

Passed by both Houses



New South Wales

# Associations Incorporation Bill 2009

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2009*



New South Wales

## **Associations Incorporation Bill 2009**

Act No , 2009

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An Act to provide for the registration of clubs, societies and other non-profit associations; to provide for the regulation of those associations after registration; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

## **Part 1   Preliminary**

### **1   Name of Act**

This Act is the *Associations Incorporation Act 2009*.

### **2   Commencement**

This Act commences on a day to be appointed by proclamation.

### **3   Objects of Act**

The objects of this Act are:

- (a) to establish a scheme for the registration of associations that are constituted for the purpose of engaging in small-scale, non-profit and non-commercial activities, including:
  - (i) associations that are currently unincorporated (which become bodies corporate when they are registered), and
  - (ii) associations that are currently incorporated under other legislation (which retain their corporate status following registration), and
- (b) to make provision with respect to the corporate governance and financial accountability of associations registered under that scheme.

### **4   Definitions**

- (1) In this Act:

***approved***, in relation to a form, means approved by the Director-General.

***ASIC*** means the Australian Securities and Investments Commission.

***assets*** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

***association*** means an association registered under this Act.

***Australian Accounting Standards*** means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations.

***Australian Auditing Standards*** means the standards issued by the Auditing and Assurance Standards Board, as in force for the time being, and including any modifications prescribed by the regulations.

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**authorised officer** means a person who is appointed as an authorised officer under section 102.

**authorised signatory**, in relation to an association, means a person who is appointed under section 36 as an authorised signatory for the association, and includes the association's public officer.

**committee**, in relation to an association, means the governing body of the association, however described.

**committee member**, in relation to an association, means a person who is elected or appointed under the association's constitution as a committee member of the association.

**constitution**, in relation to an association, means the constitution that is recorded in the Register of Incorporated Associations in relation to the association.

**corresponding law** means:

- (a) the *Co-operatives Act 1992*, or
- (b) the *Corporations Act 2001* of the Commonwealth,

and includes any law of this or another State or Territory, or any law of the Commonwealth, that is declared by the regulations to be a corresponding law for the purposes of this Act.

**court** includes tribunal.

**Department** means the Department of Commerce.

**Director-General** means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department, the Director-General of the Department.

**exercise** a function includes perform a duty.

**financial year**, in relation to an association, means:

- (a) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the association resolves, commencing on the date of incorporation of the association, and
- (b) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the association resolves, commencing at the expiration of the previous financial year of the association.

**function** includes a power, authority or duty.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).



**model constitution** means the model constitution prescribed by the regulations.

**objects**, in relation to an association, means the objects that are recorded in the Register of Incorporated Associations in relation to the association.

**official address**, in relation to an association, means the address that is recorded in the Register of Incorporated Associations as the association's official address.

**pecuniary gain**—see section 5.

**public officer**, in relation to an association, means the person who is appointed as the association's public officer, and, until he or she is replaced by a person so appointed, includes the person who is nominated as the association's public officer in the association's application for registration.

**register of committee members**, in relation to an association, means the register of committee members kept by the association for the purposes of section 29.

**Register of Incorporated Associations** means the Register of Incorporated Associations kept by the Director-General for the purposes of section 98.

**registrable corporation** means:

- (a) a co-operative registered under the *Co-operatives Act 1992*, or
- (b) a company registered under the *Corporations Act 2001* of the Commonwealth,

and includes any other entity that is constituted as a body corporate pursuant to registration under a corresponding law.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**special resolution**—see section 39.

**unacceptable name**—see section 18.

- (2) In this Act, a reference to the *Corporations Act 2001* of the Commonwealth (or to a provision of that Act) as applying under this Act is a reference to that Act (or provision) to the extent to which it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*.
- (3) Notes included in this Act do not form part of this Act.

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**5 Definition of “pecuniary gain”**

- (1) An organisation provides *pecuniary gain* for its members if:
- (a) it carries on any activity for the purpose of securing pecuniary gain for its members, or
  - (b) it has capital that is divided into shares or stock held by the organisation’s members, or
  - (c) it holds property in which the organisation’s members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the organisation or otherwise), or
  - (d) it is an organisation that is, or is included in a class of organisations that is, prescribed by the regulations for the purposes of this subsection.
- (2) For the purposes of subsection (1) (a), an organisation does not provide pecuniary gain for its members merely because of any of the following:
- (a) the organisation itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the organisation’s members or any of them,
  - (b) the organisation is established for the protection of a trade, business, industry or calling in which the organisation’s members are engaged or interested, but the organisation itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling,
  - (c) members of the organisation derive pecuniary gain through the enjoyment of facilities or services provided by the organisation for social, recreational, educational or other like purposes,
  - (d) members of the organisation derive pecuniary gain from the organisation by way of bona fide payment of remuneration,
  - (e) members of the organisation derive pecuniary gain from the organisation of a kind which they could also derive if they were not members of the organisation,
  - (f) members of the organisation compete for trophies or prizes in contests directly related to the objects of the organisation,
  - (g) the organisation provides pecuniary gain of a class prescribed by the regulations for the purposes of this section.

## **Part 2    Registration of associations**

### **Division 1      Registration**

#### **6    Application for registration**

- (1) An application for registration of an association may be made to the Director-General on behalf of:
  - (a) 5 or more individuals, or
  - (b) an unincorporated body having 5 or more members, or
  - (c) a registrable corporation having 5 or more members or shareholders, or
  - (d) 2 or more existing associations together having 5 or more members.
- (2) Such an application must be authorised:
  - (a) in the case of an application made on behalf of 5 or more individuals, by each of the individuals, and
  - (b) in the case of an application made on behalf of an unincorporated body, by a special resolution passed by the members of the body, and
  - (c) in the case of an application made on behalf of a registrable corporation, by a special resolution passed by the members of the corporation, and
  - (d) in the case of an application made on behalf of 2 or more associations proposing to amalgamate, by special resolutions passed by the members of each association.
- (3) An application:
  - (a) must be in the approved form, and
  - (b) must specify the association's proposed name and the address that is to be the association's first official address, and
  - (c) must include a statement of the association's objects, and
  - (d) must annex a copy of the association's proposed constitution, and
  - (e) must identify the person who is to be the association's first public officer, and
  - (f) must include copies of any special resolution referred to in subsection (2) (b), (c) or (d), and
  - (g) in the case of an application made on behalf of a registrable corporation, must annex a document (issued by the relevant regulatory authority under the law under which it is currently incorporated) declaring that the requirements of that law in

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- relation to the transfer of its registration under that law to registration under some other law have been complied with, and
- (h) must include any information required by the regulations, and
  - (i) must be accompanied by the fee prescribed by the regulations.
- (4) An association's proposed official address must be an address, within New South Wales:
- (a) at which any premises used by the association are located, or
  - (b) at which the proposed public officer resides, is employed or carries on business.
- (5) An association's proposed constitution must address each of the matters referred to in Schedule 1.
- (6) An application need not annex a copy of an association's proposed constitution if the application indicates that the association is to be governed solely by the model constitution.

## 7 Decision on application

- (1) The Director-General may determine an application for registration of an association by registering the association or by refusing the application.
- (2) An application for registration may be refused if:
- (a) the application does not comply with section 6, or
  - (b) the name of the association has not been reserved or is unacceptable, or
- Note.** Changing circumstances may mean that a name that was acceptable when it was reserved has since become unacceptable.
- (c) the Director-General is satisfied that, having regard to the objects of this Act, the association should not be registered:
    - (i) because some provision of the association's constitution is contrary to law, or
    - (ii) because of the association's objects or the Director-General's assessment of the likely nature or extent of the association's proposed activities, or
    - (iii) because of the likely nature or extent of the association's dealings with the public, or
    - (iv) for any other reason that appears sufficient to the Director-General.
- (3) The Director-General registers an association by recording its name, objects, constitution and official address in the Register of Incorporated Associations.

- (4) On registering an association, the Director-General:
  - (a) must cause a certificate of registration for the association to be given to the applicant, and
  - (b) if the applicant is a registrable corporation, must cause notice of its registration to be given to the relevant regulatory authority under the law under which it was formerly registered.
- (5) In the case of 2 or more associations that become a single association, the registration of each of the former associations is to be cancelled when the amalgamated association is registered.

**8 Incorporation of associations other than former registrable corporations**

- (1) An association that arises otherwise than from the registration of a registrable corporation becomes a body corporate when it is registered under this Act.
- (2) Schedule 2 contains provisions relating to an association that arises from the registration of an unincorporated body or from the amalgamation of 2 or more associations.

**9 Continuity of incorporation of former registrable corporations**

- (1) An association that arises from the registration of a registrable corporation is a continuation of, and the same legal entity as, the registrable corporation.
- (2) Without limiting subsection (1):
  - (a) the assets, rights and liabilities of the registrable corporation become the assets, rights and liabilities of the association, and
  - (b) proceedings that have been commenced by or against the registrable corporation may be continued by or against the association in its own name or in the name of the registrable corporation.

**Division 2            Changing association's name, objects,  
constitution or official address**

**10 Application for change of particulars**

- (1) An association may apply to the Director-General for registration of a change in the association's name, objects or constitution.
- (2) An application may only be made pursuant to a special resolution passed by the association.
- (3) An application:
  - (a) must be in the approved form, and

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- (b) must include details of the proposed change, and
  - (c) must include a copy of the special resolution by which the association has approved the change, and
  - (d) must be accompanied by the fee prescribed by the regulations.
- (4) An association's constitution, as proposed to be changed, must address each of the matters referred to in Schedule 1.
- Note.** A change in an association's name, objects or constitution does not take effect until it is registered: see section 14.

#### **11 Director-General may direct association to change its name**

- (1) The Director-General may, by order in writing served on an association that has an unacceptable name, direct the association to adopt a new name.
- (2) Such a direction may be given whether or not the association's name was acceptable when the association was registered.

**Note.** Changing circumstances may mean that a name that was acceptable when the association was registered has since become unacceptable.
- (3) A direction:
  - (a) must specify the grounds on which the association's current name is unacceptable, and
  - (b) must specify a date by which an application for registration of a change of name must be made (being a date no less than 2 months after the date on which the direction is given), and
  - (c) must state that the association's registration may be cancelled if such an application is not made on or before that date.

#### **12 Decision on application**

- (1) The Director-General may determine an application for registration of a change of name, objects or constitution by registering the change or by refusing the application.
- (2) An application for registration of a change of name, objects or constitution may be refused if:
  - (a) the application does not comply with section 10, or
  - (b) the special resolution was approved by the association more than 28 days before the application was made, or
  - (c) in the case of an application for a change of name, the new name has not been reserved or is unacceptable.
- (3) On registering an association's change of name, the Director-General is to cause a replacement certificate of registration, bearing the association's new name, to be given to the applicant.

**13 Notification of change of official address**

- (1) Within 28 days after an association's official address becomes obsolete or unusable, the association's public officer must notify the Director-General, in the approved form, of the association's new address.

Maximum penalty: 5 penalty units.

- (2) Without limiting subsection (1), an association's public officer may at any time notify the Director-General, in the approved form, of a change in the association's official address.

- (3) The new address must be an address, within New South Wales:

- (a) at which any premises used by the association are located, or  
(b) at which the public officer resides, is employed or carries on business.

- (4) On receiving a notification under this section, the Director-General must register the new address as the association's official address.

**Note.** A change of official address does not take effect until it is registered: see section 14.

**14 Effect of registration of change of name, objects, constitution or official address**

- (1) A change of name, objects, constitution or official address that is registered under this Division takes effect when it is registered.

- (2) Section 53 of the *Interpretation Act 1987* applies to an association in respect of which a change of name, objects or constitution has been registered under this Division in the same way as it would apply to the association had the change been made by an Act or statutory rule.

**Division 3      Reservation of names**

**15 Application for reservation of name**

- (1) An application for reservation of a name may be made to the Director-General by an association or by an applicant for registration as an association.

- (2) An application for reservation of a name:

- (a) must be in the approved form, and  
(b) must specify the name to be reserved, and  
(c) must be accompanied by the fee prescribed by the regulations.

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- (3) The application may nominate alternative names (not exceeding the maximum number prescribed by the regulations) and indicate the order in which they are to be considered.

#### **16 Decision on application**

- (1) The Director-General may determine an application for reservation of a name by reserving the name or by refusing the application.
- (2) An application for reservation of a name may be refused:
- (a) if each of the nominated names is unacceptable, or
  - (b) if the Director-General is satisfied that the application has been made for an improper purpose.
- (3) Unless each of the nominated names is unacceptable, the reserved name is to be the first of the nominated names that is not unacceptable.

#### **17 Duration of reservation of name**

Reservation of a name expires at the end of the period of 3 months after the name is reserved or, if an application for registration of an association or for a change in an association's name is made within that period, when the application is determined.

#### **18 Unacceptable names**

- (1) For the purposes of this Act, a name is unacceptable if:
- (a) it does not include, at the end of the name, the word "Incorporated" or the abbreviation "Inc", or
  - (b) it contains foreign language characters, or
  - (c) it includes the word "police" or "sheriff", unless its use is the subject of a consent in force under section 204B of the *Police Act 1990* or section 12 of the *Sheriff Act 2005*, or
  - (d) the Director-General is of the opinion:
    - (i) that it is identical to, or closely resembles, some other name that is registered, that is reserved or that is the subject of an earlier application for reservation, and
    - (ii) that the public would be likely to be misled if associations operated under both names, or
  - (e) the Director-General is of the opinion that it suggests a connection with the Crown or the State, or
  - (f) the Director-General is of the opinion that it is offensive or undesirable, or
  - (g) it is declared by the regulations to be unacceptable.



Clause 18      Associations Incorporation Bill 2009

Part 2          Registration of associations

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- (2) A name is not unacceptable on a ground referred to in subsection (1) (e) or (f) if, in a particular case, the Minister directs that the name is acceptable.

## Part 3 Basic features of associations

### Division 1 Association powers

- 19 Legal capacity and powers** (cf Corporations Act 2001 of the Commonwealth, section 124)
- (1) An association has the legal capacity and powers of an individual both in and outside New South Wales.
  - (2) An association's legal capacity to do something is not affected by the fact that the association's interests are not, or would not be, served by doing it.
- 20 Constitution may limit powers** (cf Corporations Act 2001 of the Commonwealth, section 125)
- (1) An association's constitution may contain an express restriction on, or a prohibition of, the association's exercise of any of its powers, but the exercise of a power by the association is not invalid merely because it is contrary to such a restriction or prohibition.
  - (2) An act of an association is not invalid merely because it is contrary to or beyond the association's objects.
- 21 Agent exercising association's power to make contracts** (cf Corporations Act 2001 of the Commonwealth, section 126)
- (1) An association's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the association's express or implied authority and on behalf of the association.
  - (2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.
- 22 Execution of documents (including deeds) by an association** (cf Corporations Act 2001 of the Commonwealth, section 127)
- (1) An association may execute a document without using a common seal if the document is signed by 2 of its authorised signatories.
  - (2) An association with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by 2 of its authorised signatories.
  - (3) An association may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).
  - (4) This section does not limit the ways in which an association may execute a document (including a deed).

- (5) This section does not authorise an association to execute a document contrary to the provisions of its constitution.

## **Division 2 Assumptions people dealing with associations are entitled to make**

### **23 Entitlement to make assumptions** (cf Corporations Act 2001 of the Commonwealth, section 128)

- (1) A person is entitled to make the assumptions in section 24 in relation to dealings with an association, and the association is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section 24 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired property from an association, and the association and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (3) The assumptions may be made even if anyone purporting to act on behalf of the association acts fraudulently, or forges a document, in connection with the dealings.
- (4) A person is not entitled to make an assumption in section 24 if at the time of the dealings they knew or suspected that the assumption was incorrect.

### **24 Assumptions that may be made** (cf Corporations Act 2001 of the Commonwealth, section 129)

- (1) A person may assume that the association's constitution has been complied with.
- (2) A person may assume that anyone who appears, from information provided by the association that is available to the public from the Register of Incorporated Associations, to be the association's public officer:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the functions customarily exercised by the public officer of a similar association.
- (3) A person may assume that anyone who appears, from information provided by the association, to be a committee member of the association:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the functions customarily exercised by a committee member of a similar association.

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- (4) A person may assume that anyone who is held out by the association to be an agent of the association:
    - (a) has been duly appointed, and
    - (b) has authority to exercise the functions customarily exercised or performed by an agent of a similar association.
  - (5) A person may assume that persons acting on behalf of the association properly perform their duties to the association.
  - (6) A person may assume that a document has been duly executed by the association if the document appears to have been signed in accordance with section 22 (1).
  - (7) A person may assume that a document has been duly executed by the association if:
    - (a) the association's common seal appears to have been fixed to the document in accordance with section 22 (2), and
    - (b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.
  - (8) A person may assume that anyone who has, or may be assumed to have, the authority to issue a document or a certified copy of a document on behalf of the association also has authority to warrant that the document is genuine or is a true copy.
  - (9) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

### **Division 3      General**

#### **25    Provisions of model constitution to apply if appropriate provision not otherwise made**

- (1) If an association's constitution fails to address a matter referred to in Schedule 1, the provisions of the model constitution with respect to the matter are taken to form part of the association's constitution.
- (2) For avoidance of doubt, an association's constitution may address a matter referred to in Schedule 1:
  - (a) by adopting the provisions of the model constitution with respect to the matter, or
  - (b) by adopting a modified version of the provisions of the model constitution with respect to the matter.
- (3) Subsection (2) does not limit the way in which an association's constitution may otherwise address a matter referred to in Schedule 1.

- (4) A provision of an association's constitution is of no effect to the extent to which it is contrary to this or any other Act or law.

**26 Nature of association**

- (1) Subject to this Act, an association's constitution binds the association and its members to the same extent as if it were a contract between them under which they each agree to observe its provisions.
- (2) Subject to this Act, a member of an association (including a committee member and the public officer) is not, merely because of being such a member, liable in relation to the association's liabilities or the costs, charges and expenses of the winding up of the association.
- (3) Subject to this Act, membership of an association does not confer on a member any right, title or interest, whether legal or equitable, in the association's assets.

**27 Pre-registration contracts**

- (1) Contracts entered into before an association is registered under this Act are 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 2B.3 of the *Corporations Act 2001* of the Commonwealth.
- (2) In subsection (1), the reference to an association does not include a reference to an association arising from the registration of an unincorporated body, the amalgamation of 2 or more associations or the registration of a registrable corporation.

**Note.** Contracts entered into by an association arising from the registration of an unincorporated body or the amalgamation of 2 or more associations are unaffected by registration (see section 8 and Schedule 2) as are those of an association arising from the registration of a registrable corporation (see section 9).

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## Part 4 Management of associations

### Division 1 Committee members

#### 28 Committee to be established

- (1) An association must establish a committee to manage its affairs.  
**Note.** An association's registration is liable to be cancelled if it does not comply with this subsection.
- (2) The committee must include 3 or more members, each of whom is aged 18 years or more and at least 3 of whom are ordinarily resident in Australia.  
**Note.** An association's registration is liable to be cancelled if its committee does not comply with this subsection.
- (3) The committee may exercise such of the association's powers as are not required by this Act or its constitution to be exercised by the association in general meeting.
- (4) A committee member's acts are valid despite any defect in his or her appointment.
- (5) Within 14 days after vacating office, a former committee member of an association must ensure that all documents in his or her possession that belong to the association are delivered to the public officer for delivery to his or her successor.  
Maximum penalty: 1 penalty unit.

#### 29 Register of committee members

- (1) An association must keep a register of committee members in accordance with this section.  
Maximum penalty: 1 penalty unit.
- (2) The register must contain the following particulars in relation to each committee member:
  - (a) the committee member's name, date of birth and residential address,
  - (b) the date on which the committee member takes office,
  - (c) the date on which the committee member vacates office,
  - (d) such other particulars as may be prescribed by the regulations.
- (3) The register must be kept in New South Wales:
  - (a) at the main premises of the association, or
  - (b) if the association has no premises, at the association's official address.

- (4) Any change in the committee's membership must be recorded in the register within one month after the change occurs.
- (5) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

**30 Committee meetings**

- (1) An association's committee meetings may be held as and when the association's constitution requires.
- (2) If the association's constitution so provides, a committee meeting may be held at 2 or more venues using any technology that gives each of the committee members a reasonable opportunity to participate.
- (3) In any legal proceedings, a committee meeting held in accordance with subsection (2), or part of such a meeting, is not to be declared invalid on the ground that one or more committee members did not have a reasonable opportunity to participate unless the court is satisfied that:
  - (a) substantial injustice has been, or may be, caused, and
  - (b) the injustice cannot be remedied by any other order available to the court.

**31 Disclosure of interests**

- (1) If:
  - (a) a committee member has a direct or indirect interest in a matter being considered or about to be considered at a committee meeting, and
  - (b) the interest appears to raise a conflict with the proper performance of the committee member's duties in relation to the consideration of the matter,the committee member must, as soon as possible after the relevant facts have come to the committee member's knowledge, disclose the nature of the interest at a committee meeting.

Maximum penalty: 60 penalty units.
- (2) A disclosure by a committee member at a committee meeting that the committee member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or

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- (c) has some other specified interest relating to a specified company or other body or to a specified person,  
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).
- (3) Particulars of any disclosure made under this section must be recorded by the committee in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the committee (but not exceeding the maximum fee prescribed by the regulations).
- (4) The book must be kept at the same address as the register of committee members.
- (5) After a committee member has disclosed the nature of an interest in any matter, the committee member must not, unless the committee otherwise determines:
- (a) be present during any deliberation of the committee with respect to the matter, or
  - (b) take part in any decision of the committee with respect to the matter.
- (6) For the purposes of the making of a determination by the committee under subsection (5), a committee member who has a direct or indirect interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the committee for the purpose of making the determination, or
  - (b) take part in the making by the committee of the determination.
- (7) A contravention of this section does not invalidate any decision of the committee.

### **32 Dishonest use of information**

A committee member or former committee member of an association who uses information obtained as a committee member dishonestly with the intention directly or indirectly of:

- (a) gaining an advantage for himself or herself or for any other person, or
  - (b) causing detriment to the association,
- is guilty of an offence.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.



Clause 33      Associations Incorporation Bill 2009

Part 4          Management of associations

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**33 Dishonest use of position**

A committee member of an association who uses his or her position as a committee member dishonestly with the intention of directly or indirectly:

- (a) gaining an advantage for himself or herself or for any other person, or
- (b) causing detriment to the association,

is guilty of an offence.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

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## Division 2 Public officer and authorised signatories

### 34 Public officer

- (1) An association's committee must appoint a public officer.  
Maximum penalty: 1 penalty unit.
- (2) The public officer must be a person who is aged 18 years or more and is ordinarily resident in New South Wales.  
**Note.** An association's registration is liable to be cancelled if its public officer does not comply with this subsection.
- (3) The position of public officer may, but need not be, held by a committee member.
- (4) The public officer's acts are valid despite any defect in his or her appointment.
- (5) The first public officer of an association is the person nominated as public officer in the application for registration of the association.
- (6) Within 28 days after taking office as an association's public officer (other than its first public officer), a person must notify the Director-General, in the approved form, of:
  - (a) the person's full name and date of birth, and
  - (b) the person's address for service of notices, being either the person's residential address or some other address at which the person can generally be found, and
  - (c) the fact that the person has taken office as public officer.Maximum penalty: 1 penalty unit.

### 35 Vacation of office of public officer

- (1) An association's public officer vacates office in the following circumstances:
  - (a) if he or she dies,
  - (b) if he or she resigns the office in writing addressed to the association's committee,
  - (c) if he or she is removed from office by resolution of a general meeting of the association,
  - (d) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
  - (e) if he or she becomes a mentally incapacitated person,
  - (f) if he or she ceases to ordinarily reside in New South Wales,

- (g) in such other circumstances as the constitution of the association may provide.
- (2) Within 14 days after vacating office, a former public officer of an association must ensure that all documents in his or her possession that belong to the association are delivered to a committee member of the association.  
Maximum penalty: 1 penalty unit.
- (3) An association's committee must fill any vacancy in the office of public officer within 28 days after the vacancy arises.  
Maximum penalty: 1 penalty unit.

### **36 Authorised signatories**

- (1) An association's public officer is, by virtue of that office, an authorised signatory for the association.
- (2) An association's committee may from time to time appoint additional authorised signatories from among such of its members as are ordinarily resident in Australia, and may at any time revoke any such appointment.
- (3) A person (other than the association's public officer) vacates office as an association's authorised signatory if:
  - (a) his or her appointment as an authorised signatory is revoked, or
  - (b) he or she ceases to be a committee member, or
  - (c) he or she ceases to be ordinarily resident in Australia.

## **Division 3 General**

### **37 General meetings**

- (1) An association's committee must ensure that the association's first annual general meeting is held within 18 months after its registration under this Act.  
Maximum penalty: 1 penalty unit.
- (2) An association's committee must ensure that annual general meetings are held:
  - (a) within 6 months after the close of the association's financial year, or
  - (b) within such further time as may be allowed by the Director-General or prescribed by the regulations.Maximum penalty: 1 penalty unit.

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- (3) If the association's constitution so provides, a general meeting may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate.
  - (4) In any legal proceedings, a general meeting held in accordance with subsection (3), or part of such a meeting, is not to be declared invalid on the ground that one or more of the association's members did not have a reasonable opportunity to participate unless the court is satisfied that:
    - (a) substantial injustice has been, or may be, caused, and
    - (b) the injustice cannot be remedied by any other order available to the court.

### **38 Voting generally**

- (1) A resolution is passed by an association as an *ordinary resolution*:
  - (a) at a general meeting of the association, or
  - (b) in a postal ballot conducted by the association,if it is supported by more than half of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.
- (2) A postal ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal ballot and, if conducted, must be conducted in accordance with the regulations.

### **39 Voting on special resolutions**

- (1) A resolution is passed by an association as a *special resolution*:
  - (a) at a meeting of the association of which notice has been given to its members no later than 21 days before the date on which the meeting is held, or
  - (b) in a postal ballot conducted by the association, or
  - (c) in such other manner as the Director-General may direct,if it is supported by at least three-quarters of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.
- (2) A notice referred to in subsection (1) (a) must include the terms of the resolution and a statement to the effect that the resolution is intended to be passed as a special resolution.
- (3) A postal ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal ballot and, if conducted, must be conducted in accordance with the regulations.

- (4) A direction under subsection (1) (c) may not be given unless the Director-General is satisfied that, in the circumstances, it is impracticable to require votes to be cast in the manner provided by subsection (1) (a) or (b).

**40 Association not to provide pecuniary gain for its members**

- (1) An association must not conduct its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members.  
Maximum penalty: 60 penalty units.
- (2) Subsection (1) does not affect the association's civil liability to any person as a result of it having provided pecuniary gain for its members.

**41 Where name must appear**

- (1) An association must not issue any letter, statement, invoice, notice, publication, order for goods or services or receipt in connection with its activities unless the association's name appears in legible characters on the document.  
Maximum penalty: 1 penalty unit.
- (2) This section does not limit the operation of section 24 of the *Business Names Act 2002* in relation to any association that carries on activities under a business name registered under that Act.

## **Part 5 Financial reporting**

### **Division 1 Tier 1 associations**

#### **42 Application of Division**

- (1) This Division applies to any association:
  - (a) whose gross receipts (as calculated in accordance with the regulations) for the financial year last ended, or
  - (b) whose current assets (as calculated in accordance with the regulations),exceed such amount as may be prescribed by the regulations (*a Tier 1 association*).
- (2) Despite subsection (1), this Division does not apply to any association that the Director-General declares not to be a Tier 1 association.
- (3) Such a declaration may be made in respect of an association whose gross receipts for the financial year last ended were negligible, but whose current assets are such that it would (but for the declaration) be a Tier 1 association, and not otherwise.

#### **43 Financial statements**

- (1) As soon as practicable after the end of each financial year, the committee of a Tier 1 association:
  - (a) must cause financial statements for that year to be prepared in relation to the association's financial affairs (including its affairs as trustee of any trust), and
  - (b) must cause the financial statements to be audited in time for them to be submitted to the association's next annual general meeting.Maximum penalty: 5 penalty units.
- (2) The financial statements must be prepared in accordance with the Australian Accounting Standards and must deal with such matters as are prescribed by the regulations.
- (3) The auditor's report:
  - (a) must be prepared in accordance with the Australian Auditing Standards, and
  - (b) must state whether the association has kept such financial records as are necessary to enable financial statements to be prepared in accordance with the Australian Accounting Standards.

#### **44 Submission of financial statements to AGM**

At each annual general meeting of a Tier 1 association, the association's committee must cause:

- (a) the association's financial statements for the previous financial year, and
- (b) the auditor's report for those statements, to be submitted to the meeting.

Maximum penalty: 5 penalty units.

#### **45 Lodgment of documents with Director-General**

- (1) The public officer of a Tier 1 association must lodge the following documents with the Director-General in accordance with this section:

- (a) a summary, in the approved form, of the association's financial affairs for the previous financial year,
- (b) the association's financial statements for that year,
- (c) the auditor's report for those statements,
- (d) a document setting out the terms of any resolution passed at the association's annual general meeting in connection with the documents referred to in paragraphs (b) and (c).

Maximum penalty: 5 penalty units.

- (2) The documents referred to in subsection (1):

- (a) must be lodged within:
  - (i) one month after the annual general meeting for the current financial year, or
  - (ii) 7 months after the end of the previous financial year, whichever is the earlier, or within such further time as the Director-General may allow, and
- (b) must be accompanied by the fee prescribed by the regulations.

- (3) For the avoidance of doubt, the documents referred to in subsection (1) are taken not to have been lodged if the relevant fee has not been paid.

### **Division 2 Tier 2 associations**

#### **46 Application of Division**

This Division applies to any association to which Division 1 does not apply (*a Tier 2 association*).

**47 Financial statements**

- (1) As soon as practicable after the end of each financial year, the committee of a Tier 2 association must cause financial statements for that year to be prepared, in accordance with this section, in relation to the association's financial affairs (including its affairs as trustee of any trust).

Maximum penalty: 5 penalty units.

- (2) The financial statements must give a true and fair view of the association's affairs and must deal with such matters as are prescribed by the regulations.

**48 Submission of reports and statements to AGM**

At each annual general meeting of a Tier 2 association, the association's committee must cause the association's financial statements for the previous financial year to be submitted to the meeting.

Maximum penalty: 5 penalty units.

**49 Lodgment of summary with Director-General**

- (1) The public officer of a Tier 2 association must lodge with the Director-General, in accordance with this section, a summary, in the approved form, of the association's financial affairs for the previous financial year.

Maximum penalty: 5 penalty units.

- (2) The summary:
- (a) must be lodged within:
    - (i) one month after the annual general meeting for the current financial year, or
    - (ii) 7 months after the end of the previous financial year, whichever is the earlier, or within such further time as the Director-General may allow, and
  - (b) must be accompanied by the fee prescribed by the regulations.
- (3) For the avoidance of doubt, the summary is taken not to have been lodged if the relevant fee has not been paid.

**Division 3 General****50 Keeping of accounts and minutes of proceedings**

- (1) An association:
- (a) must keep records that correctly record and explain its financial transactions and financial position, and



(b) must keep minutes of the proceedings of its committee meetings and general meetings.

Maximum penalty: 5 penalty units.

- (2) In the case of a Tier 1 association within the meaning of Division 1, the records referred to in subsection (1) (a) must be sufficient to enable financial statements to be prepared in accordance with the Australian Accounting Standards.
- (3) If any document required to be kept under this section is, either in whole or in part, in a language other than the English language, a copy of the document wholly in the English language must be kept with the document.
- (4) The regulations may make provision for or in respect of the keeping and inspection of records and minutes under this section.

#### **51 Audit at the Director-General's direction**

- (1) The Director-General may direct an association to cause the whole or any specified part of an association's financial records to be audited, and an auditor's report lodged with the Director-General, within a specified time.
- (2) Such a direction may be given regardless of whether the financial records have previously been audited.
- (3) An association to which such a direction is given must ensure that the direction is complied with.  
Maximum penalty: 5 penalty units.
- (4) An auditor's report under this section must state whether the association's financial records:
  - (a) have been properly kept, and
  - (b) give a true and fair view of the association's affairs.

#### **52 Auditor to be qualified and independent**

- (1) Subject to subsection (2), an audit under this Part must be carried out by:
  - (a) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (b) a person approved by the Director-General for the purposes of this Part, either generally or in relation to a specified association or class of associations, or a person who belongs to a class of persons so approved.

- (2) Except with the written approval of the Director-General, an audit under this Part may not be carried out by any person who is, or who has at any time within the last 2 years been:
- (a) a member of the association, or
  - (b) an employee of, or provider of professional services (other than audit services) to, the association or to a committee member or public officer of the association.

**53 Power of Director-General to grant exemptions**

- (1) The Director-General may, by order in writing, exempt an association or any class of associations, from the requirements of this Part in relation to the preparation and auditing of financial statements.
- (2) Any such exemption:
- (a) may be given subject to conditions, and
  - (b) may be limited as to time, and
  - (c) may be varied, suspended or revoked by the Director-General by a further order in writing.
- (3) An order under this section takes effect:
- (a) if it applies to a particular association, when the order is served on the association, or
  - (b) if it applies to a class of associations, when the order is published in the Gazette.

## **Part 6   External administration and winding up**

### **Division 1       External administration on grounds of insolvency**

**54   Appointment of administrator—Corporations legislation** (cf Co-operatives Act 1992, sections 332 and 332A)

- (1) An association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.3A and Division 3 of Part 5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
  - (a) those provisions are to be read as if an association and its committee were, respectively, a company and its board,
  - (b) those provisions are to be read as including the provisions of subsections (2) and (3),
  - (c) a reference in those provisions to sections 128 and 129 of the *Corporations Act 2001* of the Commonwealth is to be read as a reference to sections 23 and 24 of this Act,
  - (d) a reference in those provisions to an administrator appointed under a provision of Part 5.3A is to be read as including a reference to an administrator appointed by the Director-General under this section,
  - (e) a reference in those provisions to ASIC is to be read as a reference to the Director-General,
  - (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) Without limiting subsection (1), the Director-General may appoint a person as an administrator for the purposes of the provisions of Part 5.3A of the *Corporations Act 2001* of the Commonwealth (as applying under this section) if of the opinion that the association is, or is likely to become, insolvent.
- (3) A person appointed under subsection (2) may, but need not, be a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

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**Division 2 External administration on grounds other than insolvency****55 Appointment of administrator by Director-General**

The Director-General may appoint an administrator to administer an association's affairs if:

- (a) the association has persistently failed to comply with the requirements of this Act or the regulations, and
- (b) having regard to those circumstances, the Director-General is satisfied that it is in the interests of the association's members or creditors for an administrator to be appointed.

**56 Effect of appointment of administrator** (cf Co-operatives Act 1992, section 334)

- (1) On the appointment of an administrator for an association:
  - (a) the committee members and the public officer cease to hold office, and
  - (b) the administrator may terminate any contract of employment with the association or any contract for the provision of secretarial, administrative or other services to the association.
- (2) An administrator for an association has the functions of the association's committee and the functions of the association's public officer.

**57 Revocation of appointment** (cf Co-operatives Act 1992, section 335)

- (1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.
- (2) When a liquidator of an association is appointed, the appointment of any administrator of the association is automatically revoked.
- (3) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Director-General showing how the administration was carried out, and for that purpose an administrator has access to the association's records and documents.
- (4) On providing the report and accounting fully in relation to the administration of the association to the satisfaction of the Director-General, the administrator is released from any further duty to account in relation to the administration of the association otherwise than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.

- (5) Before revoking the appointment of an administrator of an association, the Director-General:
  - (a) must appoint another administrator, or
  - (b) must ensure that committee members and the public officer have been elected in accordance with the association's constitution at a meeting convened by the administrator in accordance with the constitution, or
  - (c) must appoint committee members and a public officer for the association.
- (6) Committee members elected or appointed under subsection (5):
  - (a) take office on revocation of the administrator's appointment, and
  - (b) if appointed, hold office until the next annual general meeting of the association after the revocation of that appointment.
- (7) The public officer of an association appointed under subsection (5) (c) takes office on revocation of the administrator's appointment.

**58 Expenses of administration** (cf Co-operatives Act 1992, section 336)

- (1) The expenses of and incidental to the conduct of an association's affairs by an administrator are payable from the association's funds.
- (2) The expenses of conducting an association's affairs include:
  - (a) if the administrator is a public servant, such amount as the Director-General may certify as being the Crown's costs in relation to the administrator's remuneration, or
  - (b) if the administrator is not a public servant, such amount as the Director-General may approve in relation to the administrator's remuneration.
- (3) An amount certified under subsection (2) (a) may be recovered in a court of competent jurisdiction as a debt due to the Crown.
- (4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding up of an association as the liquidator of the association has.

**59 Liabilities arising from administration** (cf Co-operatives Act 1992, section 337)

- (1) An administrator is liable for any loss incurred by the association because of any fraud, dishonesty, negligence or wilful failure by the administrator to comply with this Act, the regulations or the association's constitution.
- (2) An administrator is not liable for any other loss, but must account for the loss in a report given under section 57.

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**60 Stay of proceedings** (cf Co-operatives Act 1992, section 337B)

- (1) If the Director-General appoints an administrator to conduct an association's affairs, a person must not begin or continue any legal proceedings against the association until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.
- (2) A person intending to apply for the leave of the Supreme Court under subsection (1) must give the Director-General not less than 10 days' notice of intention to apply.
- (3) On the hearing of an application under subsection (1), the Director-General may be represented and may oppose the granting of the application.

**61 Administrator to report to Director-General** (cf Co-operatives Act 1992, section 337C)

On the receipt of a request from the Director-General, the administrator for an association must, without delay, prepare and give to the Director-General a report showing how the administration is being carried out.

**Division 3 Winding up****62 Voluntary winding up**

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

**63 Involuntary winding up**

- (1) The Supreme Court may order the winding up of an association if:
  - (a) the association has by special resolution resolved that it be wound up by the Court, or
  - (b) the association does not commence its operations within one year after the date of its registration under this Act or suspends its operations for a whole year, or
  - (c) the association is insolvent, or
  - (d) the association has conducted its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members, or
  - (e) the association has engaged in activities inconsistent with its objects, or

- (f) the committee of the association has acted in affairs of the association in the interests of the committee or the committee members rather than in accordance with its objects, or in any other manner whatever that appears to the Court to be unfair or unjust to the association's members, or
  - (g) the association would, if not registered under this Act, not be eligible to be so registered, or
  - (h) the Director-General has, pursuant to section 73, directed the association to apply for cancellation of its registration and the association has failed to do so within the time fixed by the direction, or
  - (i) the Court is of the opinion that it is just and equitable that the association be wound up.
- (2) An application to the Supreme Court for the winding up of an association may be made by the association, by a member or creditor of the association or by the Director-General.

**64 Modifications to text of applied Corporations Act 2001 of the Commonwealth**

- (1) The winding up of an association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.5 and 5.6 of the *Corporations Act 2001* of the Commonwealth, subject to:
- (a) the modifications referred to in subsection (2), and
  - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of subsection (1):
- (a) a reference to a company or body is to be read as a reference to an association,
  - (b) a reference to the directors of a company is to be read as a reference to the committee members of an association,
  - (c) a reference to ASIC is to be read as a reference to the Director-General,
  - (d) a reference to a company's principal place of business is to be read as a reference to an association's official address,
  - (e) the reference to 5 years in section 1316 of that Act is taken to be a reference to 3 years.

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**65 Distribution of surplus property**

- (1) In this section, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.
- (2) In a winding up of an association, the surplus property of the association is to be distributed in accordance with a special resolution of the association.
- (3) Any such distribution of surplus property:
  - (a) must be approved by the Director-General, and
  - (b) is not to be made to or for the benefit of:
    - (i) any member or former member of the association, or
    - (ii) any person to be held on trust for any member or former member of the association,  
unless the member or former member is an association (whether incorporated or unincorporated) whose constitution, at the time of the distribution, prohibits the distribution of property to its members, and
  - (c) is subject to any trust affecting that property or any part of it.
- (4) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.
- (5) A person aggrieved by the operation of this section in relation to an association's surplus property may apply to the Supreme Court for an order as to its disposal.
- (6) The Supreme Court may deal with such an application by making such orders as it thinks fit with respect to the disposal of the association's surplus property.

**66 Appeal**

- (1) A person aggrieved by any act, omission or decision of an association's liquidator or provisional liquidator may appeal to the Supreme Court in respect of the act, omission or decision.
- (2) The Supreme Court may deal with such an appeal by confirming, reversing or modifying the act or decision, or remedying the omission, as the case may be, and by making such other orders as it thinks fit.



## **Division 4            Offences relating to incurring of debts or fraudulent conduct**

### **67    Definitions**

- (1) This Division applies to an association:
  - (a) that is insolvent, or
  - (b) that is being, or has been, wound up, or
  - (c) whose registration has been cancelled under Division 1 or 2 of Part 7.
- (2) In this Division, *appropriate officer* means:
  - (a) in relation to an association that has been or is being wound up, the liquidator, or
  - (b) in relation to an association whose registration has been cancelled by the Director-General or that is insolvent, the Director-General.
- (3) For the purposes of this section, an association is taken to be insolvent if, and only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the association is returned unsatisfied in whole or in part.

### **68    Incurring of debts in respect of association to which this Division applies**

- (1) If an association incurs a debt and:
  - (a) immediately before the debt is incurred:
    - (i) there are reasonable grounds for believing that the association is or will become insolvent, or
    - (ii) there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent, and
  - (b) the association is or becomes an association to which this Division applies,  
any person who was a committee member of the association at the time the debt was incurred is guilty of an offence.  
Maximum penalty: 50 penalty units or imprisonment for 1 year, or both.
- (2) The association and any person who was a committee member of the association at the time the debt was incurred are jointly and severally liable for the payment of the debt.
- (3) In any proceedings against a person under subsection (1), it is a defence if the defendant proves:
  - (a) that the debt was incurred without the defendant's express or implied authority or consent, or

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- (b) that, at the time the debt was incurred, the defendant did not have reasonable grounds:
- (i) to believe that the association was insolvent, or
  - (ii) to expect that, if the association incurred that debt, it would become insolvent.
- (4) If subsection (2) renders a person or persons liable to pay a debt incurred by an association, the payment by that person or either or any of those persons of the whole or any part of the debt does not render the association liable to the person or persons concerned in respect of the amount so paid.

**69 Fraudulent conduct in respect of association to which this Division applies**

If:

- (a) an association does any act (including the entering into of a contract or transaction) with intent to defraud any person or for any other fraudulent purpose, and
- (b) the association is or becomes an association to which this Division applies,

any person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**70 Powers of Supreme Court**

- (1) If a person (*the offender*) is convicted of an offence under section 68 (1) in respect of the incurring of a debt, the Supreme Court, on the application of:
  - (a) the Director-General, or
  - (b) the person to whom the debt is payable (*the creditor*),may declare that the offender is personally responsible, without any limitation of liability, for payment to the creditor of the amount of the debt or such part of it as the Court thinks fit.
- (2) If a person (*the offender*) is convicted of an offence under section 69, the Supreme Court, on the application of:
  - (a) the Director-General, or
  - (b) the appropriate officer, or

- (c) a member or creditor of the association authorised by the Director-General to make such an application, may declare that the offender is personally responsible, without any limitation of liability, for payment to the association of the amount required to satisfy so much of the debts of the association as the Court thinks fit.
- (3) If the Supreme Court makes a declaration under subsection (1), it may make such further orders as it thinks fit for the purpose of giving effect to that declaration.
- (4) In particular, the Supreme Court may order that the offender's liability is a charge on:
- (a) a debt or obligation due from the association to the creditor, or
  - (b) a right or interest under a charge on any property of the association held by or vested in the offender or a person on behalf of the offender, or a person claiming as assignee from or through the offender or a person acting on behalf of the offender.
- (5) The Supreme Court may, from time to time, make such further order as it thinks fit for the purpose of enforcing a charge imposed under subsection (4).
- (6) For the purpose of subsection (4) (b), *assignee* includes a person to whom or in whose favour, by the direction of the offender:
- (a) the debt, obligation or charge was created, issued or transferred, or
  - (b) the interest was created,
- but does not include an assignee for valuable consideration given in good faith and without actual knowledge of any of the matters on which the conviction or declaration was made.

**71 Certain rights not affected**

Nothing in this Division affects any rights of a person to indemnity, subrogation or contribution.

## **Part 7 Cancellation and transfer of registration**

### **Division 1 Voluntary cancellation**

#### **72 Application for cancellation**

- (1) An association may apply to the Director-General for cancellation of its registration.
- (2) The application:
  - (a) must be in the approved form, and
  - (b) must include a copy of the special resolution by which the association has approved:
    - (i) the cancellation of its registration, and
    - (ii) the proposed distribution of its assets, and
  - (c) must be accompanied by a statement (verified by statutory declaration by 2 committee members) that the association has no outstanding liabilities.

#### **73 Director-General may direct association to apply for cancellation**

- (1) The Director-General may, by order in writing served on an association, direct the association to apply for cancellation of its registration within such time (being not less than 3 months) as is fixed by the direction.
- (2) The Director-General may not give such a direction unless he or she is satisfied that, having regard to the objects of this Act, the association should no longer be registered:
  - (a) because some provision of the association's constitution is contrary to law, or
  - (b) because of the Director-General's assessment of the nature or extent of the association's activities, or
  - (c) because of the Director-General's assessment of the nature or extent of the association's dealings with the public, or
  - (d) for any other reason that appears sufficient to the Director-General.

#### **74 Decision on application**

- (1) The Director-General may determine an application for cancellation of an association's registration by cancelling the registration or by refusing the application.

- (2) An application for cancellation of an association's registration must be refused if the Director-General suspects:
  - (a) that the association has outstanding obligations under this Act, or
  - (b) that the association has outstanding liabilities, or
  - (c) that the proposed distribution of assets does not comply with section 75.
- (3) On cancelling an association's registration, the Director-General is to cause notice of that fact to be published in the Gazette and to be given to the association.

**75 Distribution of assets**

- (1) On the cancellation of its registration under this Division, an association's assets are to be distributed in accordance with a special resolution of the association.
- (2) Any such distribution of assets:
  - (a) must be approved by the Director-General, and
  - (b) is not to be made to or for the benefit of:
    - (i) any member or former member of the association, or
    - (ii) any person to be held on trust for any member or former member of the association,unless the member or former member is an association (whether incorporated or unincorporated) whose constitution, at the time of the distribution, prohibits the distribution of property to its members, and
  - (c) is subject to any trust affecting those assets or any part of them.
- (3) Any asset that has been supplied by a government department or public authority (including any unexpended portion of a grant) must be returned to the department or authority that supplied it or delivered to such person or body as that department or authority may direct.
- (4) A person aggrieved by the operation of this section in relation to an association's assets may apply to the Supreme Court for an order as to their disposal.
- (5) The Supreme Court may deal with such an application by making such orders as it thinks fit with respect to the disposal of the association's assets.

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**Division 2      Involuntary cancellation****76    Director-General may cancel registration**

- (1) The Director-General may cancel an association's registration if satisfied that:
- (a) the association is not in operation, whether or not it has been wound up, or
  - (b) the association has fewer than 5 members, or
  - (c) the association has failed to establish and maintain a committee in accordance with section 28, or
  - (d) the association's committee does not include 3 or more members of whom each is aged 18 years or more and of whom at least 3 are ordinarily resident in Australia, or
  - (e) the association's public officer is not aged 18 years or more or not ordinarily resident in New South Wales, or
  - (f) the association is, or has been, conducting its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members, or
  - (g) during the last 3 financial years, the association has not held an annual general meeting, or
  - (h) during the last 3 financial years, no financial statements for the association have been lodged with the Director-General, or
  - (i) the association has failed to comply with a direction under section 11 for the change of its name, or
  - (j) the association has become registered under this Act because of fraud or mistake.
- (2) An association's registration is not to be cancelled under this section if:
- (a) the association is being wound up, or
  - (b) the Administrative Decisions Tribunal has ordered the Director-General not to cancel the association's registration.
- (3) Before cancelling an association's registration under this section, the Director-General:
- (a) must cause notice of the proposed cancellation to be given to the association stating the ground or grounds referred to in subsection (1) that the Director-General believes exist, and
  - (b) must give the association and its members at least 28 days within which to make submissions to the Director-General with respect to the proposed cancellation, and

- (c) must give due consideration to any submissions that are made within that period.
- (4) After cancelling an association's registration under this section, the Director-General must cause notice of that fact to be given to the association.
- (5) Any notice to be sent to an association under this section must be sent by registered post addressed to the association:
  - (a) at the association's official address, or
  - (b) if the Director-General suspects that the association's official address is no longer in use, at such other address as appears to the Director-General to be an address that is used by the association.

**77 Distribution of assets**

- (1) On the cancellation of an association's registration under this Division, the association's property vests in the Director-General.
- (2) The Director-General:
  - (a) may give such directions as the Director-General considers just for or with respect to the payment of the association's debts and liabilities, the distribution of its property and the winding up of its affairs, and
  - (b) may appoint a person for the purpose of investigating the affairs of the association with a view to the realisation of its property, payment of its debts, discharge of its liabilities, distribution of its property and winding up of its affairs, and
  - (c) may do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of the Director-General's powers under this section.
- (3) The Director-General is entitled to be paid out of an association's property any costs reasonably incurred in the exercise of the Director-General's powers under this section in relation to the association.
- (4) Section 65 applies to and in respect of the distribution of any property remaining after satisfaction of the association's debts and liabilities under subsection (2) and the payment of the Director-General's costs under subsection (3) in the same way as it applies to and in respect of the distribution of surplus property under that section.

### **Division 3      Transfer of registration**

#### **78    Application for transfer of registration declaration**

- (1) An association may apply to the Director-General for a transfer of registration declaration in relation to its proposed registration under a corresponding law.
- (2) Such an application must be authorised by a special resolution passed by the association.
- (3) An application:
  - (a) must be in the approved form, and
  - (b) must identify the corresponding law under which the association proposes to seek registration, and
  - (c) must include a copy of the special resolution referred to in subsection (2), and
  - (d) must include any information required by the regulations, and
  - (e) must be accompanied by the fee prescribed by the regulations.

#### **79    Decision on application**

- (1) The Director-General may determine an association's application for a transfer of registration declaration:
  - (a) by making the transfer of registration declaration in terms:
    - (i) that identify the corresponding law under which the association proposes to seek registration, and
    - (ii) that indicate that the Director-General has no objection to the association becoming registered under that law, or
  - (b) by refusing the application.
- (2) An application for a transfer of registration declaration may be refused if the application does not comply with section 78.
- (3) On making a transfer of registration declaration, the Director-General is to cause a certificate as to the terms of the declaration to be given to the applicant.

#### **80    Effect of transfer of registration declaration**

- (1) A transfer of registration declaration authorises the association to which it relates to transfer its incorporation to the corresponding law identified in the declaration.
- (2) If the association becomes registered under the corresponding law, the Director-General must cancel its registration under this Act.



## **Division 4       General**

### **81   Loss of corporate status**

- (1) Subject to any other Act or law, an association ceases to be a body corporate when its registration is cancelled.
- (2) This Act (except for this Division and Division 4 of Part 6) does not apply to an association whose registration is cancelled.

### **82   Notice of cancellation to be sent to association**

- (1) On cancelling an association's registration, the Director-General is to cause notice of that fact to be published in the Gazette and sent to the association.
- (2) Any notice to be sent to an association under this section must be sent by registered post addressed to the association:
  - (a) at the association's official address, or
  - (b) if the Director-General suspects that the association's official address is no longer in use, at such other address as appears to the Director-General to be an address that is used by the association.

### **83   Certain liabilities not affected by cancellation**

The cancellation of an association's registration does not affect any liability of any former public officer or former committee member, and any such liability may be enforced as if the association's registration had not been cancelled.

### **84   Reinstatement of registration**

- (1) If the Director-General is satisfied that an association's registration should not have been cancelled under this Part, and the association has not become incorporated under any other Act or law, the Director-General may reinstate its registration under this section.
- (2) If an association's registration is reinstated under this section, the body corporate previously established by this Act in relation to the association is, as from the time of reinstatement, taken to have continued in existence as if the association's registration had not been cancelled.
- (3) The regulations may make provision of a savings or transitional nature consequent on the reinstatement of an association's registration and incorporation under this section.

## Part 8 Enforcement provisions

### Division 1 Power to require information and documents

#### 85 Power to require information and documents

- (1) The Director-General may, by notice in writing served on any person, require the person to do either or both of the following within such time as is specified in the notice:
  - (a) to furnish the Director-General with such information as the person possesses in connection with the affairs of an association,
  - (b) to produce to the Director-General such documents as the person possesses in connection with the affairs of an association.
- (2) A person must not fail to comply with a requirement under this section.  
Maximum penalty: 60 penalty units.  
**Note.** The furnishing of false or misleading information and the production of false or misleading documents are offences under Division 3 of Part 5 of the *Crimes Act 1900*.
- (3) A person is not excused from furnishing information or producing a document pursuant to a requirement under this section on the ground that to do so may tend to incriminate the person, but any information so furnished or document so produced is not admissible in evidence against the person in any criminal proceedings other than proceedings for an offence under Division 3 of Part 5 of the *Crimes Act 1900*.

#### 86 Power to enter premises

- (1) An authorised officer:
  - (a) may enter any premises at which an association carries on any activity, and
  - (b) may inspect, and take copies of or extracts from, any document that relates to the carrying on of business at or from the premises, for the purpose of ascertaining whether the provisions of this Act are being complied with.
- (2) The power of entry conferred by subsection (1) may not be exercised:
  - (a) in relation to any part of premises that is used for residential purposes, or
  - (b) outside the hours during which business is being carried on at or from the premises,except with the consent of the occupier of the premises.

**87 Search warrants**

- (1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a named authorised officer under this Act to enter the premises and to exercise any of the authorised officer's functions under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

**88 Manner in which power of entry to be exercised**

- (1) The powers conferred on an authorised officer by this Division may not be exercised in relation to any premises unless:
  - (a) the officer is in possession of a certificate of authority, issued in accordance with the regulations, that evidences his or her authority to exercise those powers, and
  - (b) the occupier of the premises has been given at least 24 hours' notice that those powers are to be exercised or the Director-General has given prior authority for the exercise of those powers without the need for such notice.
- (2) Authority under subsection (1) (b) may only be given if the Director-General is satisfied, in the circumstances of the case, that the giving of 24 hours' notice would frustrate the purpose for which the powers are to be exercised.
- (3) Reasonable force may be used for the purpose of effecting entry under this Division.

**89 Damage to be minimised**

- (1) In exercising the powers conferred by this Division, an authorised officer must do as little damage as possible.
- (2) The Director-General must compensate all interested parties for any damage caused by an authorised officer as a consequence of the exercise of the powers conferred by this Division.

- (3) Subsection (2) does not apply to the extent to which the occupier of the premises has obstructed or hindered the authorised officer in the exercise of the powers conferred by this Division.

## **Division 2      Offences**

### **90    Offence of using certain names**

- (1) Any person or body (other than an association) that calls itself by a name that includes the word “Incorporated” or “Inc” is guilty of an offence.  
Maximum penalty: 2 penalty units.
- (2) Subsection (1) does not apply to a body that is incorporated, whether in New South Wales or elsewhere, under a name that includes either of those words.

### **91    Offences by committee members**

- (1) If an association contravenes, whether by act or omission, any provision of this Act or the regulations, each committee member of the association is taken to have contravened the same provision if he or she knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the association has been proceeded against or convicted under that provision.
- (3) In the case of a contravention of section 40, each person who, pursuant to subsection (1), is taken to have contravened that section is, together with the association, jointly and severally liable for all debts incurred by the association as a consequence of that contravention.
- (4) Nothing in this section affects any liability imposed on an association for an offence committed by the association under this Act.
- (5) For the purposes of this section, an association’s public officer (not otherwise being a committee member) is taken to be a committee member.

### **92    Obstruction of authorised officers**

A person must not obstruct or hinder an authorised officer in the exercise of the officer’s functions under this Act.

Maximum penalty: 60 penalty units.

### **93    Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against

this Act, being an offence prescribed by the regulations as a penalty notice offence.

- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations:
  - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) may prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) may prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

#### **94 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court.
- (2) Proceedings for an offence under section 31 (1), 32, 33, 40 (1), 68 (1) or 69 may be commenced not later than 3 years from when the offence was alleged to have been committed.

**Note.** Under section 179 of the *Criminal Procedure Act 1986*, proceedings for any other summary offence under this Act must be commenced not later than 6 months from when the offence was alleged to have been committed.

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## Part 9 Application of Corporations legislation

### 95 Excluded matters

- (1) An association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

**Note.** This section ensures that neither the *Corporations Act 2001* of the Commonwealth, nor the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, will apply to an association other than to the extent specified in this section. Section 5F of the *Corporations Act 2001* provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation, other than to a specified extent, then that legislation will apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Act provide for the application of provisions of the Corporations legislation to associations as laws of the State.

- (2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to an association to the extent to which those provisions would otherwise be applicable to the association:
- (a) provisions relating to the role of an association in the formation of a company,
  - (b) provisions relating to the registration of an association as a company under Chapter 5B of the *Corporations Act 2001* of the Commonwealth,
  - (c) provisions relating to substantial shareholdings, by or involving an association, in a company,
  - (d) provisions conferring or imposing functions on an association as a member, or former member, of a corporation,
  - (e) provisions relating to dealings by an association in financial products of a corporation,
  - (f) provisions conferring or imposing functions on an association in its dealings with a corporation,
  - (g) provisions relating to any of the following activities of an association:
    - (i) the activity of operating, or being concerned in the operation of, a managed investment scheme,
    - (ii) the activity of providing advice about, or dealing in, insurance,
    - (iii) any activity regulated by or under Chapter 2L (Debentures), Part 5.7 (Winding up bodies other than companies), Chapter 6D (Fundraising) or Chapter 7

(Financial services and markets) of the *Corporations Act 2001* of the Commonwealth.

- (3) To avoid doubt, it is declared that subsection (1) does not operate to exclude the operation of:
- (a) Chapter 2F, 2L, 5C, 6D or 7 or section 1324 of the *Corporations Act 2001* of the Commonwealth, or
  - (b) Part 1, 2 or 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth to the extent necessary to enforce the provisions of the Corporations legislation referred to in subsection (2) (a)–(g) and in paragraph (a) of this subsection.
- (4) In this section, **the Corporations legislation** means the Corporations legislation, within the meaning of the *Corporations Act 2001* of the Commonwealth, to which Part 1.1A of that Act applies.

## 96 Applying the Corporations legislation to associations

- (1) The regulations may declare any matter relating to associations to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration).

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

- (2) Without limiting subsection (1), any such regulations:
- (a) may specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
  - (b) may specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and
  - (c) may identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
  - (d) may specify a New South Wales court (other than the Supreme Court) to exercise any function conferred on a court or the Supreme Court by any excluded Corporations legislation provision to which the declaration relates.

- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.
- (4) In this section, ***excluded Corporations legislation provision*** means any provision of the Corporations legislation that does not apply to associations as a law of the Commonwealth.

#### **97 Modifications to applied provisions**

- (1) If a provision of this Act declares a matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (***the declaratory provision***) in relation to any provisions of the Corporations legislation (***the applied provisions***), the declaratory provision is taken to specify the following modifications:
  - (a) a reference in the applied provisions to the constitution of a company is to be read as a reference to the constitution of an association,
  - (b) a cross-reference in the applied provisions to another provision of the Corporations legislation is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act,
  - (c) a reference in the applied provisions to the Commonwealth is to be read as a reference to New South Wales,
  - (d) any of the applied provisions that are not relevant to associations or which are incapable of application to associations are to be ignored,
  - (e) modifications directed by the Director-General under subsection (2).
- (2) The Director-General may, by order published in the Gazette, give directions as to the modifications that are necessary or desirable for the effectual operation of applied provisions.



## **Part 10   Miscellaneous**

### **98   Register of Incorporated Associations**

- (1) The Director-General is to keep a Register of Incorporated Associations in such form, and containing such particulars, as the Director-General thinks fit.
- (2) On payment of the fee prescribed by the regulations, a person is entitled:
  - (a) to inspect any document that has been lodged with the Director-General under this Act, not being a document that has been destroyed or otherwise disposed of, and
  - (b) to be given a copy (including a copy certified by the Director-General) of, or an extract (including an extract certified by the Director-General) from, any such document.

### **99   Power of Director-General to refuse to register or reject documents**

- (1) The Director-General may refuse to register or may reject a document submitted to the Director-General if the Director-General considers the document:
  - (a) contains matter contrary to law, or
  - (b) contains matter that is false or misleading in a material particular in the form or context in which it is included, or
  - (c) because of an omission or misdescription, has not been properly completed, or
  - (d) does not comply with the requirements of this Act, or
  - (e) contains an error, alteration or erasure, or
  - (f) has been submitted by electronic transmission in a form that is not readily or satisfactorily accessible by the Director-General.
- (2) If the Director-General refuses to register or rejects a document under subsection (1), the Director-General may ask that:
  - (a) the document be appropriately altered, or
  - (b) a fresh document be submitted in its place, or
  - (c) if the document has not been properly completed—a supplementary document in the approved form be submitted.

### **100   Evidentiary certificates**

A certificate issued by the Director-General to the effect that:

- (a) a specified association was or was not, on a specified date or during a specified period, registered under this Act, or

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- (b) an association was or was not, on a specified date or during a specified period, registered under this Act by a name so specified, or
  - (c) a requirement of this Act specified in the certificate had or had not been complied with by a specified date or within a specified period, or
  - (d) a specified address was or was not, on a specified date or during a specified period, the official address of a specified association, or
  - (e) the constitution of a specified association was or was not, on a specified date or during a specified period, in terms so specified, is evidence of the matter or matters so certified.

**101 Service of documents**

- (1) A document addressed to an association may be served on the association:
  - (a) by leaving it at, or by sending it by post to, the association's official address, or
  - (b) by delivering copies of it personally to the association's public officer or to each of 2 committee members of the association, or
  - (c) in such other manner as the Director-General may in the special circumstances of the case direct.
- (2) As soon as practicable after a document addressed to an association is received by a person who is, or has at any time within the past 12 months been, the association's public officer or a committee member of the association, the person must bring the document to the attention of the committee of the association.  
Maximum penalty: 1 penalty unit.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

**102 Authorised officers**

The Director-General may appoint any member of staff of the Department as an authorised officer for the purposes of this Act.

**103 Exclusion of personal liability**

Anything done or omitted to be done:

- (a) by the Director-General, or a person acting under the direction of the Director-General, or

(b) by an authorised officer,  
does not subject the Director-General, person so acting or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

**104 Review of decisions of Director-General**

- (1) An association may apply to the Administrative Decisions Tribunal for a review of:
  - (a) any decision by the Director-General under section 7, 12, 16, 74 or 79 to refuse an association's application, or
  - (b) any direction given to the association by the Director-General under section 11 or 73, or
  - (c) any cancellation of the association's registration by the Director-General under section 76.
- (2) Section 53 of the *Administrative Decisions Tribunal Act 1997* does not apply to the cancellation of an association's registration.
- (3) A person aggrieved by a decision made by the Director-General to appoint an administrator under section 54 or 55 may apply to the Supreme Court for a review of the decision.

**105 Waiver, remittal and postponement of fees**

The Director-General may waive, remit or postpone payment of the whole or any part of a fee payable under this Act.

**106 Delegation of Director-General's functions**

- (1) The Director-General may delegate any of the Director-General's functions under this Act, other than this power of delegation.
- (2) Subject to the terms of the delegation, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**107 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following matters:
  - (a) the form and content of a model constitution,

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- (b) the manner and form in which an application for an extension of time under section 37 (2) is to be made, and the fees that are payable in connection with any such application,
  - (c) the additional fees that are payable for late payment of any prescribed fee,
  - (d) the exemption by the Director-General of any association, or class of associations, from the requirements of this Act in relation to the preparation and auditing of financial statements,
  - (e) the books, documents and other records that must be kept by associations.
- (2) A model constitution must address each of the matters referred to in Schedule 1, and may deal with any other matters.
  - (3) A provision of a regulation may impose a penalty not exceeding 2 penalty units for any offence against the provision.

**108 Repeals**

The *Associations Incorporation Act 1984* and the *Associations Incorporation Regulation 1999* are repealed.

**109 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1 Matters to be addressed in association's constitution**

(Sections 6, 10 and 107)

### **1 Membership qualifications**

The qualifications (if any) for membership of the association.

### **2 Register of members**

The register of the association's members.

### **3 Fees, subscriptions etc**

The entrance fees, subscriptions and other amounts (if any) to be paid by the association's members.

### **4 Members' liabilities**

The liability (if any) of the association's members to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.

### **5 Disciplining of members**

The procedure (if any) for the disciplining of the association's members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.

### **6 Internal disputes**

The mechanism for the resolution of disputes between members (in their capacity as members) and between members and the association.

### **7 Committee**

The constitution and functions of the committee, including:

- (a) the election or appointment of the committee members, and
- (b) the terms of office of the committee members, and
- (c) the grounds on which, or reasons for which, the office of a committee member 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.

### **8 Calling of general meetings**

The intervals between general meetings of the association's members and the manner of calling general meetings.

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**9 Notice of general meetings**

The time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated.

**10 Procedure at general meetings**

The quorum and procedure at general meetings of the association's members, and whether members are entitled to vote by proxy at general meetings.

**11 Postal ballots**

The kinds of resolution that may be voted on by means of a postal ballot.

**12 Sources of funds**

The sources from which the funds of the association are to be or may be derived.

**13 Management of funds**

The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the association.

**14 Custody of books etc**

The custody of books, documents and securities of the association.

**15 Inspection of books etc**

The inspection by the association's members of books and documents of the association.

**16 Financial year**

The association's financial year.

## **Schedule 2 Provisions relating to association's assets, rights and liabilities**

(Section 8)

### **1 Definitions**

In this Schedule:

**assets** of a former body include assets held for or on behalf of the body or its members (in their capacity as members) and assets held for the objects of the body.

**former body**, in relation to an association, means:

- (a) an unincorporated body that has been incorporated as a consequence of its registration under this Act, or
- (b) each of 2 or more associations that have amalgamated to form the association.

### **2 Transfer of assets, rights and liabilities etc**

- (1) On an association's incorporation under this Act, the following provisions have effect:
  - (a) the assets of the former body vest in the association by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the former body become by virtue of this clause the rights and liabilities of the association,
  - (c) all proceedings relating to the assets, rights and liabilities of the former body that were commenced by or against the former body and still pending are taken to be proceedings by or against the association,
  - (d) any act, matter or thing in relation to the assets, rights and liabilities of the former body that was done or omitted to be done by, to or in respect of the former body is taken to have been done or omitted by, to or in respect of the association,
  - (e) subject to the regulations, any reference in any instrument, or in any document of any kind, to the former body or a predecessor of the former body is, to the extent to which it relates to the assets, rights or liabilities of the former body, to be read as, or as including, a reference to the association.
- (2) Assets that vest in an association by operation of this clause are not to be dealt with contrary to the provisions of any trust affecting them immediately before the association's incorporation under this Act,

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being provisions as to the purposes for which the assets may or must be applied.

- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.

### **3 Certificate evidence**

- (1) A certificate that is issued by the public officer of an association, that is in the approved form, that is verified by statutory declaration and that states that, immediately before the association's incorporation under this Act:
- (a) specified property was vested in a specified former body, or
  - (b) specified property was held by a person for or on behalf of a specified body or its members (in their capacity as members) or for its objects,
- is evidence of the matters so stated.
- (2) A certificate that is issued by the Director-General and that states that a specified body is a former body in relation to a specified association is evidence of the matter so stated.

### **4 Attornment not necessary**

No attornment to an association by any lessee of land vested in the association by operation of this Schedule is necessary.

### **5 Stamp duty etc**

- (1) A document or an instrument executed or registered solely:
- (a) for a purpose ancillary to, or consequential on, the operation of this Schedule, or
  - (b) for the purpose of giving effect to this Schedule,
- is not liable to duty under the *Duties Act 1997* or to any fee or charge payable under any Act for registration.



Associations Incorporation Bill 2009

Schedule 2 Provisions relating to association's assets, rights and liabilities

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- (2) A dutiable transaction within the meaning of the *Duties Act 1997* that is not in writing and that occurs solely:
  - (a) for a purpose ancillary to, or consequential on, the operation of this Schedule, or
  - (b) for the purpose of giving effect to this Schedule, is not liable to duty under the *Duties Act 1997*.

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## Schedule 3 Amendment of other Acts

### 3.1 Baptist Churches of New South Wales Property Trust Act 1984 No 4

#### Section 44 Certain provisions of Associations Incorporation Act 2009 not to apply

Omit “*Associations Incorporation Act 1984*” from section 44 (1).

Insert instead “*Associations Incorporation Act 2009*”.

### 3.2 Co-operatives Act 1992 No 18

#### [1] Section 316 Application for transfer

Omit “*Associations Incorporation Act 1984*” from section 316 (1) (b).

Insert instead “*Associations Incorporation Act 2009*”.

#### [2] Section 321A

Insert after section 321:

#### **321A Registration under the Associations Incorporation Act 2009**

- (1) Sections 320 and 321 do not apply to or in respect of a co-operative that applies for registration under the *Associations Incorporation Act 2009*.

**Note.** See sections 6 and 9 of the *Associations Incorporation Act 2009* in relation to the registration under that Act of registrable corporations. See also the definition of **registrable corporation** in section 4 of that Act.

- (2) For the purposes of section 6 (3) (g) of the *Associations Incorporation Act 2009*, the Registrar may issue a document declaring that the requirements of this Act in relation to the transfer of a co-operative’s registration under this Act to registration under that Act have been complied with.
- (3) If a former co-operative becomes registered under the *Associations Incorporation Act 2009*, the Registrar may cancel its registration under this Act.

### **3.3 Country Women's Association of New South Wales Incorporation Act 1931**

#### **Section 11**

Omit the section. Insert instead:

##### **11 Registration of rules**

- (1) The rules of the corporation recorded in the register under the *Associations Incorporation Act 1984* are, on the repeal of that Act, to continue to be recorded in the Register of Incorporated Associations kept under the *Associations Incorporation Act 2009*.
- (2) After the commencement of the *Associations Incorporation Act 2009*, any alteration or repeal of a rule, or any new rule, does not take effect until a copy is lodged for recording in the register under that Act.
- (3) The officer in charge of the register under that Act may, for that purpose, apply provisions of that Act relating to the lodging of documents by associations.
- (4) The provisions of that Act relating to the inspection of the register under that Act apply to the inspection of rules recorded under this section.

### **3.4 Education Act 1990 No 8**

#### **Section 115 Constitution of associations and district councils**

Omit "*Associations Incorporation Act 1984*" from section 115 (1A).

Insert instead "*Associations Incorporation Act 2009*".

### **3.5 Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Insert in alphabetical order of Acts:

*Associations Incorporation Act 2009*, section 93

### **3.6 Frustrated Contracts Act 1978 No 105**

#### **Section 6 Act does not apply to certain contracts**

Omit "*Associations Incorporation Act 1984*" from section 6 (2) (d).

Insert instead "*Associations Incorporation Act 2009*".

### **3.7 Hunter Water Act 1991 No 53**

#### **Section 3 Definitions**

Omit “*Associations Incorporation Act 1984*” from the definition of **statutory body** in section 3 (2).

Insert instead “*Associations Incorporation Act 2009*”.

### **3.8 Industrial Relations Act 1996 No 17**

#### **Section 217 Organisations capable of applying for registration**

Omit “*Associations Incorporation Act 1984*” from section 217 (1) (a) and (c) wherever occurring.

Insert instead “*Associations Incorporation Act 2009*”.

### **3.9 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Associations Incorporation Act 2009*, section 87

### **3.10 Parents and Citizens Associations Incorporation Act 1976 No 50**

#### **[1] Section 19 Public liability insurance**

Omit the definition of **approved public liability insurance** from section 19 (2).

Insert instead:

**approved insurer** means a person, or a person belonging to a class of persons:

- (a) approved as referred to in section 95 of the *Strata Schemes Management Act 1996*, or
- (b) approved by the Minister by order published in the Gazette.

**approved public liability insurance** means liability insurance with an approved insurer for a cover of at least \$2,000,000 or such other amount as may be prescribed by the regulations.

**[2] Section 23 Regulations**

Omit “*Associations Incorporation Act 1984*”.

Insert instead “*Associations Incorporation Act 2009*”.

**3.11 Passenger Transport Act 1990 No 39**

**Section 5A Persons who may be accredited**

Omit “*Associations Incorporation Act 1984*” from section 5A (1) (c).

Insert instead “*Associations Incorporation Act 2009*”.

**3.12 Police Act 1990 No 47**

**[1] Section 204A Use of “police” in operating name**

Omit “*Associations Incorporation Act 1984*” from section 204A (5).

Insert instead “*Associations Incorporation Act 2009*”.

**[2] Section 204B Consents for the purposes of section 204A**

Omit “*Associations Incorporation Act 1984*” from section 204B (5) and (6) (b) wherever occurring.

Insert instead “*Associations Incorporation Act 2009*”.

**[3] Section 204B (6) (b) (i)**

Omit “14 (5)”. Insert instead “12 (3)”.

**[4] Section 204B (6) (b) (ii)**

Omit “54”. Insert instead “76”.

**3.13 Sheriff Act 2005 No 6**

**[1] Section 11 Use of word “sheriff” in operating name**

Omit “*Associations Incorporation Act 1984*” from section 11 (5).

Insert instead “*Associations Incorporation Act 2009*”.

**[2] Section 12 Consents for the purposes of section 11**

Omit “*Associations Incorporation Act 1984*” from section 12 (5) and (6) (b) wherever occurring.

Insert instead “*Associations Incorporation Act 2009*”.

**[3] Section 12 (6) (b) (i)**

Omit “14 (5)”. Insert instead “12 (3)”.

**[4] Section 12 (6) (b) (ii)**

Omit “54”. Insert instead “76”.

**3.14 Sydney Water Act 1994 No 88**

**Section 3 Definitions**

Omit “*Associations Incorporation Act 1984*” from paragraph (c) of the definition of *statutory body* in section 3 (2).

Insert instead “*Associations Incorporation Act 2009*”.

**3.15 Sydney Water Catchment Management Act 1998 No 171**

**Section 3 Definitions**

Omit “*Associations Incorporation Act 1984*” from paragraph (c) of the definition of *public authority* in section 3 (1).

Insert instead “*Associations Incorporation Act 2009*”.

**3.16 Water Management Act 2000 No 92**

**Dictionary**

Omit “*Associations Incorporation Act 1984*” from paragraph (c) of the definition of *statutory body*.

Insert instead “*Associations Incorporation Act 2009*”.

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## **Schedule 4 Savings, transitional and other provisions**

### **Part 1 Savings and transitional regulations**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part:

*former association* means an association whose incorporation under the 1984 Act was in force immediately before the commencement of this Act.

*the 1984 Act* means the *Associations Incorporation Act 1984*, as in force immediately before its repeal by this Act.

#### **3 Continuation of registration of existing associations**

- (1) A former association is taken to have been registered under this Act.
- (2) The body corporate that arises from the registration of a former association under this Act is a continuation of, and the same legal entity as, the former association.

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**4 Rules of existing associations**

- (1) The rules of a former association are taken to be its constitution under this Act and, until the former association changes them under this Act, are taken to comply with the requirements of this Act.
- (2) To the extent to which a former association adopted the model rules established under the 1984 Act, and until it changes its rules under this Act, those model rules continue in force in relation to that association.

**5 Association members**

Subject to the former association's rules, a person who was a member of a former association, or a member of a former association's committee, continues to be such a member.

**6 Reservation of names**

Any name that, immediately before the commencement of Division 3 of Part 2, was reserved under the 1984 Act is taken to have been reserved under this Act.

**7 Continuation of register**

The register kept under section 59 of the 1984 Act is taken to be the Register of Incorporated Associations under this Act.

**8 Continuation of certain certificates**

A certificate issued under section 62 of the 1984 Act has the same evidentiary effect as a certificate issued under section 100 of this Act.

**9 Continuation of certain appeals**

An appeal made under section 72 of the 1984 Act is to be heard and determined as if this Act had not been enacted, but the decision on the appeal is to be given effect to as if it were a decision on an application under section 104 of this Act.

**10 Construction of other references**

Subject to this Schedule and the regulations, in any Act or instrument:

- (a) a reference to a provision of the 1984 Act for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and
- (b) a reference to any act, matter or thing referred to in a provision of the 1984 Act for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.



**11 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the commencement of this Act under a provision of the 1984 Act for which there is a corresponding provision in this Act may be continued and completed under the 1984 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1984 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.