 An incorporated association may, unless its rules otherwise provide, act as trustee and accept and hold property on trust, but an incorporated association does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the association.

**28. Manner in which contracts may be made**

- 15 (1) Contracts may be made by or on behalf of an incorporated association as follows —
- 20 (a) a contract which, if made between natural persons, would be required to be in writing under seal may be made by the incorporated association under its common seal;
  - (b) a contract which, if made between natural persons, would be required to be in writing signed by the parties may be made on behalf of the association in writing by any person acting under its express or implied authority;
  - 25 (c) a contract which, if made between natural persons, would be valid although not in writing signed by the parties may be made orally on behalf of the association by any person acting under its express or implied authority.
- 30 (2) A contract may be varied or rescinded by or on behalf of an incorporated association in the same manner as it is authorised to be made.

**29. Limitation of doctrine of *ultra vires***

- 5       (1) A contract made with an incorporated association is not invalid by reason of any deficiency in the legal capacity of the association to enter into, or carry out, the contract unless the person contracting with the association has actual notice of the deficiency.
- (2) An incorporated association that enters into a contract that would, but for subsection (1), be invalid may carry out the contract.
- 10       (3) This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into a transaction that is beyond the powers of the association.

**30. Liability of officers, trustees and members**

- 15       (1) An officer, trustee or a member of an incorporated association is not by reason only of being such an officer, trustee or member liable in respect of the liabilities of the association.
- (2) Subsection (1) does not apply in respect of liabilities incurred by or on behalf of the association before its incorporation.

20       **31. Authentication of documents**

A document or proceeding requiring authentication by an incorporated association may be authenticated by the signature of the public officer of the association and need not be authenticated under the common seal of the association.

### **Division 3 — The corporate name**

#### **Subdivision 1 — Name restrictions**

**32. Names that are offensive, misleading etc.**

5 An incorporated association cannot have a name that in the opinion of the Commissioner is —

- (a) offensive, undesirable or otherwise unacceptable; or
- (b) likely to mislead the public as to the objects or purposes of the association; or
- 10 (c) identical with the name of an association that is, or is taken to be, incorporated under this Act and is in existence at the relevant time; or
- (d) resembles the name of an association referred to in paragraph (c) in a manner that is likely to mislead the public; or
- 15 (e) identical to, or likely to be confused with, the name of any other body corporate or any registered business name.

**33. Regulations may provide for name restrictions**

20 An incorporated association cannot have —

- (a) a name that is prescribed for the purposes of this section; or
- (b) a name of a kind that is so prescribed.

**34. Review of Commissioner's decision about a name**

- 25 (1) If the Commissioner refuses to incorporate an association because the proposed name would, in the Commissioner's opinion, not be appropriate having regard to section 32 or regulations made for the purposes of section 33, the applicant for incorporation may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.



- (2) An application under subsection (1) must be made within —
- (a) 28 days; or
  - (b) such other period as is prescribed,
- after the applicant receives notice of the refusal.

**Subdivision 2 — Conferral of name**

**35. Name on incorporation**

On the incorporation of an association under this Act, its corporate name is the name of the association as stated in the certificate of incorporation, concluding with the word “Incorporated” or the abbreviation “Inc.”.

**36. Corporate name to appear on documents**

- 15 (1) An incorporated association must ensure that a document endorsed or issued by the association (including advertising material) contains in legible characters the corporate name of the association including the word “Incorporated” or the abbreviation “Inc.” as provided for by section 35.
- (2) Subsection (1) applies whether or not the name of the association as stated in the certificate of incorporation concludes with the word “Incorporated” or the abbreviation “Inc.”.

20           **Subdivision 3 — Change of name by amendment of rules**

**37. Commissioner's approval required**

- (1) An amendment to the rules of an incorporated association that changes the name of the association does not take effect until the approval of the Commissioner is given to the change.
- (2) An application for the Commissioner's approval under subsection (1) must be included in the notice lodged under section 64(1) by the public officer of the incorporated association.

**38. Criteria to be applied by Commissioner**

5 The Commissioner is not to approve a change of name unless the Commissioner is of the opinion that the proposed name is appropriate having regard to section 32 and regulations made for the purposes of section 33.

**39. Issue of new certificate of incorporation**

10 (1) Where the Commissioner approves a change of name, the Commissioner is to issue a new certificate of incorporation in the approved form showing the new name of the incorporated association.

(2) The Commissioner must not issue a new certificate of incorporation under subsection (1) unless —  
15 (a) the certificate of incorporation previously issued has been returned to the Commissioner; or  
(b) the Commissioner is satisfied that the certificate has been lost or destroyed.

**40. Review of Commissioner's decision**

20 (1) If the Commissioner refuses to approve a change of name under this Subdivision, the incorporated association concerned may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

(2) An application under subsection (1) must be made within —  
(a) 28 days; or  
(b) such other period as is prescribed,  
25 after the incorporated association receives notice of the refusal.

**41. Commissioner may require public notice of application to be given**

- (1) The Commissioner may in writing require an applicant under section 37(2) to give public notice of the application —
- 5       (a) by advertisement in a manner determined by the Commissioner; or
- (b) in some other way that the Commissioner thinks appropriate,
- or by notification under both of those paragraphs.
- 10    (2) For the purposes of section 42, the applicant must include in the public notice a statement in wording approved by the Commissioner showing —
- (a) that a written request, including the reasons for the request, may be given to the Commissioner by any
- 15       person under section 42; and
- (b) the period within which any request is to be received by the Commissioner.

**42. Request for refusal of change of name**

- 20    (1) Where public notice is given under section 41 in respect of a change of name, any person may, in accordance with the terms of the notice, request the Commissioner to decline to approve the change.
- (2) A request under subsection (1) must include the reasons for the request.
- 25    (3) If the Commissioner refuses a request made under subsection (1), the person who made the request may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.
- (4) An application under subsection (3) must be made within —
- 30       (a) 28 days; or

- (b) such other period as is prescribed,  
after the person receives notice of the refusal.

**Subdivision 4 — Change of name by order of Commissioner**

**43. Change of name where corporate name later determined to be inappropriate**

5

- (1) This section applies if an association has been incorporated under this Act but the Commissioner becomes of the opinion —

10

- (a) that the corporate name of the association is inappropriate having regard to section 32 or regulations made for the purposes of section 33; and
- (b) that the decision of the Commissioner under section 18(b) in respect of the association was made in error.

15

- (2) This section also applies if an association was incorporated under the repealed Act but the Commissioner becomes of the opinion —

20

- (a) that the corporate name of the association is inappropriate having regard to section 8 of that Act; and
- (b) the decision made under section 9(1)(c) of that Act in respect of the association was made in error.

- (3) Subject to sections 44 and 46, the Commissioner may by order served on the incorporated association —

25

- (a) declare that the corporate name of the association is cancelled; and
- (b) determine a different corporate name for the association.

- (4) An order under subsection (3) takes effect —

- (a) on the day on which it is served; or
- (b) if some other day is specified in the order, on that day.

**44. Commissioner to give notice of intention to change name**

- (1) Before the Commissioner serves an order on an incorporated association under section 43, the Commissioner must give notice in writing to the association stating —
- 5           (a) the change of name proposed by the Commissioner; and
- (b) the grounds on which the Commissioner is proposing to act; and
- (c) that written submissions on the proposed change of name may be made to the Commissioner within a
- 10           specified period.
- (2) The period specified under subsection (1)(c) is not to be less than 28 days after the notice is given.
- (3) Before the Commissioner serves an order on an incorporated association under section 43 the Commissioner must have
- 15           regard to any submission made by the association in accordance with the notice.

**45. Issue of new certificate of incorporation**

- (1) Where an order under section 43 takes effect the Commissioner is to issue a new certificate of incorporation in the approved
- 20           form showing the new name of the incorporated association.
- (2) The Commissioner must not issue a new certificate of incorporation under subsection (1) unless —
- (a) the certificate of incorporation previously issued has been returned to the Commissioner; or
- 25           (b) the Commissioner is satisfied that the certificate has been lost or destroyed.

**46. Review of Commissioner's proposal**

- (1) An incorporated association to which notice is given under section 44 may, not later than the end of the period specified

under section 44(1)(c), apply to the State Administrative Tribunal for a review of the Commissioner's proposal.

(2) If an application is so made, the Commissioner cannot serve an order under section 43 unless —

- 5           (a) the application results in the Commissioner's proposal being confirmed; or
- (b) the application is dismissed or struck out.

**Subdivision 5 — Savings and other provisions on change of name**

**47. Corporate identity and other matters are not affected**

10       (1) This section applies to a change of name of an incorporated association that —

- (a) is approved under Subdivision 3; or
- (b) takes effect under Subdivision 4.

(2) The change of name does not affect —

- 15           (a) the corporate identity of the incorporated association; or
- (b) its rights and obligations; or
- (c) any legal proceeding by or against it.

(3) A reference in an agreement or instrument to the incorporated association by its former name is unless the context otherwise requires to be read as a reference to the incorporated association by its new name.

20

(4) A legal proceeding that might have been continued or commenced by or against the incorporated association in its former name may be continued or commenced by or against it in its new name.

25

## Division 4 — Transfer of incorporation

### 48. Definition

In this Division —

**“prescribed body corporate”** means —

- 5           (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth that is taken to be registered in Western Australia; or
- (b) a body corporate under —
- (i) some other written law of the State; or
- 10           (ii) a written law of the Commonwealth,
- that is prescribed for the purposes of this definition.

### 49. Incorporated association may apply for incorporation under another law

15           An incorporated association may apply for registration or incorporation as a prescribed body corporate if the association —

- (a) has obtained the approval of the Commissioner to the application being made; and
- 20           (b) makes the application in accordance with the terms and conditions of that approval.

### 50. Commissioner may direct an incorporated association to apply for incorporation under another law

- (1) This section applies if the Commissioner is satisfied that the continued incorporation of an association under this Act would
- 25           for any reason be inappropriate or inconvenient, including —
- (a) on account of the incorporated association having, in the opinion of the Commissioner, ceased to be eligible to be incorporated under this Act; or

- (b) because 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, as determined by the Commissioner.
- (2) The Commissioner may in writing direct the incorporated association to apply for, and do all things that are reasonably necessary to obtain, registration or incorporation as a prescribed body corporate.
- (3) A direction under subsection (2) —
- (a) must specify the period within which the application is to be made; and
  - (b) may specify any terms and conditions that are to be observed in making the application for registration or incorporation or doing the things that are reasonably necessary to obtain it.
- (4) The Commissioner may, by notice in writing to the incorporated association —
- (a) from time to time extend the period referred to in subsection (3)(a); or
  - (b) revoke or amend a direction given under subsection (2).
- 51. Commissioner to give notice of intention**
- (1) Before the Commissioner gives a direction to an incorporated association under section 50(2) or notice of an amendment under section 50(4)(b), the Commissioner must give notice in writing to the association stating —
- (a) the Commissioner's intention to give the direction or make the amendment; and



- 5                   (b) the grounds on which the Commissioner is proposing to act; and
- (c) that written submissions on the proposed direction or amendment may be made to the Commissioner within a specified period.
- (2) The period specified under subsection (1)(c) is not to be less than 28 days after the notice is given.
- 10           (3) Before the Commissioner gives or amends a direction to an incorporated association under section 50 the Commissioner must have regard to any submission made by the association in accordance with the notice.

**52. Review of proposed direction or amendment**

- 15           (1) An incorporated association to which a notice is given under section 51 may, not later than the end of the period specified under section 51(1)(c), apply to the State Administrative Tribunal for a review of the proposed direction or amendment.
- (2) If an application is so made, the Commissioner cannot give the direction or make the amendment unless —
- 20               (a) the application results in the Commissioner's proposed action being confirmed; or
- (b) the application is dismissed or struck out.

**53. Association to comply with direction**

- 25           (1) Subject to section 52, an incorporated association must comply with a direction given to the association under section 50(2) or a direction as amended under section 50(4)(b).
- (2) A contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only of a failure by the association to comply with a direction under section 50.

**54. Cancellation of incorporation under this Act**

- (1) The registration or incorporation of an incorporated association as a prescribed body corporate automatically cancels the incorporation of the association under this Act.

- 5 (2) Where an incorporated association becomes registered or incorporated as a prescribed body corporate, the body must notify the Commissioner in writing of the registration or incorporation within 14 days after it occurs.

Penalty: a fine of \$5 000.

10 **55. Provisions about the transition to incorporation under another law**

- (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to an incorporated association becoming registered or incorporated as a prescribed  
15 body corporate (the “**body corporate**”).

- (2) The transfer of incorporation by an incorporated association does not affect —

- (a) the identity of the association which is to be taken to be the same body before and after the transfer of  
20 incorporation; or
- (b) any act, matter or thing done or omitted to be done, or any circumstance subsisting, before the transfer to the extent that the act, matter, thing, omission or  
25 circumstance has any relevance to the association after the transfer.

- (3) Without limiting subsection (2) —

- (a) proceedings by or against an incorporated association subsisting immediately before the transfer of  
30 incorporation may be continued by or against the body corporate in the name of the incorporated association; and

- (b) proceedings that might have been brought by or against an incorporated association immediately before the transfer of incorporation may be commenced by or against the body corporate.
- 5 (4) Without limiting subsection (2), a transfer of incorporation does not affect —
- (a) any obligation or liability incurred under this Act; or
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or
- 10 (c) any investigation, proceeding or remedy in respect of any such obligation, liability, penalty, forfeiture or punishment,
- and any such investigation, proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if section 54(1) had not been passed.
- 15
- (5) This section has effect in relation to a matter concerning an incorporated association that is registered as a company under the *Corporations Act 2001* of the Commonwealth only to the extent that the matter is not dealt with by that Act.
- 20

## **Part 5 — Rules of incorporated associations**

### **Division 1 — Effect of rules**

#### **56. Effect stated**

- 5 (1) The rules of an incorporated association bind the association and the members of the association as if —
- (a) they contained an agreement on the part of each member to be bound by and observe all the provisions of the rules; and
  - (b) that agreement were duly executed by each member.
- 10 (2) Subsection (1) has effect only so far as the rules are consistent with this Act.

### **Division 2 — Content of rules**

#### **57. General requirements for content of rules**

- 15 (1) The rules of an incorporated association must at all times —
- (a) include provision in respect of each of the matters set out in Schedule 3 Division 1; and
  - (b) comply with the requirements specified in Schedule 3 Division 2; and
  - (c) be otherwise consistent with this Act.
- 20 (2) An incorporated association must ensure that subsection (1) is complied with.

#### **58. Restriction on distribution of surplus property**

- 25 (1) There is implied in the rules of every incorporated association a provision that, on the winding up of the association under Part 9 Division 2 or 4, its surplus property, as defined in section 134, can only be distributed to one or more of the following —
- (a) an incorporated association;

- 5                   (b) a company limited by guarantee that is registered as mentioned in section 150 of the *Corporations Act 2001* of the Commonwealth;
- (c) a company holding a licence that continues in force under section 151 of that Act;
- (d) a local government;
- (e) a body corporate that —
- (i) is a member or former member of the incorporated association; and
- 10                   (ii) at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;
- (f) a trustee for a body corporate referred to in paragraph (e).
- 15           (2) The provision mentioned in subsection (1) has effect despite any inconsistent provision in the rules of an incorporated association.

**Division 3 — Model rules and rules of existing incorporated associations**

20   **59.     Model rules**

- (1) Regulations are to be made prescribing model rules for an incorporated association.
- (2) The model rules are to be taken to comply with section 57.

**60.     Automatic application of model rules**

- 25           (1) This section applies to an association that is incorporated after the commencement of this Act.

- (2) Except as provided in subsection (3), on the incorporation of the association the rules of the association consist of —
- (a) the statement of —
    - (i) the association's name; and
    - (ii) the objects or purposes of the association,  
as accepted by the Commissioner for the purposes of the incorporation; and
  - (b) the model rules in the form in which they existed immediately before the day of incorporation.
- (3) On the incorporation of an association under section 131, the rules of the association consist of —
- (a) the statement referred to in subsection (2)(a); and
  - (b) the rules referred to in section 130(1)(c) as accepted by the Commissioner for the purposes of the incorporation.
- (4) Subsections (2) and (3) do not affect the ability of an incorporated association or of the management committee of an incorporated association to amend the rules of the association in accordance with this Part after the association is incorporated.
- 61. Rules of associations existing at the commencement of this Act**
- (1) This section applies to an association that was incorporated under a repealed Act and whose incorporation has effect immediately before the commencement of this Act.
- (2) The rules of the incorporated association as in force immediately before the commencement of this Act continue to have effect but without limiting —
- (a) the ability of the association, or of the management committee of the association, to amend the rules of the association in accordance with this Part or Schedule 6 clause 14; or

- (b) the operation of section 57 as qualified by Schedule 6 Division 4.

**62. Copy of rules to be kept**

5      An incorporated association must keep a copy of its rules as in force from time to time.

**Division 4 — Amendment of rules**

**63. Amendment of rules**

- (1) An incorporated association may amend its rules by special resolution but not otherwise.
- 10      (2) An amendment cannot be made under subsection (1) that would contravene section 57.
- (3) An amendment to the rules of an incorporated association does not take effect until —
- 15      (a) section 64(1) is complied with; or
- (b) where applicable, an approval is given under section 37(1) or 65(1).

**64. Commissioner to be notified of amendments**

- (1) Where an incorporated association has passed a special resolution for the purposes of section 63(1), the public officer of the association must lodge the required documents with the Commissioner within —
- 20      (a) 28 days after the special resolution is passed; or
- (b) such longer period as the Commissioner may allow.
- Penalty: a fine of \$1 000.
- 25      (2) The required documents are —
- (a) a notice of the special resolution setting out particulars of the amendments; and

- (b) a certificate in the approved form that the resolution was duly passed as a special resolution and that the amendments do not contravene section 57; and
- (c) a copy of rules of the incorporated association as in force at the time when the special resolution was passed marked up to show the amendments to which the special resolution relates.
- (3) The certificate under subsection (2)(b) must be signed by 2 members of the management committee of the incorporated association.
- (4) Any application to the Commissioner for an extension of time under subsection (1)(b) is to be made by the public officer and is to be so made in the approved form and not later than 14 days after the resolution is passed.
- 65. Amendment of objects or purposes of incorporated association**
- (1) An amendment to the rules of an incorporated association that changes the objects or purposes of the association does not take effect until the approval of the Commissioner is given to the change.
- (2) An application for the Commissioner's approval under subsection (1) must be included in the notice lodged under section 64(1) by the public officer of the incorporated association.
- (3) If the Commissioner refuses to approve the amendment, the incorporated association may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.
- (4) An application under subsection (3) must be made within —
- (a) 28 days; or
- (b) such other period as is prescribed,
- after the incorporated association receives notice of the refusal.



**66. Commissioner may require public notice of application under section 65**

- 5      (1) The Commissioner may in writing require an applicant under section 65 to give public notice of the application —
- (a) by advertisement in a manner determined by the Commissioner; or
- (b) in some other way that the Commissioner thinks appropriate,
- or by notification under both of those paragraphs.
- 10      (2) For the purposes of section 67, the applicant must include in the public notice a statement in wording approved by the Commissioner showing —
- (a) that a written request, including the reasons for the request, may be given to the Commissioner under
- 15          section 67 by any person; and
- (b) the period within which any request is to be received by the Commissioner.

**67. Request for refusal of change of name**

- 20      (1) Where public notice is given under section 66 in respect of a change to the objects or purposes of an association, any person may, in accordance with the terms of the notice, request the Commissioner to decline to approve the change.
- (2) A request under subsection (1) must include the reasons for the request.
- 25      (3) If the Commissioner refuses a request made under subsection (1), the person who made the request may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.
- (4) An application under subsection (3) must be made within —
- 30          (a) 28 days; or

- (b) such other period as is prescribed,  
after the person receives notice of the refusal.

### **Division 5 — Provision of rules to members**

#### **68. Inspection by members**

- 5 (1) At the request of a member of an incorporated association, the  
association must make the copy of its rules referred to in  
section 62 available for inspection by the member.
- (2) The member may make a copy of or take an extract from the  
10 copy of the rules but does not have the right to remove them for  
that purpose.

#### **69. When member to receive copy of rules**

- (1) Without limiting section 68, an incorporated association  
must —
  - 15 (a) at the request of a member of the association, give to the  
member a copy of the association's rules, or of any  
particular part of those rules to which the request relates,  
as in force at the time of the request; and
  - (b) give to each person who becomes a member of the  
20 association a copy of the association's rules as in force  
when the membership commences.
- (2) An incorporated association must not make a charge for taking  
any action that it is required to take under this section.
- (3) The regulations may make provision for —
  - 25 (a) the manner in which a copy of an incorporated  
association's rules or of any part of those rules may be,  
or must be, given under this section; or
  - (b) the circumstances and manner in which notice of any  
amendment to an incorporated association's rules must  
be given to members of the association.

## **Part 6 — Management of incorporated associations**

### **Division 1 — Management committee**

#### **70. Management of incorporated association**

- 5      (1) The management committee of an incorporated association is the governing body of the association with authority, in the name of the association, to exercise and perform the powers, functions and duties of the association and control and manage its affairs.
- 10      (2) Subsection (1) has effect in relation to an incorporated association subject to this Act and the rules of the association.
- 15      (3) The validity of anything done or omitted to be done by a management committee is not affected by any defect afterwards discovered in the appointment or qualification of a person purporting to be a member of the committee or the deputy or alternate of a member.

#### **71. Duty of committee members to secure compliance by association**

20      A member of the management committee of an incorporated association must take all reasonable steps to secure compliance by the association with its obligations under this Act.

Penalty: a fine of \$5 000.

#### **72. Handing over of documents and records when membership of committee ceases**

- 25      (1) In this section —  
    **“relevant documents and records”** means documents and records pertaining to the management of the affairs of an incorporated association that —
- 30      (a) if subsection (2)(a) applies, were in the possession of the member immediately before the member’s death;  
    or

- (b) if subsection (2)(b) applies, are in the possession of the person who has ceased to be a member of the management committee.

5 (2) This section applies where a member of the management committee of an incorporated association —

- (a) dies; or
- (b) otherwise ceases to be a member of the committee.

10 (3) As soon as is practicable after a person has ceased to be a member of the management committee of an incorporated association —

- (a) the person; or
- (b) if subsection (2)(a) applies, the personal representative of the person,

15 must deliver to a member of that management committee all relevant documents and records or, in the case of relevant documents or records that are stored on a computer, a copy of all such documents and records.

Penalty: a fine of \$10 000.

20 **Division 2 — Pecuniary interest of committee member in contract**

**73. Definition**

In this Division —

25 **“relevant interest”** means a direct or indirect pecuniary interest in a contract or proposed contract made by, or in the contemplation of, the management committee.

**74. Disclosure of interest**

- (1) A member of the management committee of an incorporated association who has a relevant interest must, as soon as the

member becomes aware of the interest, disclose the nature and extent of it to the committee.

Penalty: a fine of \$10 000.

(2) Subsection (1) does not apply to a pecuniary interest that exists only by virtue of —

(a) the member of the management committee being an employee of the incorporated association; or

(b) the member of the management committee being a member of a class of persons for whose benefit the association is established.

(3) An incorporated association must cause a disclosure made under this section by a member of the management committee to be recorded in the minutes of the meeting of the committee at which it is made.

**75. Effect of disclosure**

Where a member of the management committee of an incorporated association discloses a relevant interest in a contract or the member's interest in a contract is not such as need be disclosed under section 74 —

(a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the incorporated association; and

(b) the member is not liable to account for profits derived from the contract.

**76. Voting on a contract in which a committee member has a relevant interest**

(1) A member of the management committee of an incorporated association who has a relevant interest must not take part in any deliberations or decision of the committee with respect to the contract concerned.

Penalty: a fine of \$10 000.

- (2) Subsection (1) does not apply to a relevant interest that exists only by virtue of the member of the management committee being a member of a class of persons for whose benefit the association is established.

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**Division 3 — Public officer**

**77. Incorporated association to have a public officer**

- (1) An incorporated association must have a public officer.
- (2) On the incorporation of an association, the person named as the public officer in the application for incorporation is the first public officer of the incorporated association.

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**78. Requirements for holding office**

- (1) A person is eligible to be named or appointed as the public officer of an incorporated association only if the person is a natural person and —
- (a) is, or will be on the incorporation of the association, a member of the management committee of the association; and
- (b) has reached 18 years of age; and
- (c) is resident in the State.
- (2) The public officer of an incorporated association may hold any other office of the association unless the rules of the association otherwise provide.
- (3) The validity of anything done or omitted to be done by a person purporting to act as the public officer of an incorporated association is not affected by any defect afterwards discovered in the appointment or qualification of the person.

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**79. Vacancy in office**

- (1) An incorporated association must appoint a person to fill any vacancy in the office of public officer within 28 days after it occurs.
- 5      (2) For the purposes of subsection (1), a vacancy occurs in the office of public officer of an incorporated association if the public officer —
- 10              (a) dies; or
- (b) resigns from the office by giving the management committee of the association a signed letter of resignation; or
- (c) is removed from office under subsection (3); or
- (d) ceases to be a resident of the State; or
- 15              (e) is an insolvent under administration as that term is defined in the *Corporations Act 2001* of the Commonwealth.
- (3) An incorporated association may at any time, in accordance with its rules, remove the association's public officer from that office.

20      **80. Commissioner to be notified of appointment**

- (1) A public officer must, within 14 days after being appointed under section 79(1), give written notice of the appointment to the Commissioner in the approved form.
- 25      (2) The notice must include the person's full name and the person's residential and postal addresses (which may be the same).
- (3) If an address of a public officer changes, the public officer must, within 14 days after the change occurs, give written notice of the change to the Commissioner.
- Penalty applicable to subsections (1) and (3): a fine of \$1 000.

**81. Role of public officer in service of documents on incorporated association**

(1) In this section —

“**address of the public officer**” means the address of the public officer of an incorporated association last notified to the Commissioner under section 80;

“**served on**” includes given, delivered or sent to.

(2) A process, notice or other document to be served on an incorporated association is to be served on the association by addressing it to the association and —

(a) sending it by post to the postal address of the public officer; or

(b) leaving it at the residential address of the public officer with any person apparently over 18 years of age.

(3) Subsection (2) applies even if at the time when the process, notice or other document is sent or left, there is a vacancy in the office of public officer of the incorporated association concerned.

**82. Public officer to refer documents to the management committee**

Where a person who —

(a) is the public officer of an incorporated association; or

(b) was at any time during the preceding 2 years the public officer of an incorporated association,

receives a process, notice or other document addressed to the association and sent or left as mentioned in section 81, the person must, as soon as practicable, bring it to the attention of the management committee of the association.

Penalty: a fine of \$1 000.



**83.      Handing over of documents and records where person has  
         ceased to be the public officer**

(1) In this section —

**“relevant documents and records”** means documents and  
records that —

- (a) pertain to the management of the affairs of an  
incorporated association; and
- (b) are in the possession of a person who has ceased to  
be the public officer of the association by reason of  
the person having been the holder of that office.

(2) This section applies where a person has ceased to be the public  
officer of an incorporated association by operation of  
section 79(2) (other than paragraph (a)) but has not ceased to be  
a member of the management committee of the association.

(3) As soon as is practicable after the incorporated association has  
appointed a successor to the person as the public officer of the  
association the person must deliver to that successor —

- (a) all relevant documents and records; or
- (b) in the case of relevant documents or records that are  
stored on a computer, a copy of all such documents and  
records.

Penalty: a fine of \$10 000.

(4) This section does not limit the application of section 72 to a  
person, or the person’s personal representative, where the  
person has ceased to be the public officer of an incorporated  
association and has also ceased to be a member of the  
management committee of the association.

**Division 4 — Annual general meeting**

**84. Annual general meeting**

- (1) An incorporated association must in each calendar year hold a general meeting called its annual general meeting.
- 5 (2) Despite subsection (1), an incorporated association may hold its first annual general meeting at any time within 18 months after incorporation.
- (3) Except as allowed by subsection (2), an incorporated association must hold its annual general meeting —
- 10 (a) within 4 months after the end of the association's financial year; or
- (b) within such longer period as the Commissioner may on a particular occasion allow.
- (4) If an incorporated association wishes to seek the
- 15 Commissioner's approval to a longer period as mentioned in subsection (3)(b), the application for approval must be made by the public officer of the incorporated association and must be so made not later than 90 days after the end of the association's financial year.

20 **Division 5 — Special resolutions**

**85. Requirements for special resolution**

- (1) For the purposes of this Act, a resolution of an incorporated association is a special resolution if it —
- (a) is passed at a general meeting of the association; and
- 25 (b) is supported by the votes of not less than three-fourths of the members of the association who cast a vote at the meeting.

- (2) A person is taken to cast a vote at a general meeting as mentioned in subsection (1)(b) if the person has a right under the rules of the association to vote on the resolution and —

- 5      (a) votes in person at the meeting; or  
      (b) where proxies or postal votes are allowed by the rules of the association, votes on the resolution by proxy or postal vote.

**86. Notice to be given**

- 10      (1) Before the general meeting, written notice of —  
      (a) the proposed special resolution; and  
      (b) the time and place of the general meeting at which it is proposed to move the resolution,

must be given, as required under the rules of the incorporated association, to each member of the association.

- 15      (2) The notice must set out the wording of the proposed special resolution.  
  
      (3) If notice is not given in accordance with subsections (1) and (2) the special resolution has no effect.

**87. Commissioner may determine other requirements**

- 20      (1) On application made by an incorporated association, the Commissioner may in writing determine other requirements for a special resolution of the association if the Commissioner is satisfied that it is not possible or practicable for a provision of section 85 or 86 to be complied with.  
  
25      (2) The Commissioner may specify the period for which a determination under subsection (1) is in force, and may at any time revoke or amend a determination.  
  
30      (3) Despite sections 85 and 86, a resolution of an incorporated association is a special resolution if it is passed in accordance with a determination in force under subsection (1).

**88. Evidence of passing of resolution**

- 5 (1) At a meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person presiding that the resolution has been passed as a special resolution is evidence of that fact.
- (2) Subsection (1) does not apply if, during the meeting at which the resolution is submitted, a poll is demanded —
- 10 (a) in accordance with the rules of the association; or
- (b) if the rules do not make provision as to the manner in which a poll may be demanded, by at least 3 members of the association present in person or, where proxies are allowed, by proxy.
- 15 (3) If a poll is taken under subsection (2), a declaration by the person presiding as to the result of the poll is evidence of the matter so declared.

**Division 6 — Register of members**

**89. Register to be maintained**

- An incorporated association must —
- 20 (a) maintain a register of its members in accordance with the regulations; and
- (b) record in the register any change in the membership of the association within 28 days after the change occurs.

**90. Inspection of register by member**

- 25 (1) An incorporated association must, at the request of a member, make the register of members available for inspection by the member, but subject to any rule of the kind mentioned in subsection (2).

- 5      (2)      The rules of an incorporated association may require a member who wishes to inspect the register of members to satisfy —
- (a)      the management committee of the association; or
- (b)      a senior executive officer of the association designated
- 10      by resolution of the management committee,
- by statutory declaration or otherwise, that the purpose of the inspection is directly connected with the affairs of the association.
- 10      (3)      A member inspecting the register of members may make a copy of, or take an extract from, the register but is not entitled to remove the register for that purpose.

**91.      Commissioner may request copy of register**

15      The Commissioner may request an incorporated association to provide the Commissioner with a copy of the register of members and the association must comply with the request within 14 days after it is made.

**92.      Member may apply for copy of register**

- 20      (1)      A member of an incorporated association may request the association to provide the member with a copy of the register of members.
- 20      (2)      The request is to be made by application in writing accompanied by a statutory declaration setting out the purpose for which the application is made.
- 25      (3)      If the management committee of the association is satisfied that the purpose set out in the application is directly connected with the association's affairs, the association must comply with the request on payment of any amount required to be paid under subsection (4).

- (4) The management committee may —
- (a) determine a reasonable charge for the cost of complying with a request under subsection (1); and
  - (b) require the person making the request to pay the charge to the association.
- (5) The regulations may make provision for —
- (a) the manner in which a copy of the register of members may be, or must be, provided to a member under subsection (1); and
  - (b) the maximum amount, or a method of calculating the maximum amount, that may be charged under subsection (4).

**93. Improper use of information in register**

A person must not use or disclose information in the register of members of an incorporated association except for a purpose —

- (a) that is directly connected with the affairs of the association; or
- (b) that is related to the administration of this Act.

Penalty: a fine of \$10 000.

**Division 7 — Record of office holders**

**94. Record of office holders**

- (1) In this section —

“address” means —

- (a) in the case of the public officer, both the residential address and the postal address of that officer; and
- (b) in any other case, the residential address or the postal address.

- (2) An incorporated association must maintain a record of —
- (a) the names and addresses of the persons who —
    - (i) are members of its management committee; or
    - (ii) hold other offices of the association provided for by its rules;
  - and
  - (b) the name and address of any person who is authorised to use the common seal of the association; and
  - (c) the name and address of any person who is appointed or acts as a trustee on behalf of the association.

**95. Inspection of record by member**

- (1) At the request of a member of an incorporated association, the association must make the record referred to in section 94 available for inspection by the member.
- (2) The member may make a copy of or take an extract from the record but does not have the right to remove it for that purpose.

**96. Member may request a copy of record**

- (1) An incorporated association must, at the request of a member, provide the member with a copy of the record maintained under section 94, but subject to any rule of the kind mentioned in subsection (2).
- (2) The rules of an incorporated association may require a member who wishes to be provided with a copy of the record maintained under section 94 to satisfy —
- (a) the management committee of the association; or
  - (b) a senior executive officer of the association designated by resolution of the management committee,
- by statutory declaration or otherwise, that the purpose for which the record is to be provided is directly connected with the affairs of the association.

(3) The regulations may make provision for the manner in which a copy of the record may be, or must be, provided to a member under subsection (1).

5 (4) An incorporated association must not make a charge for taking any action that it is required to take under this section.

**97. Improper use of information**

A person must not use or disclose information in the record maintained under section 94 except for a purpose —

- 10 (a) that is directly connected with the affairs of the association; or
- (b) that is related to the administration of this Act.

Penalty: a fine of \$10 000.

**98. Commissioner may ask apparent office holders to provide information**

15 (1) This section applies to a person if it appears to the Commissioner that the person is or may be a member of the management committee, or the public officer, of an incorporated association.

20 (2) The Commissioner may, by notice served on the person, require the person, within the time specified in the notice, to give to the Commissioner in writing —

- (a) particulars of the person's residential address; and
- (b) in addition, in the case of a person who it appears to the Commissioner is or may be the public officer, particulars of the person's postal address; and
- 25 (c) a statement showing —
- (i) whether or not the person holds or has held the office specified in the Commissioner's notice; and



(ii) if the person has held the office, when the person ceased to hold it.

(3) The person must comply with any requirement made on the person by a notice under subsection (2).

5      Penalty: a fine of \$5 000.

## **Part 7 — Accounts and audit**

### **Division 1 — Preliminary**

#### **99. Terms used in this Part**

In this Part —

5       **“accounting records”** includes —

- (a) invoices and receipts; and
- (b) orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (c) other documents of prime entry; and
- 10       (d) books, registers and records (however compiled, recorded or stored) that record the documents and information necessary to explain the methods and calculations by which financial statements are made up;

15       **“financial statements”**, in relation to an incorporated association, means —

- (a) a combination of —
  - (i) a statement of the receipts and payments of the association recording its total receipts and payments based on the cash method of accounting; and
  - (ii) a statement of the property and liabilities of the association;

or

- 25       (b) a combination of —
  - (i) a statement of the income and expenditure of the association recording its total income and expenditure based on the accrual method of accounting; and

(ii) a balance sheet,

together with the statements, reports and notes, other than an auditor's report, attached to and intended to be read with the statement or balance sheet;

5       **“gross receipts or gross income”**, in relation to an incorporated association, means the total amount of —

(a) the receipts of the association (where the cash method of accounting applies); or

10       (b) the income of the association (where the accrual method of accounting applies),

including a grant or subsidy paid to or for the benefit of the association by or on behalf of —

(c) the Commonwealth; or

(d) the State; or

15       (e) a local government; or

(f) any other body;

**“tier 1 incorporated association”** means an incorporated association other than a tier 2 incorporated association or tier 3 incorporated association;

20       **“tier 2 incorporated association”** has the meaning given by section 109;

**“tier 3 incorporated association”** has the meaning given by section 110.

## **Division 2 — Accounts**

### 25    **100. Keeping of accounting records**

(1) An incorporated association must keep accounting records that correctly record and explain —

(a) the transactions of the association (including any transactions as trustee); and

30       (b) the financial position of the association.

(2) An incorporated association must keep its accounting records in such a way that —

(a) true and fair financial statements of the association can be prepared from time to time; and

5 (b) the association's financial statements can conveniently and properly be audited in accordance with this Part.

**101. Retention of accounting records**

10 An incorporated association must retain its accounting records in respect of a transaction for at least 7 years after the transaction was completed.

**102. When annual financial statements to be prepared**

15 An incorporated association must ensure that financial statements for the association are prepared before the end of the period within which an annual general meeting of the association is required to be held under section 84.

**103. Financial statements to give true and fair account**

(1) In this section —

**“financial transactions”** means —

20 (a) where the cash method of accounting applies, receipts and payments; or

(b) where the accrual method of accounting applies, income and expenditure.

(2) The financial statements must not be misleading.

(3) The financial statements must give a true and fair account of —

25 (a) the financial transactions of the association during the last financial year of the association (the **“financial year”**); and

(b) the property and liabilities of the association at the end of the financial year; and

(c) mortgages, charges or other securities of any description affecting any property of the association at the end of the financial year.

5 (4) In relation to each trust of which the association was the trustee for any period during the financial year, the financial statements must give a true and fair account of —

(a) the financial transactions of the trust during that period; and

10 (b) the property and liabilities of the trust at the end of that period; and

(c) all mortgages, charges or other securities of any description affecting any property of the trust during that period.

15 (5) The financial statements must give a true and fair account of any matter that is prescribed for the purposes of this subsection.

**104. Presentation of financial statements and solvency statement at annual general meeting**

(1) An incorporated association must present for consideration at each annual general meeting of the association —

20 (a) the audited financial statements of the association in relation to the last financial year of the association; and

(b) a copy of the auditor's report to the association in relation to the financial statements for that financial year; and

25 (c) a solvency statement in respect of the association.

(2) The solvency statement mentioned in subsection (1)(c) is a resolution of the management committee of the association passed not earlier than 30 days before the day of the annual general meeting concerned —

30 (a) stating that the committee has examined the affairs of the association; and

- (b) showing whether or not in its opinion there are reasonable grounds to believe that the association will be able to pay or meet its debts and liabilities as and when they become due and payable.

5     **105. Information to be provided by annual return**

- (1) For the purposes of this section the “**annual return**” of an incorporated association is a return in the approved form providing the information required by this section in respect of the last financial year of the association.
- 10     (2) The annual return must show —
  - (a) the total amount of the gross receipts or gross income of the association during the financial year; and
  - (b) the gross value of the property of the association at the end of the financial year; and
  - 15     (c) the total amount of the liabilities of the association at the end of the financial year.
- (3) For the purposes of subsection (2) —
  - (a) the receipts or income; and
  - (b) the value of the property; and
  - 20     (c) the amount of the liabilities,

are to be determined in respect of a financial year after the association’s financial statements have been audited for that year.
- 25     (4) The annual return of an incorporated association in respect of a financial year must be accompanied by a copy of the solvency statement mentioned in section 104(1)(c) that was presented to the annual general meeting of the association following the financial year to which the return relates.
- 30     (5) In the case of a tier 3 incorporated association, the annual return in respect of a financial year must be accompanied by each of

the documents referred to in section 104(1)(a) and (b) that was presented to the annual general meeting of the association following the financial year to which the return relates.

- 5       (6) The annual return of an incorporated association must also contain such information relating to the financial affairs of the association as is prescribed for the purposes of this subsection.

**106. Lodgment of annual return with Commissioner**

- 10       (1) The annual return referred to section 105 must be lodged with the Commissioner by the public officer of an incorporated association —

- (a) within 28 days after the annual general meeting of the association following the financial year to which the return relates; or
- 15       (b) within such longer period as the Commissioner may allow.

Penalty: a fine of \$1 000.

- 20       (2) An application to the Commissioner for an extension of time under subsection (1)(b) must be made by the public officer and must be so made in the approved form and not later than 14 days after the annual general meeting.

**Division 3 — Audit**

**Subdivision 1 — Auditors, qualifications and eligibility for appointment**

**107. Audit of tier 1 incorporated association**

- 25       (1) A tier 1 incorporated association must ensure that its financial statements are audited by a person who is not prohibited by subsection (2) from auditing those statements.

- (2) A person cannot audit the financial statements of a tier 1 incorporated association if the person —
- (a) is an officer or employee of the association; or
  - (b) has prepared or assisted with the preparation of the financial statements; or
  - (c) is the spouse or de facto partner of a person who comes within paragraph (a) or (b).

**108. Report of auditor of tier 1 incorporated association**

- (1) The auditor of a tier 1 incorporated association must report to the association whether the financial statements of the association are in the auditor's opinion properly drawn up so as to give a true and fair view of matters required by section 103 to be dealt with in the financial statements.
- (2) If an auditor is of the opinion that the financial statements do not comply with subsection (1), the auditor's report must set out the reasons for that opinion.

**109. Audit of tier 2 incorporated association**

- (1) This section applies to an incorporated association (a “**tier 2 incorporated association**”) in respect of a financial year of the association if it is not a tier 3 incorporated association in respect of that financial year and —
- (a) in relation to that financial year it had gross receipts or gross income exceeding the amount prescribed for the purposes of this paragraph; or
  - (b) it had property, at the end of the financial year, the gross value of which exceeded the amount prescribed for the purposes of this paragraph; or
  - (c) it is an incorporated association that is prescribed to be a tier 2 incorporated association or a member of a class of incorporated associations that is so prescribed.



- (2) The incorporated association must ensure that its financial statements are audited by a person who comes within one of the following descriptions and is not prohibited by section 111 from auditing those financial statements —

- 5           (a) a member of CPA Australia or of the Institute of Chartered Accountants in Australia;
- (b) a member of the National Institute of Accountants, other than an associate, who has satisfactorily completed an auditing component of a course of study in accountancy of at least 3 years duration at a tertiary level conducted by —
- 10                 (i) a prescribed university; or
- (ii) other prescribed institution,
- under the *Corporations Act 2001* of the Commonwealth
- 15                 section 1280(2A)(a);
- (c) a person who the Commissioner considers has appropriate qualifications or experience and approves for the purposes of this section.

**110. Audit of tier 3 incorporated association**

- 20           (1) This section applies to an incorporated association (a “**tier 3 incorporated association**”) in respect of a financial year of the association if —
- (a) in relation to the financial year it had gross receipts or gross income exceeding the amount prescribed for the purposes of this paragraph; or
- 25                 (b) it had property, at the end of the financial year, the gross value of which exceeded the amount prescribed for the purposes of this paragraph.
- (2) The incorporated association must ensure that its financial statements are audited by a person —
- 30                 (a) who is registered as an auditor under the *Corporations Act 2001* of the Commonwealth; or

- (b) who the Commissioner considers has appropriate qualifications or experience and approves for the purposes of this section,

and who is not prohibited by section 111 from auditing those financial statements.

**111. Restrictions on persons who may audit certain financial statements**

A person cannot audit the financial statements of a tier 2 incorporated association or a tier 3 incorporated association if the person —

- (a) is a member or employee of the association; or
- (b) is the spouse, de facto partner, employer or employee of a member of the association; or
- (c) is a partner in a partnership in which a member of the association is also a partner; or
- (d) has prepared or assisted with the preparation of the financial statements.

**Subdivision 2 — Provisions relating to auditors of all incorporated associations**

**112. Access to records**

An auditor of an incorporated association has a right of access at all reasonable times to the accounting records and other records of the association.

**113. Entitlement to information**

An auditor of an incorporated association is entitled to require from an officer of the association any information or explanation that the auditor wishes to have for the purpose of auditing the association's financial statements.

**114. Breaches of Act and rules to be noted in report**

5 If an auditor of an incorporated association, in the course of the performance of the auditor's duties, is satisfied that there has been a failure to comply with this Act or with a rule of the association, the auditor must note the matter in the auditor's report to the association in relation to its financial statements.  
Penalty: a fine of \$10 000.

**115. Offences in relation to auditor**

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

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

Penalty: a fine of \$5 000.

**116. Protection of auditor**

- 25 (1) An auditor of an incorporated association is not, in the absence of malice on the auditor's part, liable to any action for defamation in respect of any statement that the auditor makes, orally or in writing, in the course of the exercise or performance of powers or duties as auditor of the association.
- 30 (2) Subsection (1) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as a defendant in an action for defamation.

**Subdivision 3 — Powers and duties of auditors of tier 2 and tier 3 incorporated associations**

**117. Terms used in this Subdivision**

In this Subdivision —

5       **“auditor”** means the auditor of a tier 2 incorporated association or of a tier 3 incorporated association;

**“Australian Accounting Standards”** means the accounting standards and other requirements issued by the Australian Accounting Standards Board continued in existence by the  
10       *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

**“report”** means a report under section 118.

**118. Auditor to report on financial statements etc.**

15       (1) An auditor must report to the incorporated association concerned on —

- (a) the financial statements required to be laid before the association at the annual general meeting; and
- (b) the association’s accounting records and other records relating to those statements.

20       (2) An auditor’s report —

- (a) must be attached to or endorsed on the financial statements; and
- (b) must, if a member so requires, be read out at the annual general meeting of the incorporated association; and
- 25       (c) is open to inspection by a member at any reasonable time.

**119. Report to state whether statements properly drawn up**

- (1) An auditor's report must state whether the financial statements are in the auditor's opinion properly drawn up —
- 5           (a) so as to give a true and fair view of matters required by section 103 to be dealt with in the financial statements; and
- (b) in accordance with the provisions of this Act and the Australian Accounting Standards.
- 10       (2) If an auditor is of the opinion that the financial statements do not comply with subsection (1), the auditor's report must set out the reasons for that opinion.

**120. Position where Australian Accounting Standards not complied with**

- 15       (1) If in an auditor's opinion the financial statements have not been drawn up in accordance with the Australian Accounting Standards, the auditor's report must state —
- 20           (a) whether, in the auditor's opinion, the financial statements would, if drawn up in accordance with those Standards, have given a true and fair view of the matters required by section 103 to be dealt with in the statements; and
- 25           (b) if, in the auditor's opinion, the financial statements would not, if so drawn up, have given a true and fair view of those matters, the auditor's reasons for being of that opinion.
- 30       (2) If the auditor's report states that the financial statements would, if drawn up in accordance with the Australian Accounting Standards, have given a true and fair view of the matters referred to in subsection (1)(a), the report must also include the auditor's opinion as to the quantified financial effect on the statements of the failure to comply with the Australian Accounting Standards.

**121. Report to identify material defects and omissions**

An auditor's report must specify —

- (a) any defect or irregularity in the financial statements; and
- (b) any omission from those statements,

5 not otherwise referred to in this Subdivision, that in the opinion of the auditor is relevant to the obtaining of a true and fair view of the matters dealt with by the statements.

**122. Report to cover adequacy of information and record keeping**

10 An auditor must form an opinion as to —

- (a) whether the auditor has obtained all the information and explanations that the auditor required; and
  - (b) whether proper accounting records and other records have been kept by the incorporated association
- 15 concerned as required by this Act,

and must state in the auditor's report particulars of any deficiency or failure in respect of any such matter.

**123. Auditor may attend general meeting and be heard**

20 (1) An auditor of an incorporated association, or an agent of the auditor authorised by the auditor in writing for the purpose, is entitled —

- (a) to receive all notices of and other communications relating to any general meeting of the association that a member is entitled to receive; and
- 25 (b) to attend any general meeting of the association; and
- (c) to be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

(2) Subsection (1) applies despite the fact that the auditor retires at the meeting or a resolution to remove the auditor from office is passed at the meeting.

5 (3) An incorporated association must ensure that an auditor is afforded the rights conferred by this section.

**124. Reporting of breaches of this Act to the Commissioner**

10 (1) If, in the course of the performance of duties as auditor of an incorporated association, an auditor becomes aware that the association has contravened section 84 or 104, the auditor must —

- (a) as soon as is practicable, inform the Commissioner in writing of the contravention; and
  - (b) if financial statements have been prepared and audited, send to the Commissioner a copy of the statements and of the auditor's report on them.
- 15

20 (2) An auditor must also, as soon as is practicable, report to the Commissioner in writing any other contravention of this Act or of its rules by an incorporated association of which the auditor has become aware in the course of the performance of duties as auditor, but only if the auditor considers that the circumstances are such that the matter has not been or will not be adequately dealt with —

- (a) by comment in the auditor's report on the financial statements; or
  - (b) by bringing the matter to the notice of the management committee of the incorporated association.
- 25

**125. Removal of auditor to be reported**

30 If an auditor is removed or dismissed, the auditor must as soon as is practicable notify the Commissioner in writing of the removal or dismissal and the circumstances in which it occurred.

**126. Payment of auditor**

The reasonable fees and expenses of an auditor are payable by the incorporated association concerned.

**Subdivision 4 — Special audits of financial affairs of incorporated association**

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**127. Commissioner may require special audit to be carried out**

10 (1) The Commissioner may exercise the power in subsection (2) in respect of an incorporated association if the Commissioner is of the opinion that it is desirable to do so because the financial affairs of the association are not being properly managed.

(2) The Commissioner —  
(a) may, in writing given to the incorporated association, direct that a special audit of the financial affairs of the association is to be carried out; and  
15 (b) may, for that purpose, appoint the auditor and specify —  
(i) the kind of information that the auditor is to furnish to the Commissioner; and  
(ii) the period to which the audit is to relate; and  
(iii) the time within which the auditor is to report to the Commissioner.  
20

(3) An auditor appointed under this section in respect of an incorporated association is to be a person who is qualified as mentioned in section 110(2)(a) or (b) and is not prohibited by section 111 from auditing the financial statements of the association.  
25

(4) Where a direction is given under subsection (2) to an incorporated association, the association must do all things that are necessary to be done on its part to enable the audit to be properly completed.



- (5) Sections 112, 113, 115 and 116 apply to and in relation to an auditor appointed under this section in respect of an incorporated association as if the auditor were the auditor of the financial statements of the association.

## **Part 8 — Amalgamation of incorporated associations**

### **128. Meaning of “new body”**

In this Part —

“**new body**” has the meaning given by section 129.

### **129. Application for incorporation of body formed by amalgamation**

- 5
- 10
- 15
- 20
- (1) An application may be made to the Commissioner in the approved form for the incorporation of an association (the “**new body**”) that is an amalgamation of 2 or more existing incorporated associations.
  - (2) The application must be made by a person duly authorised to do so by each of the existing associations.
  - (3) An application cannot be made if the proposed amalgamation is inconsistent with the rules of either of the existing associations.
  - (4) An application cannot be made unless —
    - (a) the terms of amalgamation; and
    - (b) the name and the objects or purposes of the new body; and
    - (c) the rules of the new body,have been approved by a special resolution of each of the existing incorporated associations concerned.

### **130. What is to be included in the application**

- 25
- (1) An application under section 129 must contain —
    - (a) evidence that the special resolutions referred to in section 129(4) have been passed; and
    - (b) the same information in relation to the new body as is required to be provided in relation to an association under sections 11(2) and (3), 12(1), 13 and 14; and

- 5                   (c) a copy of the rules of the new body and a certificate  
                    given by the applicant that the rules comply with  
                    section 57; and
- (d) such other information as may be prescribed for the  
                    purposes of this paragraph.
- (2) The objects or purposes of the new body must comply with  
section 12(2).
- 10           (3) The applicant must also provide the Commissioner with such  
              further information and documents as the Commissioner may in  
              writing request.

**131. Incorporation of the new body**

- 15           (1) If on application duly made the Commissioner is satisfied that  
              the requirements set out in subsection (2) have been met, the  
              Commissioner must, subject to subsection (4), incorporate the  
              new body by the issue to it of a certificate of incorporation in  
              the approved form.
- (2) The requirements referred to are that —
- 20                   (a) the special resolutions mentioned in section 129(4) have  
                    been passed; and
- (b) the new body is eligible to be incorporated under this  
                    Act; and
- (c) the objects or purposes of the new body comply with  
                    section 12(2); and
- 25                   (d) the name of the new body is appropriate having regard  
                    to section 32 and regulations made for the purposes of  
                    section 33; and
- (e) the rules of the new body comply with section 57; and
- (f) the considerations mentioned in section 20(1)(a) and (b)  
                    do not apply; and
- 30                   (g) the applicant has complied with any request under  
                    section 130(3).

**s. 132**

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- (3) The issue of a certificate of incorporation to the new body automatically cancels the incorporation of an incorporated association that is a party to the amalgamation.
- 5 (4) The Commissioner must not issue a certificate of incorporation to the new body unless —
- (a) each certificate of incorporation of an incorporated association that is a party to the amalgamation has been returned to the Commissioner; or
- 10 (b) the Commissioner is satisfied that the certificate has been lost or destroyed.

**132. Review of decision to refuse application**

- (1) If the Commissioner refuses an application under section 129 the applicant may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.
- 15 (2) An application under subsection (1) must be made within —
- (a) 28 days; or
- (b) such other period as is prescribed,
- after the applicant receives notice of the refusal.

**133. Vesting of property and liabilities in new body**

- 20 Schedule 2 has effect in relation to the new body on its incorporation.

## **Part 9 — Winding up and cancellation of incorporation**

### **Division 1 — Preliminary**

#### **134. Terms used in this Part**

5 In this Part —

**“distribution plan”** means a statement showing —

- (a) the intended recipients of surplus property of the incorporated association concerned; and
  - (b) an estimate of the amount or value of the property that each is to receive;
- 10

**“surplus property”**, in relation to an incorporated association, means property remaining after satisfaction of —

- (a) the debts and liabilities of the association; and
  - (b) the costs, charges and expenses of winding up the association.
- 15

#### **135. Object of this Part**

The object of this Part is to make provision —

- (a) in Division 2, for the voluntary winding up of an incorporated association that has surplus property to be distributed on the winding up and for the cancellation of its incorporation; and
  - (b) in Division 3, for the cancellation of the incorporation of an association where the debts and liabilities of the association have been satisfied and there is no surplus property to be distributed; and
  - (c) in Division 4, for the winding up of an incorporated association by the Supreme Court on certain grounds and for the cancellation of its incorporation.
- 20
- 25

**136. Modifications of applied text of Corporations Act**

The modifications set out in Schedule 4 to the text of Parts 5.4 to 5.8 of the *Corporations Act 2001* of the Commonwealth apply for the purposes of Divisions 2 and 4.

5 **Division 2 — Voluntary winding up of incorporated association that has property to be distributed**

**Subdivision 1 — Requirements for voluntary winding up**

**137. When voluntary winding up may occur**

- 10 (1) This Subdivision applies to the voluntary winding up of an incorporated association that has surplus property to be distributed on the winding up.
- (2) Before the incorporated association may be wound up voluntarily —
- 15 (a) the management committee of the association must examine the affairs of the association and by resolution declare that in its opinion the association is able to pay or meet its debts and liabilities; and
- (b) the association must then pass special resolutions —
- 20 (i) that it be wound up voluntarily; and
- (ii) approving a distribution plan that complies with Subdivision 2;
- and
- (c) a distribution plan must be approved or determined by the Commissioner under that Subdivision 2.

25 **138. Notice to be given to the Commissioner**

- (1) If an incorporated association has passed the special resolutions referred to in section 137(2)(b), the public officer of the association must lodge a notice in the approved form with the Commissioner.

30 Penalty: a fine of \$1 000.



**140. Corporations Act may be applied by the regulations**

5 The regulations may declare the winding up of an incorporated association under this Division to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to one or more of Parts 5.4 to 5.8 (winding up) of the *Corporations Act 2001* of the Commonwealth, with any modifications that are specified in the declaration.

10 **Subdivision 2 — Distribution of surplus property on voluntary winding up**

**141. Application of this Subdivision**

This Subdivision applies to an incorporated association that has passed the special resolutions referred to in section 137(2)(b).

**142. Duty of association**

15 An incorporated association to which this Subdivision applies must ensure that —

- (a) its surplus property is properly distributed in accordance with a distribution plan that is approved or determined under this Subdivision; and
- 20 (b) the distribution is completed within the period required under section 147.

**143. Content and operation of distribution plan**

- 25 (1) A distribution plan in respect of an incorporated association must provide for the distribution of the surplus property in accordance with the rules of the association, being rules that —
  - (a) make provision of the kind mentioned in Schedule 3 Division 1 item 17; and
  - (b) are consistent with the provision implied by section 58.



- (2) Surplus property distributed under a distribution plan is subject to any trust affecting the property or any part of it.

**144. Position where conditions attached to grant**

- (1) In this section —

5       **“body”** includes a government department or public authority of the State or the Commonwealth;

10       **“relevant contract”** means a contract as to the manner in which property referred to in subsection (2), or any part of the property, is to be dealt with if an incorporated association is wound up.

- (2) Where property has been provided to an incorporated association by any body, a distribution plan in respect of the association must give effect to any relevant contract that has been made between the association and the body.

- 15       (3) Subsection (2) —

- (a) applies only if, and to the extent that, the contract is binding on the association; and  
(b) does not apply if, or to the extent that, the body concerned agrees otherwise.

20       **145. Approval of distribution plan**

- (1) A distribution plan lodged under section 138(2) does not have effect unless it is approved by the Commissioner.

- (2) The Commissioner may —

- 25       (a) approve a distribution plan so lodged; or  
(b) approve it with any amendment that the Commissioner determines to be a minor amendment; or  
(c) specify any amendment that is required and approve the distribution plan in an amended form.

**Associations Incorporation Bill 2006**

**Part 9** Winding up and cancellation of incorporation

**Division 2** Voluntary winding up of incorporated association that has property to be distributed

**s. 146**

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- (3) An amendment under subsection (2)(c) must be approved by or on behalf of the incorporated association concerned in such manner as the Commissioner may determine in a particular case.

5     **146. If necessary Commissioner may determine contents of plan**

The Commissioner may determine the contents of a distribution plan if —

- (a) an amendment to the plan has been required under section 145(2)(c); but
- 10     (b) within a period that the Commissioner considers reasonable and notifies to the association concerned, the Commissioner is not satisfied that an amended distribution plan that complies with this Subdivision has been approved by or on behalf of the association in
- 15     accordance with a determination under section 145(3).

**147. Time limit for implementation of plan**

The Commissioner must, when approving or determining a distribution plan under this Subdivision, fix a period within which the implementation of the plan is to be completed, and

20     may from time to time extend the period so fixed.

**148. Review of Commissioner's decision**

- (1) A person who is dissatisfied with —
- (a) a decision of the Commissioner to refuse the approval of a distribution plan or to request that it be amended by the incorporated association; or
- 25     (b) any provision of a distribution plan determined under section 146,

may apply to the State Administrative Tribunal for a review of the Commissioner's decision or of the plan so determined.

- (2) An application under subsection (1) must be made within —
- (a) 28 days; or
  - (b) such other period as is prescribed,
- after the person receives notice of the refusal, request or  
determination.

**149. Reporting to Commissioner**

- (1) The incorporated association concerned must —
- (a) in the approved form, prepare such reports for the Commissioner on the implementation of a distribution plan as the Commissioner may in writing require; and
  - (b) as soon as is practicable after the implementation of a distribution plan has been completed, prepare a certificate in the approved form that the surplus property of the association has been distributed in accordance with the plan.
- (2) An incorporated association prepares a report or certificate under subsection (1) when the association, or the management committee of the association, determines by resolution content of the report or certificate.
- (3) The incorporated association must lodge with the Commissioner —
- (a) a report under subsection (1)(a); and
  - (b) a certificate under subsection (1)(b),
- as soon as is practicable after the report or certificate is prepared.

**Subdivision 3 — Powers of Commissioner on default  
under Subdivision 2**

**150. Grounds on which Commissioner may act**

5 Section 151 applies if in the opinion of the Commissioner an incorporated association has failed —

- (a) to properly implement a distribution plan; or
- (b) to prepare a report or certificate,

as required under Subdivision 2.

**151. Commissioner may require association to show cause**

10 (1) The Commissioner may give to the incorporated association concerned a notice —

- (a) stating that the Commissioner proposes to make a declaration under section 154 in respect of the association; and
- 15 (b) specifying the ground or grounds on which it is proposed to do so; and
- (c) informing the association that, if it does not show cause within the allowed period, the declaration will be made.

20 (2) The allowed period under subsection (1)(c) is 28 days after the day on which the notice is given.

**152. How association may show cause**

Where notice has been given to an incorporated association under section 151, the association shows cause for the purposes of this Subdivision if it satisfies the Commissioner that —

- 25 (a) the incorporated association has not failed to do the things specified in the notice; or
- (b) there is otherwise sufficient reason for not making the proposed declaration.

**153. Review of Commissioner's proposal**

- 5 (1) An incorporated association to which a notice has been given under section 151 may, not later than the end of the allowed period, apply to the State Administrative Tribunal for a review of the Commissioner's proposal.
- (2) If an application is so made, the Commissioner cannot make a declaration that section 155 applies to an incorporated association unless —
- 10 (a) the application results in the Commissioner's proposal being confirmed; or
- (b) the application is dismissed or struck out.

**154. Making of declaration by the Commissioner**

- 15 (1) Subject to section 153, the Commissioner may make a declaration in writing that section 155 applies to an incorporated association if the association does not show cause within the allowed period.
- (2) The Commissioner must give notice in writing of the making of a declaration under subsection (1) to the incorporated association concerned.

20 **155. Effect of declaration**

- (1) In this section —
- “surplus property” means property remaining after the satisfaction of —
- 25 (a) the debts and liabilities of the association; and
- (b) the costs, charges and expenses incurred in giving effect to this section.

**Associations Incorporation Bill 2006**

**Part 9** Winding up and cancellation of incorporation

**Division 2** Voluntary winding up of incorporated association that has property to be distributed

**s. 156**

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- (2) On the making of a declaration under section 154 in respect of an incorporated association —
- 5 (a) the property held by the association immediately before the making of the declaration vests in the Commissioner; and
- (b) the Commissioner has power to realise such property, pay the debts and liabilities of the association, distribute its surplus property and wind up its affairs.
- 10 (3) The Commissioner may for the purposes of this section or any incidental purpose —
- (a) do all such other acts and things as are reasonably necessary or expedient; and
- 15 (b) appoint a person to investigate the affairs of the association and exercise any power on behalf of the Commissioner; and
- (c) give such directions as the Commissioner thinks; and
- (d) do or omit any act or thing, or take any step, that is prescribed.
- 20 (4) The reasonable costs, charges and expenses of the Commissioner and a person appointed under subsection (3)(b) relating to the exercise and performance of the powers and functions conferred by or under this section in respect of an incorporated association are to be paid out of the property of the association.
- 25 **156. Distribution of surplus property under this Subdivision**
- (1) Any surplus property of an incorporated association to which section 155 applies must be distributed by the Commissioner in accordance with a distribution plan determined by the Commissioner in conformity with sections 143 and 144.
- 30 (2) A person who is dissatisfied with the determination of a distribution plan under subsection (1) may apply to the State

Administrative Tribunal for a review of the plan or any provision of it.

- (3) An application under subsection (2) must be made within —
- (a) 28 days; or
  - (b) such other period as is prescribed,
- after the person receives notice of the determination.

**157. Cancellation of incorporation**

- (1) When the Commissioner is satisfied that —
- (a) all surplus property of an incorporated association to which section 155 applies has been distributed; and
  - (b) the affairs of the incorporated association have been otherwise wound up,

the Commissioner must, by instrument in writing, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in the instrument.

- (2) The Commissioner may cause an instrument under subsection (1) to be published in the *Gazette* if the Commissioner considers that public notification of the cancellation is desirable.

**Division 3 — Cancellation of incorporation on application  
by association that has no debts or surplus property**

**158. Application for cancellation**

- (1) An incorporated association may apply to the Commissioner in the approved form to have the incorporation of the association cancelled.
- (2) An application cannot be made under subsection (1) by an incorporated association unless —
- (a) the management committee of the association has examined the affairs of the association and by resolution

**Associations Incorporation Bill 2006**

**Part 9** Winding up and cancellation of incorporation

**Division 3** Cancellation of incorporation on application by association that has no debts or surplus property

**s. 159**

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declared that in its opinion the debts and liabilities of the association have been satisfied and there is no surplus property to be distributed; and

- 5 (b) the making of the application has been approved by a special resolution of the incorporated association.

**159. Content of application**

- (1) An application by an incorporated association for cancellation of its incorporation must contain —
- 10 (a) copies of each of the resolutions referred to in section 158(2); and
- (b) a statement signed by 2 members of the management committee of the association that the special resolution referred to in section 158(2)(b) was passed in accordance with this Act.
- 15 (2) The incorporated association must also provide the Commissioner with such further information and documents as the Commissioner may in writing request.

**160. Commissioner may grant application**

- 20 (1) On application duly made under section 159, the Commissioner may, by instrument in writing, cancel the incorporation of the association concerned if the Commissioner is satisfied that —
- (a) the special resolution referred to in section 158(2) was passed in accordance with this Act; and
- 25 (b) the debts and liabilities of the association have been satisfied and there is no surplus property remaining; and
- (c) all of the requirements of this Act in respect of the association have been met.
- (2) An instrument under subsection (1) has effect on and from a day that the Commissioner considers appropriate and specifies in the instrument.
- 30



- (3) The Commissioner may cause an instrument under subsection (1) to be published in the *Gazette* if the Commissioner considers that public notification of the cancellation is desirable.

5     **161. Review of decision to refuse application**

- (1) If the Commissioner refuses an application by an incorporated association to cancel its incorporation, the association may apply to the State Administrative Tribunal for a review of the Commissioner's decision.
- 10     (2) An application under subsection (1) must be made within —
- (a) 28 days; or
  - (b) such other period as is prescribed,
- after the incorporated association receives notice of the refusal.

**162. Liabilities not affected**

- 15     Any liability of an officer or member of an association —
- (a) is not affected by the cancellation of the incorporation of the association under section 160; and
  - (b) may be enforced as if the incorporation of the association had not been cancelled.

20     **Division 4 — Winding up by the Supreme Court**

**163. Grounds on which winding up may be ordered**

An incorporated association may be wound up by the Supreme Court on any ground specified in Schedule 5.

**164. By whom application may be made**

- 25     An application to the Supreme Court for the winding up of an incorporated association must be made by petition presented by —
- (a) the incorporated association; or

- 5
- (b) a member of the incorporated association; or
  - (c) the Commissioner; or
  - (d) the Minister; or
  - (e) a creditor, in the case of a petition based on the ground specified in Schedule 5 item 5.

**165. Application of Corporations Act**

10 The winding up of an incorporated association (other than by a voluntary winding up) by the Supreme Court is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 (Winding up bodies other than companies) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications —

- 15
- (a) the modifications specified in Schedule 4; and
  - (b) the provisions of the Part are to be read as if it extended to the winding up of the affairs of an incorporated association in the State; and
  - (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed for the purposes of this paragraph.
- 20

**166. Cancellation of incorporation**

- 25
- (1) When the Commissioner is satisfied that the winding up of an incorporated association under this Division has been completed the Commissioner must, by instrument in writing, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in the instrument.
  - (2) The Commissioner may cause an instrument under subsection (1) to be published in the *Gazette* if the Commissioner considers that public notification of the cancellation is desirable.
- 30

## **Part 10 — Certain remedial measures available to the Commissioner**

### **Division 1 — Cancellation of incorporation by the Commissioner on certain grounds**

5    **167.    Grounds on which Commissioner may act**

- (1) Section 168 applies if the Commissioner has reasonable cause to believe that an incorporated association —
- (a) was not at the time of incorporation eligible for incorporation under this Act; or
  - 10    (b) has suspended its operations, or has in effect been dormant, for a whole year; or
  - (c) has fewer than 6 members who under its rules have the right to vote at its general meetings either in person or by proxy or postal vote; or
  - 15    (d) has no property and the members have resolved to discontinue the activities of the association; or
  - (e) has resolved to wind up but no person is prepared to act as liquidator; or
  - 20    (f) has failed to comply with a direction of the Commissioner under section 50 or 173; or
  - (g) has refused or failed to remedy a contravention of this Act within 60 days after notice of the contravention has been given to the association by the Commissioner.
- (2) Section 168 also applies if —
- 25    (a) the public officer of an incorporated association has contravened a provision of this Act; and
  - (b) the Commissioner has, by notice in writing given to the public officer, required the public officer to remedy the contravention within 60 days after the notice was given;
  - 30    but

**Associations Incorporation Bill 2006**

**Part 10** Certain remedial measures available to the Commissioner

**Division 1** Cancellation of incorporation by the Commissioner on certain grounds

**s. 168**

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- (c) the public officer has failed or refused to do so.

**168. Commissioner may require association to show cause**

- (1) Where this section applies, the Commissioner may give to the incorporated association a notice —
- 5 (a) stating that the Commissioner proposes to cancel the incorporation of the association; and
- (b) specifying the ground or grounds on which it is proposed to do so; and
- 10 (c) informing the association that, if it does not show cause within the allowed period, the incorporation of the association will be cancelled.
- (2) The Commissioner may also have the notice published in a newspaper circulating generally in the State.
- (3) The allowed period for the purposes of subsection (1)(c) is —
- 15 (a) 60 days after the day on which the notice is given; or
- (b) if subsection (2) applies, 60 days after the day on which the notice has been both given and published.

**169. How association may show cause**

20 Where a notice has been given to an incorporated association under section 168, the association shows cause for the purposes of this Division if it satisfies the Commissioner that the ground or grounds stated in the notice does or do not apply to the incorporated association.

**170. Cancellation of incorporation**

- 25 (1) The Commissioner may, by instrument in writing, cancel the incorporation of the association if the incorporated association does not show cause within the allowed period.

- (2) Where the Commissioner makes an instrument under subsection (1), the Commissioner must —
- (a) serve a copy of the instrument on the incorporated association; and
  - 5 (b) publish the instrument in the *Gazette*.
- (3) A cancellation does not take effect until —
- (a) the day of publication of the instrument; or
  - (b) if another day is specified in the instrument, that day.

**171. Powers of Commissioner in respect of property**

- 10 On the cancellation of the incorporation of an association under section 170 —
- (a) the property held by the association immediately before the cancellation vests in the Commissioner; and
  - (b) despite the cancellation —
- 15 (i) the Commissioner has the functions and powers set out in sections 155 and 156; and
- (ii) those sections apply with any necessary modification,
- 20 as if the association were one to which section 154 applies.

**172. Review of Commissioner's proposal to cancel incorporation**

- (1) An incorporated association to which notice is given under section 168 may, not later than the end of the allowed period under that section, apply to the State Administrative Tribunal
- 25 for a review of the Commissioner's proposal to cancel the incorporation of the association.
- (2) If an application is so made, the Commissioner cannot make an instrument under section 170 unless —
- 30 (a) the application results in the Commissioner's proposal being confirmed; or

- (b) the application is dismissed or struck out.

**Division 2 — Direction by Commissioner to transfer undertaking**

**173. Commissioner may direct an incorporated association to transfer its undertaking to another body corporate**

- (1) In this section —

**“another body corporate”** means a body corporate, other than the incorporated association concerned, being —

- (a) another incorporated association; or

- (b) a body incorporated under some other written law of the State or a written law of the Commonwealth.

- (2) This section applies if the Commissioner is satisfied that the continued incorporation of an association under this Act is inappropriate because in the opinion of the Commissioner —

- (a) it has ceased to be eligible to be incorporated under this Act; or

- (b) the undertaking or operations of the association is or are being carried on by another body corporate; or

- (c) that undertaking or those operations would more appropriately be carried on by another body corporate.

- (3) The Commissioner may in writing direct the incorporated association —

- (a) to transfer its undertaking to another body corporate specified in the direction; and

- (b) to do all things that are reasonably necessary to give effect to the transfer.

- (4) A direction under subsection (3) —

- (a) must specify the period within which the transfer is to be completed; and

- (b) may specify any terms and conditions that are to be observed in effecting the transfer.

(5) The Commissioner may, by notice in writing to the incorporated association —

- 5           (a) from time to time extend the period referred to in subsection (4)(a); or
- (b) revoke or amend a direction given under subsection (3).

**174. Commissioner to give notice of intention**

10       (1) Before the Commissioner gives a direction to an incorporated association under section 173(3) or notice of an amendment under section 173(5)(b), the Commissioner must give notice in writing to the association stating —

- (a) the Commissioner's intention to give the direction or make the amendment; and
- 15           (b) the grounds on which the Commissioner is proposing to act; and
- (c) that written submissions on the proposed direction or amendment may be made to the Commissioner within a specified period.

20       (2) The period specified under subsection (1)(c) is not to be less than 28 days after the notice is given.

             (3) Before the Commissioner gives or amends a direction to an incorporated association under section 173 the Commissioner must have regard to any submission made by the association in

25           accordance with the notice.

**175. Review of proposed direction or amendment**

             (1) An incorporated association to which a notice is given under section 174 may, not later than the end of the period specified under section 174(1)(c), apply to the State Administrative

30           Tribunal for a review of the proposed direction or amendment.

(2) If an application is so made, the Commissioner cannot give the direction or make the amendment unless —

(a) the application results in the Commissioner's proposed action being confirmed; or

5 (b) the application is dismissed or struck out.

**176. Association to comply with direction**

(1) Subject to section 175, an incorporated association must comply with a direction given to the association under section 173(3) or a direction as amended under section 173(5)(b).

10 (2) A contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only of a failure by the association to comply with a direction under section 173.

**177. Power of Commissioner if association fails to comply with direction**

15 (1) If an incorporated association has failed or refused to transfer its undertaking to another body corporate in accordance with a direction under section 173 the Commissioner may, by order published in the *Gazette* —

20 (a) transfer the undertaking of the association in accordance with the terms of the direction; and

(b) make such other incidental or transitional provisions as the Commissioner considers necessary or desirable.

25 (2) Before the Commissioner makes an order under subsection (1), the Commissioner must give notice in writing to the incorporated association stating that the Commissioner proposes to make the order after the expiration of 28 days from the day on which the notice is given.

30 (3) An incorporated association to which a notice is given under subsection (2) may, not later than the end of the period specified under that subsection, apply to the State Administrative Tribunal for a review of the Commissioner's proposal.



(4) If an application is so made, the Commissioner cannot make the order unless —

(a) the application results in the Commissioner’s proposal being confirmed; or

5 (b) the application is dismissed or struck out.

**178. Effect of order**

(1) On the publication of an order under section 177(1) in respect of an incorporated association —

10 (a) the property of the association vests, by virtue of this subsection, in the body corporate specified in the order (“**the transferee**”); and

(b) the rights and liabilities of the association become, by virtue of this subsection, the rights and liabilities of the transferee; and

15 (c) proceedings by or against the association subsisting immediately before the publication may be continued by or against the transferee; and

(d) proceedings that might have been brought by or against the association immediately before the publication may be commenced by or against the transferee; and

20 (e) any act, matter or thing done or omitted to be done before the publication by, to or in respect of the association is, to the extent to which the act, matter or thing has any force or effect, taken to have been done or omitted by, to or in respect of the transferee; and

25 (f) a reference in an agreement or instrument to the association is, unless the context otherwise requires, to be read as, or as including, a reference to the transferee.

30 (2) Any property vested in the transferee by operation of this section is vested subject to any trust, restriction or obligation to which the property was subject immediately before it became so vested.

(3) On —

(a) the application of a transferee in which any estate or interest in land has been vested by operation of this section; and

5 (b) the production of such duplicate instruments of title and other documents as the Registrar of Titles or the Registrar of Deeds may require,

the Registrar of Titles or the Registrar of Deeds is to record and register the vesting in the appropriate manner.

10 (4) This section has effect in relation to a matter concerning a transferee that is registered as a company under the *Corporations Act 2001* of the Commonwealth only to the extent that the matter is not dealt with by that Act.

**179. Cancellation of incorporation under this Act**

15 (1) Where an incorporated association has transferred its undertaking in accordance with a direction under section 173, the association must notify the Commissioner in writing of the transfer within 14 days after it occurs.

Penalty: a fine of \$5 000.

20 (2) If —

(a) the Commissioner is satisfied that an incorporated association has transferred its undertaking in accordance with a direction under section 173; or

(b) the Commissioner has made an order under section 177,

25 the Commissioner must, by instrument in writing, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in the instrument.

30 (3) The Commissioner may cause an instrument under subsection (1) to be published in the *Gazette* if the

Commissioner considers that public notification of the  
cancellation is desirable.

**Division 3 — Direction by Commissioner to convene  
general meeting**

- 5    **180.    Commissioner may direct that general meeting be convened**
- (1)    In this section —
- “relevant office holder”** means any person who under the rules  
          of an incorporated association has power to convene a  
          general meeting of the association;
- 10       **“specified”** means specified in a direction given under  
          subsection (3).
- (2)    This section applies if the Commissioner is of the opinion  
          that —
- 15           (a)    there is any dispute or matter affecting the proper  
                    conduct of the affairs of an incorporated association; and
- (b)    the giving of a direction under this section may assist in  
                    or towards the resolution of the dispute or matter.
- (3)    The Commissioner may in writing given to a relevant office  
          holder of the incorporated association direct the office holder to  
20       take such steps as are required under the rules of the association  
          to convene a general meeting of the association at a specified  
          time or within a specified period.
- (4)    A direction under subsection (3) may also require the office  
          holder to take such steps as are reasonably required to enable  
25       any specified matter to be discussed and determined at the  
          meeting, including the putting of any specified motion for  
          consideration at the meeting.
- (5)    The Commissioner may in writing given to a relevant office  
          holder revoke or amend a direction given to that person under  
30       subsection (3).

- (6) Subject to section 181, a relevant office holder to whom a direction is given under subsection (3) shall not without reasonable excuse fail to comply with the direction.

Penalty: a fine of \$5 000.

5     **181.     Review of direction**

- (1) A person to whom a direction is given under section 180(3) may apply to the State Administrative Tribunal for a review of the direction or of an amendment to the direction made under section 180(5).

- 10     (2) An application under subsection (1) must be made within —  
      (a) 28 days; or  
      (b) such other period as is prescribed,

after the person is given the direction or notice of the amendment.

15     **182.     Rights of Commissioner or a delegate at meeting convened under this Division**

- (1) In this section —

20     “**authorised officer**” means the Commissioner or an officer of the Department authorised in writing by the Commissioner to attend a meeting as the representative of the Commissioner;

“**meeting**” means a meeting convened pursuant to a direction under section 180.

- 25     (2) An authorised officer may attend a meeting and take part in the consideration and discussion of the dispute or matter in relation to which the direction under section 180 was given and of any incidental matter.

- 30     (3) An authorised officer cannot vote at a meeting and is not to be counted for the purpose of determining the existence of a quorum.

**Division 4 — Appointment of statutory manager**

**183. Commissioner may appoint statutory manager**

- 5           (1) The Commissioner may, subject to subsection (2), appoint a  
statutory manager to administer the affairs of an incorporated  
association if —
- (a) the Commissioner is of the opinion that the association  
has refused or failed to remedy a contravention of this  
Act within 60 days after notice of the contravention has  
been given to the association by the Commissioner; or
- 10           (b) the Commissioner is of the opinion that the appointment  
is necessary because of the financial or administrative  
position of the association; or
- (c) the association has by special resolution requested that a  
statutory manager be appointed for the association.
- 15           (2) The Commissioner is not to appoint a statutory manager unless  
the Commissioner is of the opinion that —
- (a) the incorporated association concerned is, at the time of  
the appointment, able to pay or meet its debts and  
liabilities as and when they become due and payable;  
and
- 20           (b) the appointment is in the public interest; and
- (c) the issues that have arisen are not likely to be effectively  
resolved by the exercise of any other power under  
this Act.
- 25           (3) An appointment is to be made by instrument in writing given to  
the incorporated association.

**184. Statutory manager has functions of management committee**

- (1) On the appointment of a statutory manager of an incorporated  
association —
- 30           (a) the members of the management committee of the  
association cease to hold office; and

- (b) the statutory manager has the functions of the management committee, including the committee's powers of delegation.

- 5 (2) Except as provided by section 186(1), an officer of an incorporated association cannot be appointed or elected so long as a statutory manager is in office in respect of the association.

**185. Duration of appointment**

- (1) An appointment of a statutory manager continues in force until it is revoked —
  - 10 (a) by the Commissioner by instrument in writing given to the statutory manager; or
  - (b) by operation of subsection (2).
- (2) If —
  - 15 (a) a statutory manager is administering the affairs of an incorporated association; and
  - (b) a liquidator is appointed to carry out the winding up of the association,

the appointment of the statutory manager is automatically revoked.

20 **186. Prerequisites to revocation of appointment**

- (1) Before revoking the appointment of a statutory manager of an incorporated association, the Commissioner must —
  - (a) appoint another statutory manager of the association; or
  - 25 (b) ensure that members of the management committee of the association have been elected in accordance with the rules of the association at a meeting convened by the statutory manager in accordance with those rules; or
  - (c) appoint members to the management committee of the association.

- (2) Elected members of the management committee or members of the management committee appointed under subsection (1) —
- (a) take office on the revocation of the statutory manager's appointment; and
- (b) in the case of members appointed under subsection (1)(c), hold office, subject to section 190, until the next annual general meeting of the association after the revocation of that appointment.

**187. Statutory manager to report to the Commissioner**

- (1) A statutory manager of an incorporated association —
- (a) must report to the Commissioner on the affairs of the association as directed by the Commissioner; and
- (b) may at any time on the statutory manager's own initiative report to the Commissioner on those affairs.
- (2) After the revocation of a statutory manager's appointment, the person who held the office —
- (a) must, as soon as is practicable, make a final report to the Commissioner on the affairs of the association; and
- (b) has access to the records and documents of the incorporated association concerned for that purpose.
- (3) The Commissioner may, after considering a report under subsection (2), refer any matter back to the person for further consideration and report to the Commissioner, and the person has access to the records and documents of the incorporated association concerned for that purpose.
- (4) The person must report to the Commissioner as required under subsection (3).

Penalty applicable to subsections (1)(a), (2)(a) and (4): a fine of \$10 000.

**188. Remuneration and expenses of statutory manager**

(1) In this section —

“**expenses**” includes —

- 5 (a) if the statutory manager is an employee within the meaning of the *Public Sector Management Act 1994*, the amount that the Commissioner determines is to be paid to the State in repayment of the statutory manager’s remuneration; or
- 10 (b) if paragraph (a) does not apply, remuneration of the statutory manager at a rate determined by the Commissioner.
- (2) The Commissioner may make moneys available for the purpose of meeting the expenses of and incidental to the conduct of the affairs of an incorporated association by a statutory manager, and the Treasurer may advance moneys to the Commissioner for that purpose on such terms and conditions as the Treasurer thinks fit.
- 15 (3) The Commissioner may determine that the expenses referred to in subsection (2) are to be recovered from the incorporated association concerned, or that a part of those expenses is to be so recovered.
- 20 (4) A member of the incorporated association concerned may apply to the State Administrative Tribunal for a review of a determination of the Commissioner —
- 25 (a) under paragraph (a) or (b) of the definition in subsection (1); or
- (b) under subsection (3).
- (5) An application under subsection (4) must be made within —
- 30 (a) 28 days; or
- (b) such other period as is prescribed,
- after the member receives notice of the determination.



- (6) An amount payable pursuant to a determination under subsection (3) is recoverable from the incorporated association by the Commissioner in a court of competent jurisdiction as a debt due to the State.
- 5      (7) The Commissioner has, in relation to an amount mentioned in subsection (6), the same priority on the winding up of an incorporated association as a liquidator of the association.

**189. Liability of statutory manager**

- 10      (1) Except as provided in subsection (3), a statutory manager is not liable for any loss incurred by the incorporated association in respect of the period of the statutory manager's appointment.
- (2) Subsection (1) does not affect the duty of a statutory manager to provide information to the Commissioner in respect of any loss in a report under section 187.
- 15      (3) A statutory manager is liable for a loss incurred by the incorporated association in respect of the period of the statutory manager's appointment because of —
- (a) fraud or dishonesty; or
- (b) negligence; or
- 20      (c) a wilful failure to comply with this Act or the rules of the association,
- on the part of the statutory manager.

**190. Additional powers of Commissioner**

- 25      (1) If the Commissioner appoints members of the management committee of an incorporated association under section 186(1)(c), the Commissioner may, by notice in writing given to the association, specify —
- (a) a period during which this section is to apply in relation to the association; and

- (b) the terms and conditions on which all or any of the members of the management committee hold office; and
  - (c) the rules that are to be the rules of the association.
- (2) While this section applies to an incorporated association, the Commissioner may —
  - (a) from time to time remove or appoint members of the management committee;
  - (b) from time to time revoke or replace, in whole or in part, or add to or vary the terms and conditions or the rules specified under subsection (1).
- (3) The Commissioner may, by notice in writing given to an incorporated association, extend the period during which this section is to apply to the association.
- (4) Rules specified by the Commissioner under this section for an incorporated association —
  - (a) are not to be amended or revoked except under this section; and
  - (b) if they are inconsistent with any other rule of the association, prevail over that other rule.
- (5) Section 198(2)(d) applies to a copy of rules specified by the Commissioner under subsection (1) as if they had been lodged with the Commissioner.

**191. Proceedings against association stayed**

- (1) After a statutory manager has been appointed to administer the affairs of an incorporated association, a person cannot begin or continue a proceeding in a court against the association until the appointment of the statutory manager is revoked except —
  - (a) with the leave of the Supreme Court; and
  - (b) if that Court grants leave, in accordance with the terms and conditions that it imposes.

- (2) A person intending to apply for leave of the Supreme Court under subsection (1) must give the Commissioner not less than 10 days' notice of that intention.
- 5 (3) On the hearing of an application under subsection (1), the Commissioner may be represented and may oppose the granting of the application.

## **Part 11 — Administration**

### **Division 1 — General**

#### **192. Commissioner**

- (1) In this section —
- 5 “**executive officer**” has the meaning given by the *Public Sector Management Act 1994* section 3(1).
- (2) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- 10 (3) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

#### **193. Delegation by Commissioner**

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner
- 15 under another provision of this Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been
- 20 delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an official or an agent.

**194. Regulations for the obtaining of information by the Commissioner**

- 5 (1) The regulations may make provision for an incorporated association to provide the Commissioner with prescribed information that is relevant to the operation of this Act, including prescribed information by way of periodical returns at prescribed times.
- 10 (2) Regulations made for the purposes of subsection (1) may provide that the prescribed information is to be included in an annual return under section 106.

**195. Information officially obtained to be confidential**

- (1) In this section —  
“**information**” means information concerning the affairs of a person.
- 15 (2) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act or a repealed Act commits an offence. Penalty: a fine of \$20 000.
- 20 (3) A person misuses information if it is directly or indirectly recorded, used, or disclosed to another person other than —
- (a) in the course of duty; or
  - (b) under this Act; or
  - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - 25 (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
  - 30 (e) with the consent of the person to whom the information relates, or each of them if there is more than one.

**196. Protection from liability for wrongdoing**

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or a repealed Act.
- 5 (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been
- 10 capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**197. Judicial notice**

- 15 All courts, judges and persons acting judicially are to take judicial notice of —
- (a) the official signature of every person who is for the time being, and every person who has at any time been, the Commissioner; and
- (b) the fact that such person holds or has held such office.

20 **198. Evidentiary provisions**

- (1) In subsection (2) —
- “**specified**” means specified in the Commissioner’s certificate.
- (2) A certificate of the Commissioner to the effect of any of the following is evidence of the matter or matters set out in the
- 25 certificate —
- (a) that on a specified day a specified association was or was not an incorporated association;
- (b) that on a specified day no incorporated association was incorporated under this Act by a specified name;

- 5           (c)   that a specified requirement of this Act —
- (i)   had or had not been complied with as at a  
                    specified day or within a specified period; or
- (ii)   had been complied with as at a specified day but  
                    not before that day;
- (d)   that a copy of the rules of a specified incorporated  
                    association is a true copy of those rules as lodged with  
                    the Commissioner as at a specified day.
- 10       (3)   A certificate of incorporation of an association issued under this  
            Act is conclusive evidence of the incorporation of the  
            association under this Act on the day specified in the certificate  
            as the day of incorporation.

## **Division 2 — Lodgment of documents with Commissioner**

### **199.   Keeping of documents by Commissioner**

- 15       (1)   The Commissioner is to keep a copy of —
- (a)   the rules of each incorporated association, except where  
                    model rules under section 59 apply without amendment;  
                    and
- 20               (b)   any amendment to the rules of an incorporated  
                    association; and
- (c)   the other documents required by this Act to be lodged  
                    with the Commissioner.
- (2)   The documents referred to in subsection (1) may be kept in such  
                    manner as the Commissioner thinks fit.
- 25       (3)   An incorporated association must, if required to do so by the  
            Commissioner by notice in writing given to the association,  
            produce to the Commissioner a copy of the rules of the  
            association as in force at the time when the notice is given or at  
            some other time specified in the notice.

**200. Destruction of documents by Commissioner**

- (1) The Commissioner may destroy or dispose of —
- (a) any document; and
  - (b) any copy or transparency of a document,
- 5 lodged in respect of an incorporated association if not less than 15 years have elapsed since the association was dissolved or its incorporation was cancelled.
- (2) Subsection (1) only applies if in the Commissioner's opinion it is no longer necessary or desirable to retain the document, copy
- 10 or transparency.

**201. Inspection etc. of documents**

- (1) A person may, on payment of the prescribed fee —
- (a) inspect any document lodged with the Commissioner for the purposes of this Act, not being a document that has
  - 15 been destroyed or otherwise disposed of; or
  - (b) obtain from the Commissioner a certified copy of, or extract from, any document lodged with the Commissioner for the purposes of this Act.
- (2) If a reproduction or transparency of a document is produced for
- 20 inspection, a person is not entitled under subsection (1) to require the production of the original.

**202. Commissioner's certification of document**

- A copy of or extract from a document lodged with the Commissioner for the purposes of this Act that is certified by
- 25 the Commissioner to be a true copy or extract is in any proceedings admissible in evidence as of equal validity with the original document.



**203. No constructive notice of contents of documents**

A person is not taken to have knowledge of —

- (a) the statement of the objects or purposes of an incorporated association; or
  - 5 (b) the rules of an incorporated association; or
  - (c) any of the contents of the statement of objects or purposes or of the rules of an incorporated association; or
  - (d) any other document or its contents; or
  - 10 (e) any particulars,
- by reason only that the statement of objects or purposes, the rules, the document or the particulars —
- (f) is or are lodged with the Commissioner for the purposes of this Act; or
  - 15 (g) is or are referred to in any other document that is so lodged.

**Division 3 — Powers of investigation**

**204. Terms used in this Division**

In this Division, unless the contrary intention appears —

20 **“authorised officer”** means a person designated as an authorised officer under section 205;

**“incorporated association”** includes —

- (a) an incorporated association that is in the course of being wound up; and
- 25 (b) an association that has ceased to be incorporated under this Act;

**“record”** includes —

- (a) any document, register or other record of information; and

- (b) any accounting record within the meaning in section 99,

however compiled, recorded or stored, and whether or not the information in the record is available only after the record is subjected to an electronic or other process.

**205. Authorised officers**

- (1) The chief executive officer of the Department may —

(a) designate any officer of the Department as an authorised officer for the purposes of this Division; and

(b) at any time cancel a designation.

- (2) The chief executive officer of the Department is to issue a certificate of authorisation to each person who is designated as an authorised officer under subsection (1).

- (3) An authorised officer must produce the certificate whenever required to do so by a person in respect of whom the officer has exercised, or is about to exercise, any power under this Division.

- (4) Production of a certificate referred to in subsection (2) in respect of a person is evidence in any court of the person's designation under subsection (1).

**206. Commissioner may require certain persons to appear, answer questions and produce records**

- (1) In this section —

**“relevant person”**, in relation to an incorporated association, means a person who —

(a) is or has been an officer or employee of the association; or

(b) is or has been an agent, banker, legal practitioner, accountant, auditor for the association or other person

acting in any capacity for or on behalf of the  
association; or

(c) has possession or control of any record relating to the  
association; or

5 (d) was a party to the creation of any record relating to  
the association; or

(e) the Commissioner reasonably believes is able to  
provide relevant information;

10 **“specified”**, in subsection (3), means specified in a notice  
referred to in subsection (4).

(2) The Commissioner may only exercise a power conferred by this  
section for the purpose of ascertaining whether —

(a) a contravention of this Act has occurred; or

15 (b) an offence has been committed in relation to an  
incorporated association that —

(i) involves fraud or dishonesty; or

(ii) concerns the management of the affairs of the  
association.

(3) The Commissioner may —

20 (a) require that any specified record relating to an  
incorporated association be produced to an authorised  
officer by —

(i) the incorporated association; or

(ii) a relevant person,

25 at a specified time and place; and

(b) require that a relevant person —

(i) attend before an authorised officer at a specified  
time and place; and

30 (ii) answer questions put to the person by the  
authorised officer relating to the incorporated  
association or its affairs;

and

(c) require that a relevant person —

- (i) give written answers to specified questions relating to the incorporated association or its affairs; and
- (ii) send or deliver the document containing the answers to the Commissioner within a specified period.

(4) A requirement under subsection (3) is to be made by notice in writing given to the incorporated association or the relevant person, as the case may be, and may be revoked or amended in the same way.

(5) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.

**207. Powers of entry, search and seizure**

(1) An authorised officer has power to enter a place for the purposes of this Act only —

- (a) with the consent of the occupier of the place; or
- (b) under the authority of a search warrant.

(2) If an authorised officer has power to enter a place for the purposes of this Act, the officer may take any action described in subsections (3), (4) and (5).

(3) The authorised officer may search the place for any record or thing that the officer believes on reasonable grounds to be connected with —

- (a) a contravention of this Act; or
- (b) a contravention of some other written law that involves fraud or dishonesty in relation to, or concerns the management of the affairs of, an incorporated association.

- (4) The authorised officer may seize any record or thing referred to in subsection (3) that is found in the place.
- (5) For the purposes of the exercise of the powers conferred by subsection (3) or (4), the authorised officer may, require any person who is at the place to —
- (a) answer any question put to the person by the authorised officer; or
- (b) produce any record, or give reasonable assistance to, the officer.
- (6) If an authorised officer enters a place under the authority of a search warrant, references in subsections (3) and (4) to “**any record or thing**” are, subject to section 209(5), references to any record or thing named or described in the warrant under section 208(4).
- 208. Issue of search warrant**
- (1) An authorised officer may apply to a justice for a search warrant in respect of a particular place.
- (2) The application must be in writing and must be made by the authorised officer in person.
- (3) The justice may issue a search warrant to the authorised officer if the justice is satisfied by evidence on oath that there are reasonable grounds to suspect that there is at the place concerned any record or thing that may be connected with —
- (a) a contravention of this Act; or
- (b) a contravention of some other written law that involves fraud or dishonesty in relation to, or concerns the management of the affairs of, an incorporated association.
- (4) Any record or thing as to which the justice is satisfied for the purposes of subsection (3) must be named or described in the search warrant.

- (5) The justice is to cause a record to be made (on the search warrant or otherwise) of the matters of fact on which the justice has relied to justify the issue of the warrant.

**209. Execution of search warrant**

- 5 (1) A search warrant remains in force for 28 days from the day of its issue.
- (2) A search warrant may be executed by the authorised officer to whom it was issued or by any other authorised officer.
- (3) A search warrant permits an authorised officer —
- 10 (a) to enter the place specified in the warrant using any force that is reasonably necessary to do so; and
- (b) to exercise in that place the powers provided for by section 207.
- 15 (4) An authorised officer executing a search warrant must produce the warrant for inspection by a person occupying the place concerned if requested by the person to do so.
- (5) If, in the course of executing a search warrant, an authorised officer —
- 20 (a) finds a record or thing that the officer believes on reasonable grounds to be connected with a contravention referred to in section 208(3), although not a record or thing named or described in the warrant; and
- (b) believes, on reasonable grounds, that it is necessary to seize that record or thing in order to prevent its concealment, loss or destruction,
- 25 the warrant is to be taken to authorise the officer to seize the record or thing.

**210. Powers of authorised officers concerning records**

An authorised officer may —

- 5 (a) examine any record found or produced, and make copies of and take extracts from any record seized or produced, under this Division; and
- (b) in the case of a record kept otherwise than in a readily intelligible format, require a person having the ability to do so to produce the record in a legible form; and
- 10 (c) take possession of and retain any record seized or produced for such reasonable period as may be necessary for the purposes of this Act.

**211. Failure to comply with a requirement and related provisions**

- 15 (1) A person must not, without lawful excuse, refuse or fail to comply with a requirement of the Commissioner or an authorised officer under this Division.
- (2) A person must not give information or produce a record to an authorised officer or a person referred to in section 214 —
  - (a) that the person knows to be; or
  - 20 (b) with reckless disregard as to whether the information or record is,  
  
false or misleading in a material particular.
- (3) A person must not without lawful excuse obstruct or hinder an authorised officer or a person referred to in section 214 in the performance of a function under this Division.
- 25 Penalty applicable to subsections (1), (2) and (3): a fine of \$10 000.

**212. Legal professional privilege**

The existence of legal professional privilege is a lawful excuse for the purposes of section 211(1).

**213. Self incrimination**

- 5 (1) It is not a lawful excuse for the purposes of section 211(1) for a person to refuse to answer a question or produce a record on the ground that the answer or record might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person answers the question or produces the record the following are not admissible against the person in criminal proceedings —
- 10 (a) the answer to the question;
- (b) the record produced;
- (c) the fact of the production of the record by the person.
- (3) The immunity provided by subsection (2) does not apply to proceedings for an offence against section 211(2).

**214. Persons assisting an authorised officer**

- 15 (1) An authorised officer who is performing any function under this Division, including the execution of a search warrant, may be accompanied or assisted by any other person whose assistance the officer considers to be necessary or expedient.
- 20 (2) A person referred to in subsection (1) may do such things as are necessary or expedient to assist in the performance by the authorised officer of a function under this Division.
- (3) Anything done under subsection (2) is taken to have been done by the authorised officer.

**Division 4 — Infringement notices**

25 **215. Terms used in this Division**

In this Division —

“**authorised officer**” means an officer designated under section 225 to be an authorised officer for the purposes of the section in which the term is used;



**“prescribed offence”** means an offence prescribed under section 216.

**216. Prescribed offences**

5 The regulations may prescribe offences against this Act for which an infringement notice may be given under section 218.

**217. Modified penalties**

- (1) For each prescribed offence the regulations are to prescribe —
- (a) a modified penalty; or
  - (b) a different modified penalty according to the
- 10 circumstances of the offence.
- (2) The modified penalty for an offence cannot exceed 20% of the maximum penalty that could be imposed for that offence by a court.

**218. Giving of notice**

- 15 (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may give an infringement notice to the alleged offender.
- (2) The notice is to be given within 6 months after the alleged offence is believed to have been committed.

20 **219. Contents of notice**

- (1) An infringement notice is to be in the prescribed form.
- (2) An infringement notice is to —
- (a) contain a description of the alleged offence; and
  - (b) specify the amount of the modified penalty for the
- 25 offence; and
- (c) advise the person concerned that, if the person does not wish to be prosecuted for the alleged offence in a court,

that amount may be paid to an authorised officer within 28 days after the giving of the notice.

- 5 (3) The amount referred to in subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time when the alleged offence is believed to have been committed.

**220. Extension of time**

- (1) An authorised officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid.
- 10 (2) An extension may be granted under subsection (1) either before or after the period of 28 days has elapsed.

**221. Withdrawal of notice**

- 15 (1) An authorised officer may, within 60 days after the day on which an infringement notice was given, withdraw the notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) Subsection (1) applies even if the modified penalty has been paid.
- 20 (3) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

**222. Benefit of paying modified penalty**

- (1) This section applies if —
- 25 (a) the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed; and
- (b) the notice has not been withdrawn.
- (2) The payment prevents —
- (a) the bringing of proceedings; and

(b) the imposition of penalties,

to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

5     **223. No admission implied by payment**

Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

**224. Application of penalties collected**

10     An amount paid as a modified penalty is to be dealt with as if it were imposed by a court as a penalty for an offence, unless section 221(3) requires that the amount be refunded.

**225. Designation of authorised officers**

(1) In this section —

15     “**chief executive officer**” means the chief executive officer of the Department.

(2) The chief executive officer may in writing designate officers of the Department as authorised officers for the purposes of section 218, 219, 220 or 221, or for the purposes of 2 or more of those sections, but an officer who is authorised to give  
20     infringement notices under section 218 is not eligible to be an authorised officer for the purposes of any of the other sections.

(3) The chief executive officer may at any time cancel a designation under subsection (2).

25     (4) The chief executive officer is to issue a certificate of authorisation to each person who is designated as an authorised officer under subsection (2).

(5) An authorised officer is to produce the certificate whenever required to do so by a person in respect of whom the officer has

exercised, or is about to exercise, any power under this Division.

- 5 (6) Production of a certificate referred to in subsection (4) in respect of a person is evidence in any court of the person's designation under subsection (2).

## Part 12 — Miscellaneous

### 226. Jurisdiction of State Administrative Tribunal in respect of disputes

- 5 (1) If a dispute cannot be resolved under the procedure mentioned in Schedule 3 Division 1 item 16 —
- (a) the incorporated association concerned; or
  - (b) a member of the association involved in the dispute,
- may make an application to the State Administrative Tribunal to have the dispute determined by that Tribunal.
- 10 (2) In a proceeding under subsection (1), the State Administrative Tribunal may make orders giving such relief as the Tribunal considers appropriate, including one or more of the following orders —
- 15 (a) an order giving directions for the observance of the rules of the incorporated association by any person who has an obligation to observe those rules;
  - (b) an order declaring and enforcing the rights and obligations of members of the incorporated association between themselves;
  - 20 (c) an order declaring and enforcing the rights and obligations between the incorporated association and any member or members of the association.

### 227. False or misleading statements in documents

- 25 (1) This section applies to a document that is —
- (a) required by or for the purposes of this Act; or
  - (b) lodged with or submitted to the Commissioner; or
  - (c) submitted to a meeting of the management committee, or of the members, of an incorporated association.

**s. 228**

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- (2) A person must not in a document to which this section applies —

- 5           (a) make or authorise the making of a statement that to the person's knowledge is false or misleading in a material particular; or
- (b) omit, or authorise the omission of, any matter or thing without which the document is to the person's knowledge misleading in a material respect.

Penalty: a fine of \$10 000.

10   **228. Time limit for prosecutions**

Proceedings for an offence against this Act may be commenced within the period of 3 years after the offence was committed, but not after the expiry of that period.

**229. Payment of fees on lodging documents**

- 15           Where a fee is payable to the Commissioner in respect of the lodging of a document with the Commissioner and the document is submitted for lodging without payment of the fee, the document is not to be treated as having been lodged until the fee is paid.

20   **230. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- 25           (2) Without limiting subsection (1), regulations may be made providing for fees to be paid and prescribing the amount of such fees.

**231. Repeal**

- (1) The *Associations Incorporation Act 1987* is repealed.

- (2) Schedule 6 has effect to make transitional provisions.

**232. Consequential amendments**

The Acts mentioned in Schedule 7 are amended as set out in that Schedule.

**Schedule 1 — Some circumstances that do not make an  
association ineligible for incorporation**

[s. 9(3)]

An association is not ineligible under section 9(1) by reason only of  
any one or more of the following circumstances —

5

(a) that the association itself is empowered to make a pecuniary  
profit, unless that profit or some part of it is divided among or  
received by the members or some of them;

10

(b) that the association is established for the protection or  
regulation of some trade, business, industry or calling in  
which the members are engaged or interested (the  
“**activity**”), if the association itself does not engage or take  
part in the activity or any part or branch of the activity;

15

(c) that any member of the association derives pecuniary profit  
from the association by way of salary as an employee or  
officer of the association;

20

(d) that any member of the association derives from the  
association any pecuniary profit to which the person would be  
equally entitled if the person were not a member of the  
association;

(e) that the members of the association compete with each other  
for trophies or prizes other than money prizes;

25

(f) that the association itself may or does make a profit from  
subscriptions, donations, sponsorship or the sale of any  
broadcasting rights;

(g) that the association provides facilities or services for its  
members;

(h) that the association trades or may trade with its members or  
with the public, so long as —

30

(i) the trading is ancillary to the principal purpose of the  
association; and

(ii) any trading with the public is not substantial in  
volume in relation to the other activities of the  
association;



- (i) that the association charges admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organised for the promotion of the objects or purposes of the association.

**Schedule 2 — Vesting of property and liabilities  
on incorporation**

[s. 25(2) and 133]

**1. Terms used in this Schedule**

5 In this Schedule, unless the contrary intention appears —

**“former association”** means —

- (a) the association that is incorporated to form an incorporated association under section 18; or
  - (b) an incorporated association that is a party to an amalgamation under Part 8,
- 10 as the case may be;

**“incorporated association”** means —

- (a) an incorporated association under section 18; or
  - (b) a new body that is incorporated under section 131,
- 15 as the case may be.

**2. Transfer of assets and liabilities and related provisions**

(1) On the incorporation of an association under section 18 or 131 —

- (a) the property of a former association vests, by virtue of this subclause, in the incorporated association; and
  - (b) the rights and liabilities of a former association become, by virtue of this subclause, the rights and liabilities of the incorporated association; and
  - (c) proceedings by or against a former association subsisting immediately before the incorporation may be continued by or against the incorporated association; and
  - (d) proceedings that might have been brought by or against a former association immediately before the incorporation may be commenced by or against the incorporated association; and
  - (e) any act, matter or thing done or omitted to be done before the incorporation by, to or in respect of a former association is, to the extent to which the act, matter or thing has any force or
- 20
- 25
- 30

effect, taken to have been done or omitted by, to or in respect of the incorporated association; and

- (f) a reference in an agreement or instrument to a former association is unless —

- 5                    (i) the context otherwise requires; or  
                      (ii) the regulations otherwise provide,  
to be read as, or as including, a reference to the incorporated association.

- 10            (2) On the incorporation of an association under section 18 any property held by a person for or on behalf of the former association vests, by virtue of this subclause, in the incorporated association.

- (3) The operation of a provision of this clause does not have effect to relieve or release a person from any liability incurred by or on behalf of a former association before its incorporation under section 18.

15      **3.      Trusts etc. not affected**

Any property vested in an incorporated association by clause 2 is vested subject to any trust, restriction or obligation to which the property was subject immediately before it became so vested.

**4.      Notation of registers**

20      On —

- (a) the application of an incorporated association in which any estate or interest in land has been vested by clause 2; and  
                  (b) the production of such duplicate instruments of title and other documents as the Registrar of Titles or the Registrar of Deeds may require,  
25

the Registrar of Titles or the Registrar of Deeds is to record and register the vesting in the appropriate manner.

## **Schedule 3 — Content of rules of an incorporated association**

[s. 57]

### **Division 1 — Matters to be provided for in rules**

- 5      1.      The qualifications (if any) for membership of the incorporated association.
2.      The register of members of the incorporated association, but subject to regulations made for the purposes of section 89.
- 10      3.      The voting rights of members or classes of members at general meetings of the incorporated association.
4.      The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
5.      The name, constitution, membership and powers of the management committee of the incorporated association (“**the committee**”) and provision for —
- 15              (a)      the election or appointment of members of the committee; and
- (b)      the terms of office of members of the committee; and
- 20              (c)      the grounds on which, or reasons for which, the office of a member of the committee is to become vacant; and
- (d)      the filling of casual vacancies occurring on the committee; and
- (e)      the quorum and procedure at meetings of the committee.
- 25      6.      The quorum and procedure at general meetings of members of the incorporated association.
7.      The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
- 30      8.      Subject to Division 2 item 1, the number of members, expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association be convened.

9.            The manner in which the funds of the incorporated association are to be controlled.
10.          Subject to Division 2 items 2 and 3, the day in each year on which the financial year of the incorporated association commences.
- 5    11.          The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
12.          Subject to Part 5 Division 4 and Schedule 6 clause 14, the manner of amending and revoking the rules of the incorporated association.
- 10    13.          Provisions for the custody and use of the common seal of the incorporated association.
14.          The custody of records, books, documents and securities of the incorporated association.
15.          Subject to Part 5 Division 5 and Part 6 Divisions 6 and 7, the inspection by members of the incorporated association of records and documents of the incorporated association.
- 15    16.          A procedure for dealing with any dispute under or relating to the rules —  
                (a)    between members; or  
                (b)    between members and the incorporated association.
- 20    17.          Subject to section 58, the manner in which surplus property of the incorporated association is to be distributed or dealt with if the association is wound up or its incorporation is cancelled.
18.          The provisions that are to apply to removal from office of the public officer of the incorporated association, including the procedure to be followed.
- 25

**Division 2 — Particular requirements for certain rules**

**1. Number of members who may call a general meeting**

5 The rules referred to in Division 1 item 8 cannot specify greater than the prescribed percentage of members as the number of members who may at any time require that a general meeting be convened in accordance with the rules of the incorporated association.

**2. Financial year of associations incorporated under this Act**

(1) In this clause —

“rules” means rules made for the purposes of Division 1 item 10.

10 (2) This clause applies to an association incorporated after the commencement of this Act other than an association to which Schedule 6 clause 4(3) applies.

(3) The first financial year of an incorporated association after its incorporation is to be a period fixed by its rules, but not exceeding 15 months commencing on the day of incorporation.

(4) Subsequent financial years of an incorporated association are to be the period of 12 months commencing at the termination of the first financial year or the anniversary of that termination.

20 (5) Subclause (4) does not limit the power of an incorporated association to amend its rules so that its financial year is some other period of 12 months and, if it does so, an initial period of more or less than 12 months may be determined to be the financial year so far as is necessary for the transition from one period to another.

**3. Transitional provisions as to financial year of associations incorporated under a repealed Act**

25

(1) In this clause —

“rules” means rules made for the purposes of Division 1 item 10.

- an initial period of more or less than 12 months may be determined to be the financial year so far as is necessary for the transition from one period to another.

**Schedule 4 — Modifications to text of Parts 5.4 to 5.8 of  
the Corporations Act**

[s. 136]

- 5 1. A reference to a company is to be read as a reference to an incorporated association.
2. A reference in Part 5.7 to a Part 5.7 body is to be read as a reference to an incorporated association.
- 10 3. A reference to the directors of a company is to be read as a reference to the members of the management committee of an incorporated association.
4. A reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association or, if applicable, the person referred to in Schedule 6 clause 18(5).
- 15 5. A reference to the principal place of business of a company is to be read as a reference to the address of an incorporated association given to the Commissioner under section 11(2), 17 or 130(1)(b).
6. A reference to ASIC is to be read as a reference to the Commissioner.
7. A reference to the Court is to be read as a reference to the Supreme Court.
- 20 8. A reference to the deregistration of a company is to be read as a reference to the cancellation of the incorporation of an association.



**Schedule 5 — Grounds on which an incorporated  
association may be wound up by the Supreme Court**

[s. 163]

1. The incorporated association was not at the time of incorporation  
5 eligible for incorporation under this Act.
2. The incorporation of the association was obtained by fraud or  
mistake.
3. The incorporated association has fewer than 6 members who under its  
rules have the right to vote at its general meetings either in person or  
10 by proxy or postal vote.
4. The incorporated association has suspended its operations, or has in  
effect been dormant, for a whole year.
5. The incorporated association is unable to pay its debts as and when  
they become due and payable.
- 15 6. The incorporated association has engaged in activities outside the  
scope of its objects or purposes or has ceased to pursue those objects  
or purposes.
7. The management committee of the incorporated association has acted  
oppressively in relation to members.
- 20 8. The following circumstances apply —
  - (a) the incorporated association has contravened a provision of  
this Act that applies to it or the public officer of the  
incorporated association has contravened a provision of this  
Act that applies to that officer; and
  - 25 (b) the Commissioner has by notice in writing given to the  
association or the public officer, as the case may be, required  
the association or the public officer to remedy the  
contravention within 60 days after the notice was given; but
  - 30 (c) the association or the public officer has failed or refused to  
do so.
9. The incorporated association has failed to comply with a direction of  
the Commissioner under section 50 or 173.

10.      The incorporated association has itself, or as a trustee, traded or secured pecuniary profit for the members of the association.
11.      The incorporated association has by special resolution resolved that it be wound up by the Supreme Court.
- 5    12.      The Supreme Court is of the opinion that it is just and equitable that the incorporated association should be wound up.

## Schedule 6 — Transitional provisions

[s. 231(2)]

### Division 1 — Preliminary

#### 1. Interpretation

- 5        (1) In this Schedule —  
          **“existing incorporated association”** means an association —  
              (a) that was incorporated under a repealed Act; and  
              (b) whose incorporation has effect immediately before the  
                  commencement of this Act.
- 10       (2) This Schedule is in addition to the provisions of the *Interpretation Act 1984* and, unless the contrary intention appears, does not limit or otherwise affect the operation of those provisions.

### Division 2 — Existing incorporated associations

#### 2. Incorporation continued

- 15       An existing incorporated association is taken to be an association incorporated under this Act.

#### 3. Committee of existing association

- 20       A committee of an existing incorporated association, or other body having the management of the affairs of an existing incorporated association, is taken to be a management committee for the purposes of section 70.

### Division 3 — Continuation of certain matters in progress

#### 4. Existing applications for incorporation

- 25       (1) If before the commencement of this Act —  
              (a) an application for the incorporation of an association was made under the repealed Act; but

- (b) the association had not been incorporated or the application refused,

the application may be dealt with and completed under the repealed Act as if it had not been repealed.

- 5 (2) If an association to which subsection (1) applies is refused incorporation as mentioned in section 9(3) of the repealed Act, that subsection applies as if it had not been repealed.

- (3) If an association to which subsection (1) applies is incorporated —

- 10 (a) the rules of the association are, despite section 60, the rules accepted for the purposes of the incorporation; and  
(b) the association is taken to be an association incorporated under this Act.

**5. Rule alteration in progress**

- (1) This clause applies if —

- 15 (a) before the commencement of this Act an incorporated association has, for the purposes of section 17 of the repealed Act, passed a special resolution altering its rules but the period specified or a period allowed under that section has not expired; and  
20 (b) the association complies with that section in respect of the alteration after the commencement of this Act.

- (2) The alteration to which the special resolution relates takes effect as if section 17 of the repealed Act had not been repealed.

**6. Applications under repealed section 18 or 19**

- 25 (1) This clause applies if before the commencement of this Act —

- (a) an application has been made for an approval under section 18 or 19 of the repealed Act; but  
(b) the application has not been determined by the Commissioner or has been so determined but the time allowed for an application to be made under that section for a review of the  
30 determination has not expired.

- (2) The application may be dealt with and completed and an application for review may be made as if section 18 or 19 of the repealed Act, as the case may be, had not been repealed.

**7. Applications for extension of time under repealed section 23(1)**

- 5 If at the commencement of this Act an application for an extension of time under section 23(1) of the repealed Act has been made but has not been determined by the Commissioner, the application may be dealt with and completed as if that section had not been repealed.

**8. Applications for review made but not determined**

- 10 (1) In this clause —  
“repealed provision” means section 4(6), 7(2), 8(2), 9(3), 18(4) or 19(3) of the repealed Act.
- (2) An application to the State Administrative Tribunal for a review of a decision of the Commissioner under a repealed provision that has  
15 been made but not finally determined before the commencement of this Act may be heard and determined as if that provision had not been repealed.

**9. Voluntary winding up in progress**

- (1) This clause applies if before the commencement of this Act —  
20 (a) a resolution has been duly passed under section 30(1) of the repealed Act for the voluntary winding up of an incorporated association; but  
(b) dissolution of the association has not taken effect under section 30(3) of that Act.
- 25 (2) The repealed Act applies, as if it had not been repealed, to the winding up of the incorporated association and its dissolution including —  
(a) the distribution of surplus property in accordance with section 33; and  
30 (b) the application of section 36 in the circumstances mentioned in subsection (1) of that section.
- (3) If an association is dissolved under section 30(3) of the repealed Act, the Commissioner must, by instrument in writing, cancel the

**Associations Incorporation Bill 2006**

**Schedule 6** Transitional provisions

**Division 4** Amendment of rules by existing incorporated associations and associations to which clause 4(3) applies

**cl. 10**

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incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies in the instrument.

- 5 (4) The Commissioner may cause an instrument under subclause (3) to be published in the *Gazette* if the Commissioner considers that public notification of the cancellation is desirable.

**10. Notice given under repealed section 34(1)**

If before the commencement of this Act —

- 10 (a) a notice has been given to an incorporated association under section 34(1) of the repealed Act; and  
(b) the period of 3 months mentioned in section 34(2) of that Act has not expired,

the incorporated association may make a request to the Commissioner under section 34(2), and the Commissioner may make an order under that section which is to apply as if it had not been repealed.

15 **11. Notice given under repealed section 35**

If before the commencement of this Act a notice has been given to an incorporated association under section 35(1) of the repealed Act but the Commissioner's powers under that section have not been exercised —

- 20 (a) the Commissioner may exercise the powers conferred by that section, but subject to section 35(2)(b) of the repealed Act; and  
(b) section 36 of the repealed Act has effect,

25 in relation to the association as if the repealed Act had not been repealed.

**Division 4 — Amendment of rules by existing incorporated associations and associations to which clause 4(3) applies**

**12. Amendment of rules**

- 30 (1) In this clause —  
“new requirements” means the requirements of section 57 when read with Schedule 3 items 3, 8, 10, 16, 17 and 18.

- (2) To allow time for an existing incorporated association to ensure that its rules comply with the new requirements, those requirements do not apply to an existing incorporated association until the expiry of —
- (a) 18 months after the commencement of this Act; or
- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.
- (3) To allow time for an association to which clause 4(3) applies to ensure that its rules comply with the new requirements, those requirements do not apply to the association until the expiry of —
- (a) 18 months after the incorporation of the association; or
- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.
- 13. Rules of existing incorporated associations to which repealed Schedule 2 clause 4 applied**
- (1) In this clause —
- “incorporated association to which the 1895 Act applied”** means an incorporated association which immediately before the commencement of this Act had the benefit of the exemption in Schedule 2 clause 4 of the repealed Act.
- (2) To allow time for an incorporated association to which the 1895 Act applied to ensure that its rules comply with section 57, those requirements do not apply to the association until the expiry of —
- (a) 18 months after the commencement of this Act; or
- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.
- 14. Amendments may be made by management committee**
- (1) This clause has effect despite the provisions of Part 5 Division 4.
- (2) The management committee of an incorporated association may, by resolution made not later than 18 months after the commencement of

**Associations Incorporation Bill 2006**

**Schedule 6** Transitional provisions

**Division 4** Amendment of rules by existing incorporated associations and associations to which clause 4(3) applies

**cl. 15**

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this Act, make any amendment to the rules of the association that is required to ensure that the rules comply with section 57.

(3) An amendment referred to in subclause (2) does not take effect unless it is approved by the Commissioner.

5 (4) The public officer of the incorporated association must, within 28 days after the management committee passes a resolution under subclause (2) to amend the rules of the association, apply to the Commissioner in the approved form for approval of the amendment.

10 (5) If the Commissioner refuses to approve an amendment under this clause, the incorporated association may apply to the State Administrative Tribunal for a review of the decision of the Commissioner.

(6) An application under subclause (5) must be made within —

- 15 (a) 28 days; or  
(b) such other period as is prescribed,

after the incorporated association receives notice of the refusal.

(7) If the amendment is approved, the incorporated association must give notice of the amendment to its members with notice of the next annual general meeting of the association after the approval is given.

20 **15. Liability of incorporated association if rules are not made compliant**

(1) In this clause —

25 “**transition period**” in relation to an incorporated association means the period allowed by or under clause 12 or 13 for the association to ensure that its rules comply with the new requirements or with section 57, as the case may be.

(2) If at the end of the transition period in relation to an incorporated association the rules of the association do not comply with section 57, the association commits an offence and is liable to a fine of \$5 000.

30 (3) Subclause (2) does not affect any liability that a member of the management committee of an incorporated association may have



under section 71 for the failure of the association to comply with section 57(2).

**16. Act modifications pending amendment of rules**

- 5      (1) This clause applies pending the amendment of the rules of an existing incorporated association or an association to which clause 4(3) applies to include the provisions required by Schedule 3 items 17 and 18.
- 10      (2) Until the provisions required by Schedule 3 item 17 are included in the rules, section 143(1) has effect in respect of an association referred to in subclause (1) as if paragraph (a) were omitted from that subsection.
- 15      (3) Subclause (2) does not apply if the rules of an association referred to in subclause (1) already make the provision referred to in Schedule 3 item 17.
- 15      (4) Until the provisions required by Schedule 3 item 18 are included in the rules, section 79(3) has effect in respect of an association referred to in subclause (1) as if the words “in accordance with its rules” were omitted from that subsection.

**Division 5 — Other things to be done by existing incorporated associations and associations to which clause 4(3) applies**

20      **17. Notification of address**

- 25      (1) An existing incorporated association must in writing notify the Commissioner of the address of the association not later than 90 days after the commencement of this Act.
- 25      (2) An association to which clause 4(3) applies must in writing notify the Commissioner of the address of the association not later than 90 days after the association is incorporated.
- 25      (3) An address notified under subclause (1) or (2) by an incorporated association may be the same as the residential address of the public officer of the association.

**18. Appointment of public officer**

- (1) To allow time for an existing incorporated association to comply with section 77(1), that subsection does not apply to an existing incorporated association until the expiry of —
- 5           (a) 90 days after the commencement of this Act; or
- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.
- (2) To allow time for an association to which clause 4(3) applies to comply with section 77(1), that subsection does not apply to the association until the expiry of —
- 10           (a) 90 days after the incorporation of the association; or
- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.
- 15           (3) A public officer must, within 14 days after being appointed for the purposes of this clause, give written notice of the appointment to the Commissioner in the approved form.
- Penalty: a fine of \$1 000.
- 20           (4) The notice must include the person's full name and the person's residential and postal addresses (which may be the same).
- (5) Until a public officer is appointed by an existing incorporated association, a provision of this Act that confers or imposes a function, power or duty on a public officer is to be read as if that function, power or duty were conferred or imposed on the person who is
- 25           normally entitled to preside at meetings of the management committee of the association.

**19. Keeping of register of members**

- (1) To allow time for an existing incorporated association to comply with section 89(a), that provision does not apply to an existing incorporated association until the expiry of —
- 30           (a) 18 months after the time when this Act and regulations made for the purposes of section 89(a) have commenced; or

- (b) such longer period as the Commissioner may, on application made by the association, from time to time allow by instrument in writing.

- 5 (2) Until the expiry of the period allowed by or under subclause (1) it is sufficient if an existing incorporated association maintains its register of members in accordance with section 27 of the repealed Act.

### **Division 6 — Other provisions**

#### **20. When accounts and audit provisions start to apply to existing incorporated associations**

- 10 (1) In this section —  
“new accounts and audit requirements” means Part 7 Divisions 1 and 2 (except section 101) and Division 3 Subdivisions 1 and 3.
- (2) If the day on which this Act commences falls after the beginning of the current financial year of an existing incorporated association the  
15 new accounts and audit requirements apply in respect of the next and subsequent financial years of the association, and in respect of the current financial year sections 25 and 26 of the repealed Act apply to the association as if they had not been repealed.
- (3) Except as provided in subclause (2), Part 7 applies to an existing  
20 incorporated association on and after the commencement of this Act.

#### **21. Property vested under repealed section 36**

If immediately before the commencement of this Act property of an incorporated association is vested in the Commissioner under section 36 of the repealed Act —

- 25 (a) the Commissioner may perform the functions conferred by that section in respect of the association and its property; and
  - (b) section 36(2) and (3) have effect,
- as if that section had not been repealed.

#### **22. Constructive notice under section 189 of this Act**

- 30 The rights, liabilities and remedies of persons in respect of acts, omissions, circumstances and things that occurred before the

commencement of section 203 are to be determined as if that section had not been passed.

**23. Time limit under section 214 of this Act**

5 Section 228 of this Act does not apply to an offence committed against the repealed Act.

**24. References in written laws**

A reference in a written law to an association incorporated under this Act includes a reference to an existing incorporated association that is taken by clause 2 to be incorporated under this Act.

10 **Division 7 — Further provision may be made**

**25. Regulations**

(1) The regulations may make provision for a transitional matter if there is no sufficient provision made in this Schedule for the matter, but no regulation may be made under this subclause after this Act has been in  
15 operation for 12 months.

(2) Regulations made for the purposes of subclause (1) may provide that a specific provision of this Act —  
(a) does not apply; or  
(b) applies with any specific modification,  
20 to or in relation to a matter.

(3) Regulations made for the purposes of subclause (1) may provide that a state of affairs is taken to have existed, or not to have existed, on and from a day that is —  
(a) earlier than the day on which the regulations are published in  
25 the *Gazette*; but  
(b) not earlier than the day on which this Act came into operation.



## **Schedule 7 — Consequential amendments**

[s. 232]

**1. *Children and Community Services Act 2004* amended**

- 5 (1) The amendments in this clause are to the *Children and Community Services Act 2004*\*.

[\*Act No. 34 of 2004.

*For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, and Act No. 35 of 2006.]*

- 10 (2) Section 197 is amended in the definition of “managerial officer”, in paragraph (b), by deleting “1987 section 3, a member of the” and inserting instead —

“ 2006 section 3, a member of the management ”.

**2. *Criminal Procedure Act 2004* amended**

- 15 (1) The amendments in this clause are to the *Criminal Procedure Act 2004*\*.

[\*Act No. 71 of 2004.]

- (2) Schedule 2 clause 4(2)(c) is amended by deleting “1987 section 41” and inserting instead —

“ 2006 section 81 ”.

20 **3. *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* amended**

- (1) The amendments in this clause are to the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*\*.

[\*Reprint 1 as at 9 May 2003.

25 *For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1.]*

- (2) Section 11(a)(ii) is amended as follows:

- (a) by deleting “1987” and inserting instead —

“ 2006 ”;

- (b) by inserting after “members of the” —  
“ management ”.

**4. Hale School Act 1876 amended**

- (1) The amendments in this clause are to the *Hale School Act 1876*\*.

5      [\*Reprinted as at 17 June 2002.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2005, Table 1.*]

- (2) Each of sections 1A, in the definition of “Association”, and 9 are amended by deleting “1987” and inserting instead —

10      “ 2006 ”.

**5. Law Society Public Purposes Trust Act 1985 amended**

- (1) The amendments in this clause are to the *Law Society Public Purposes Trust Act 1985*\*.

[\*Reprint 1 as at 6 February 2004.]

- 15      (2) Section 2(1) is amended in the definition of “Law Society” by deleting “established under the *Associations Incorporation Act 1895*” and inserting instead —

20      “  
incorporated under the *Associations Incorporation Act 2006*  
”.

**6. Liquor Licensing Act 1988 amended**

- (1) The amendments in this clause are to the *Liquor Licensing Act 1988*\*.

[\*Reprint 4 as at 9 June 2006.]

- 25      (2) Section 49(1)(a)(i) and (6) are each amended by deleting “1987” and inserting instead —

“ 2006 ”.

**cl. 7**

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- (3) Schedule 2 is amended in each of Division 1 clause 1 in the definition of “the League”, and Division 2 clause 1 in the definition of “the Association”, by deleting “1987” and inserting instead —

“ 2006 ”.

5     **7.       School Education Act 1999 amended**

- (1) The amendments in this clause are to the *School Education Act 1999*\*.

[\*Reprint 1 as at 3 September 2004.

*For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, and Act No. 34 of 2004.]*

- 10     (2) Each of sections 139(2) and 148(2)(b) are amended by deleting “section 31 of” and inserting instead —

“ Schedule 5 to ”.

- (3) Each provision specified in the Table to this subclause is amended by deleting “1987” and inserting instead —

15     “ 2006 ”.

**Table**

s. 130(3)(a)(ii)	s. 145(3)
s. 137(2)	s. 148(2) and (3)
s. 138(1)	s. 195(1)(a)
s. 139(1), (2) and (3)	

- (4) Section 141 is amended in the definition of “incorporated association” by deleting “1987” and inserting instead —

“ 2006 ”.

20     **8.       Taxation Administration Act 2003 amended**

- (1) The amendments in this clause are to the *Taxation Administration Act 2003*\*.

[\*Reprint 1 as at 14 October 2005.

*For subsequent amendments see Act No. 38 of 2005.]*



- (2) Section 67(11)(b) is amended by deleting “corporate that has been incorporated under the *Associations Incorporation Act 1987*.” and inserting instead —

“

that is incorporated under the *Associations Incorporation Act 2006*.

”

**9.        *Volunteers (Protection from Liability) Act 2002* amended**

- (1) The amendments in this clause are to the *Volunteers (Protection from Liability) Act 2002*\*.

[\**Act No. 32 of 2002*.]

- (2) Section 3(1) is amended in the definition of “community organisation” by deleting “1987” and inserting instead —

“ 2006 ”.

- (3) Section 3(1) is amended in the definition of “community work” as follows:

- (a) by inserting “or” after paragraphs (a) to (i);
- (b) by deleting paragraph (j) and “or” after it.

**10.       *References to “1895” amended to “2006” in various Acts***

Each provision specified in the Table to this clause is amended by deleting “1895” and inserting instead —

“ 2006 ”.

**Table**

<i>Companies (Co-operative) Act 1943</i>	s. 8(a) and 28(1)(a)(iv) and (6)(c)
<i>Cremation Act 1929</i>	s. 4(1)(b)
<i>Legal Aid Commission Act 1976</i>	s. 4(1) in the definition of “Law Society”
<i>Legal Contribution Trust Act 1967</i>	s. 4(1) in the definition of “Society”

**cl. 11**

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**11. References to “1987” amended to “2006” in various Acts**

Each provision specified in the Table to this clause is amended by deleting “1987” and inserting instead —

“ 2006 ”.

5

**Table**

<i>Companies (Co-operative) Act 1943</i>	s. 176A(1)(b)
<i>Equal Opportunity Act 1984</i>	s. 4(1) in the definition of “incorporated association”
<i>Gaming and Wagering Commission Act 1987</i>	s. 38(b)
<i>Insurance Commission of Western Australia Act 1986</i>	s. 3 in the definition of “community organisation” paragraph (a)
<i>Local Government Act 1995</i>	s. 5.74(1) in the definition of “corporation” paragraph (e)
<i>Members of Parliament (Financial Interests) Act 1992</i>	s. 3(1) in the definition of “corporation” paragraph (e)
<i>Planning and Development Act 2005</i>	s. 182(2)(b)
<i>Western Australian Treasury Corporation Act 1986</i>	Schedule 1 item 1

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## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
a repealed Act .....	3
accounting records .....	99
activity .....	Sch. 1
address .....	94(1)
address of the public officer .....	81(1)
amend.....	3
annual general meeting .....	3
annual return .....	105(1)
another body corporate .....	173(1)
any record or thing.....	207(6)
approved .....	3
association.....	3
auditor .....	117
Australian Accounting Standards.....	117
authorised officer .....	182(1), 204, 215
body .....	144(1)
body corporate .....	55(1)
chief executive officer.....	225(1)
Commissioner .....	3
Department.....	3
distribution plan .....	134
executive officer .....	192(1)
existing incorporated association .....	Sch. 6 cl. 1(1)
expenses .....	188(1)
financial statements.....	99
financial transactions .....	103(1)
financial year.....	3, 103(3)
former association.....	Sch. 2 cl. 1
gross receipts or gross income .....	99
incorporated association.....	3, 204, Sch. 2 cl. 1
incorporated association to which the 1895 Act applied.....	Sch. 6 cl. 13(1)
information.....	195(1)
liability.....	3
management committee .....	3
meeting .....	182(1)
new accounts and audit requirements .....	Sch. 6 cl. 20(1)
new body.....	128, 129(1)
new requirements .....	Sch. 6 cl. 12(1)
officer.....	3

**Defined Terms**

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prescribed body corporate.....	48
prescribed offence.....	215
property.....	3
public officer.....	3
record.....	204
relevant contract.....	144(1)
relevant documents and records.....	72(1), 83(1)
relevant interest.....	73
relevant office holder.....	180(1)
relevant person.....	206(1)
repealed provision.....	Sch. 6 cl. 8(1)
report.....	117
rules.....	Sch. 3 cl. 2(1) and 3(1)
served on.....	81(1)
special resolution.....	3
specified.....	180(1), 198(1), 206(1)
surplus property.....	134, 155(1)
the committee.....	Sch. 3
the repealed Act.....	3
the transferee.....	178(1)
tier 1 incorporated association.....	99
tier 2 incorporated association.....	99, 109(1)
tier 3 incorporated association.....	99, 110(1)
transition period.....	Sch. 6 cl. 15(1)

WESTERN AUSTRALIA

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# Associations Incorporation Bill 2006

**DRAFT BILL FOR PUBLIC COMMENT**

**The Government proposes to introduce into Parliament a Bill to provide for the incorporation and regulation of certain associations, to repeal the *Associations Incorporation Act 1987* and for connected purposes.**

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.