

ASSOCIATIONS INCORPORATION BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide for the incorporation of certain non-profit associations and to provide for the regulation of certain affairs of associations which become incorporated under the proposed Act.

The Bill contains the following provisions:—

PART I.

PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence, with minor exceptions, on a day to be appointed by proclamation.

Clause 3 contains definitions and other interpretative provisions.

Clause 4 specifies aspects of the operations of associations which, by themselves, do not require the conclusion that the association is carried on for the object of trading or securing pecuniary gain for its members.

Clause 5 provides for the manner in which, for the purposes of the proposed Act, an association passes a special resolution.

Clause 6 excludes the provisions of the Companies (New South Wales) Code from application to associations incorporated under the proposed Act.

PART II.

INCORPORATION.

Clause 7 deals with eligibility for incorporation under the proposed Act.

Clause 8 provides for the authorisation of a person to apply for the incorporation of an existing or proposed association.

Clause 9 specifies the manner of making an application for incorporation of an association or proposed association.

Clause 10 provides for the grant and the grounds for refusal of applications for incorporation and the issue of certificates of incorporation.

Clause 11 regulates the content, form and effect of the rules of incorporated associations.

Clause 12 deals with the naming of incorporated associations.

Clause 13 specifies the procedure for reserving a name under which it is intended an association be incorporated.

Clause 14 provides for the change of name of an incorporated association.

PART III.

INCORPORATED ASSOCIATIONS.

Clause 15 deals with the effect of incorporation of an association, particularly in relation to the property and liabilities of an incorporated association.

Clause 16 limits the liabilities and rights of members and officers of incorporated associations.

Clause 17 specifies the powers of incorporated associations.

Clause 18 prohibits an incorporated association from exercising its powers in contravention of its rules and otherwise than in pursuance of its objects.

PART IV.

AFFAIRS OF INCORPORATED ASSOCIATIONS.

Clause 19 provides that the objects and rules of an incorporated association are, subject to alterations and the inclusion of certain matters, as set out in the application for incorporation of the association.

Clause 20 lays down the procedure for the alteration of the objects or rules of an incorporated association.

Clause 21 deals with the membership of the committee of an incorporated association.

Clause 22 provides that the person who applied for incorporation of the association is the first public officer of an incorporated association.

Clause 23 requires the committee of an incorporated association to fill a vacancy in the office of public officer of the association within 14 days of the vacancy occurring and to give notice to the Corporate Affairs Commission ("the Commission") of the vacancy.

Clause 24 permits an incorporated association to remove its public officer and provides for the circumstances in which the office of public officer becomes vacant.

Clause 25 requires a person who becomes the public officer of an incorporated association to give notice to the Commission of the appointment and of any subsequent change in the person's address.

Clause 26 requires an incorporated association to hold an annual general meeting at least once in each calendar year and requires the committee of the association to submit a statement concerning the affairs of the association to that meeting.

Clause 27 requires the public officer of an incorporated association to lodge with the Commission a statement of certain affairs of the association within 1 month after the annual general meeting of the association.

Clause 28 requires an incorporated association to give notice to the Commission of the association becoming trustee of a trust.

PART V.

CONTRACTS, DEBTS, ETC., OF INCORPORATED ASSOCIATIONS.

Clause 29 provides for the manner in which an incorporated association may enter into contracts.

Clause 30 permits an incorporated association to appoint an agent for the purpose of executing deeds on behalf of the association.

Clause 31 is an interpretation provision.

Clause 32 enables an incorporated association to ratify contracts purportedly entered into by the association before it was incorporated.

Clause 33 imposes liability on a person for a contract entered into by the person on behalf of a non-existent incorporated association in circumstances where no such incorporated association is subsequently formed or where the association is formed but does not ratify the contract, and makes provision for exemption from such liability in certain circumstances.

Clause 34 provides that, where an incorporated association enters into a contract in substitution for a contract purportedly entered into by it before it was incorporated, any liability of a person who entered into the second mentioned contract on behalf of the non-existent incorporated association is discharged.

Clause 35 provides that the rights and liabilities of a person arising in relation to a contract under clauses 32-34 are in substitution for any other rights and liabilities of the person in relation to the contract.

Clause 36 provides for the manner of ratification of a contract by an incorporated association.

Clause 37 is an interpretation provision.

Clause 38 penalises and imposes liability on members of the committee of an incorporated association which incurs a debt without reasonable grounds to expect that the debt will be paid, or which does any other act with the intention of defrauding its creditors, and which is subsequently wound up, has its incorporation cancelled or is unable to pay its debts.

Clause 39 enables a certificate of a court to the effect that a person has been convicted of an offence under clause 38 to be used as evidence.

Clause 40 empowers the Supreme Court to declare that a person who has been convicted of an offence under clause 38 is personally liable for a debt or obligation of the association to which the offence relates.

Clause 41 saves certain rights which may otherwise have been affected by clause 38 or 40.

PART VI.

INSURANCE.

Clause 42 is an interpretation provision.

Clause 43 provides for the lodgment of returns by approved insurers, being insurers approved for the purposes of insurance under the Strata Titles Act, 1973.

Clause 44 requires incorporated associations to effect insurance with approved insurers for public risk liability.

Clause 45 imposes liability on the members of the committee of an incorporated association which does not effect the insurance required by section 44 in respect of a liability to which the insurance relates and which is incurred by the association.

PART VII.

AMALGAMATION OF ASSOCIATIONS AND TRANSFERS OF INCORPORATION.

Clause 46 provides for the amalgamation of 2 or more incorporated associations.

Clause 47 provides for the grant of a certificate of incorporation in respect of an amalgamated incorporated association.

Clause 48 provides for the transfer of incorporation to the proposed Act of a company limited by guarantee or a co-operative society.

Clause 49 deals with the effect of a transfer of incorporation under clause 48 on the rights and liabilities of the company or society which is the subject of the transfer.

PART VIII.

WINDING UP AND CANCELLATION OF INCORPORATION.

Clause 50 permits an incorporated association to be wound up upon a special resolution of the association and applies to that winding up such of the provisions of the Companies (New South Wales) Code as concern the voluntary winding up of companies.

Clause 51 specifies the grounds on which the Supreme Court may order the winding up of an incorporated association and applies to that winding up such of the provisions of the Companies (New South Wales) Code as concern the winding up of bodies other than companies.

Clause 52 provides for the modification of certain references in the Companies (New South Wales) Code in their application to a winding up referred to in clause 50 or 51.

Clause 53 requires the property of an incorporated association remaining after the winding up and payment of the debts of the association to be distributed (in accordance with the rules or a special resolution of the incorporated association) to a non-profit association with objects substantially similar to those of the incorporated association being wound up.

Clause 54 enables the Commission to cancel the incorporation of an incorporated association which is not in operation, which was incorporated by reason of fraud or mistake or in respect of which breaches of certain provisions of the proposed Act have been committed.

Clause 55 operates to vest in the Commission the property of an incorporated association the incorporation of which is cancelled under clause 54 and empowers the Commission to pay the debts and distribute the surplus property of the association.

Clause 56 enables the Minister to direct an incorporated association which in the Minister's opinion cannot conveniently or appropriately remain incorporated under the proposed Act to become registered as a company or co-operative society and empowers the Minister to approve of an incorporated association becoming so registered voluntarily. Failure to comply with such a direction is a ground for the winding up of the incorporated association.

Clause 57 provides for the effect of a transfer of incorporation under clause 56 on the rights and liabilities of a former incorporated association.

Clause 58 allows an aggrieved person to appeal to the Supreme Court in respect of an act, omission or decision of a liquidator or provisional liquidator of an incorporated association.

PART IX.

MISCELLANEOUS.

Clause 59 requires the Commission to keep a register for the purposes of the proposed Act and to allow a person to inspect and obtain certified copies of documents lodged with the Commission under the proposed Act.

Clause 60 provides that a person will not be held to have constructive notice of documents, including the statement of objects and the rules of an incorporated association, which are lodged with the Commission or which are referred to in such documents.

Clause 61 prevents an incorporated association or a guarantor of its obligations from asserting against a person who deals with the association that the rules of the association have not been complied with or that the person held out as public officer is not the public officer of the association.

Clause 62 provides that a certificate of the Commission in relation to certain matters is evidence of the matters certified.

Clause 63 provides for the manner of service of documents on an incorporated association and requires the public officer and members of the committee of an incorporated association to bring documents served on them to the attention of the committee of the association.

Clause 64 deems a document required to be lodged under the proposed Act not to have been lodged until any fee payable in respect of the lodgment has been paid.

Clause 65 enables the Commission to refuse to register or receive unsatisfactorily completed documents.

Clause 66 prohibits an incorporated association from trading or securing pecuniary gain for its members and from doing so as a trustee.

Clause 67 empowers the Commission or a person authorised by it to enter the premises of an incorporated association, to inspect, take copies of and take possession of records on the premises relating to the affairs of the association and to require a person on the premises to furnish certain information.

Clause 68 operates to prohibit the making of false or misleading statements in documents submitted to the Commission or to meetings of members of an incorporated association.

Clause 69 makes it an offence for bodies other than bodies corporate or associations incorporated under the proposed Act or any other law to use in their names the word "Incorporated" or an abbreviation of that word.

Clause 70 provides that, where an incorporated association contravenes a provision of the proposed Act, the public officer and each member of the committee of the association shall be deemed to have contravened the provision also.

Clause 71 enables proceedings for an offence against the proposed Act to be brought in a court of petty sessions.

Clause 72 enables a person aggrieved by certain acts and omissions of the Commission under the proposed Act to appeal to the Supreme Court.

Clause 73 empowers the Governor to make regulations.

Schedule 1 specifies the matters to be provided for in the rules of an incorporated association.

Schedule 2 makes provision with respect to the vesting of property and the continuance of the liabilities of associations which become incorporated under the proposed Act.

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NEW SOUTH WALES.

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ASSOCIATIONS INCORPORATION BILL, 1984

No. , 1984.

A BILL FOR

An Act to make provision with respect to the incorporation of certain associations and the regulation of those associations after incorporation; and for other purposes.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Associations Incorporation Act, 1984".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"agent" includes attorney;

"association" includes—

- 20 (a) a society, club, institution or other body; and
(b) an incorporated association;

"Commission" means the Corporate Affairs Commission constituted by the Corporate Affairs Commission Act, 1981;

- 25 "committee", in relation to an association, means the body which governs or has the management of the association;

"Court" means the Supreme Court of New South Wales;

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“date of incorporation”, in relation to an incorporated association, means the date of incorporation of the association under this Act;

“financial year”, in relation to an incorporated association, means—

- 5 (a) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of the association) resolves, commencing on the date of incorporation of the association; and
- 10 (b) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of the association) resolves, commencing
- 15 at the expiration of the previous financial year of the incorporated association;

“incorporated association” means an association or other body incorporated under this Act;

20 “member”, in relation to an association, means a person who is, under the rules of the association, a member of the association or, where the rules do not provide for membership of the association, a person who is a member of the committee of the association;

“model rules” means the model rules prescribed under section 73;

“officer”, in relation to an association, includes—

- 25 (a) a member of the committee of the association;
- (b) the public officer of the association;
- (c) a secretary, treasurer, executive officer or employee of the association; and
- 30 (d) a person occupying or acting in any of those positions, whether or not validly appointed to occupy or duly authorised to act in the position,

but does not include a patron or the holder of some other honorary office that confers no right to participate in the administration of the affairs of the association;

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“property” includes real and personal property, any estate or interest in any property, real or personal, any debt, any thing in action, and any other right or interest, whether in possession or not;

5 “public officer”, in relation to an incorporated association, means the person who is for the time being the public officer of the association under this Act;

“regulation” means a regulation made under this Act;

“rules”, in relation to an association, includes the constitution, regulations and by-laws, if any, of the association.

10 Association trading or securing pecuniary gain.

4. For the purposes of this Act, an association shall not be deemed to trade or to secure pecuniary gain for its members or to be formed or carried on for the object of trading or securing pecuniary gain for its members by reason only that—

- 15 (a) the association itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the members of the association or any of them;
- 20 (b) the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal object of the association and, where the transactions are with the public, the transactions—
- 25 (i) are not substantial in number or value in relation to the other activities of the association; or
- (ii) consist of admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organised for the promotion of the objects of the association;
- 30 (c) the association is established for the protection of a trade, business, industry or calling in which the members of the association are engaged or interested, and the association itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling;

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- (d) members of the association derive pecuniary gain through enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes;
- 5 (e) any member of the association derives pecuniary gain from the association by way of bona fide payment of remuneration;
- (f) any member of the association derives from it pecuniary gain to which the member would be entitled if the member were not a member of the association;
- 10 (g) members of the association compete for trophies or prizes in contests directly related to the objects of the association; or
- (h) the association—
 - (i) engages in trade which is; or
 - (ii) secures for its members pecuniary gain which is, of a class prescribed for the purposes of this section.

15 Special resolution.

5. (1) For the purposes of this Act, a resolution of an association is a special resolution if—

- 20 (a) it is passed by a majority which comprises not less than three-quarters of such members of the association as, being entitled under the rules of the association so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules; or
- 25 (b) where it is made to appear to the Commission that it is not possible or practicable for the resolution to be passed in the manner specified in paragraph (a)—the resolution is passed in a manner specified by the Commission.

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(2) At any meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person chairing the meeting that the resolution has been carried as a special resolution shall be prima facie evidence of the fact unless, during the meeting at which the resolution is submitted, a
5 poll is demanded—

- (a) except where paragraph (b) applies, by at least 3 members of the association present in person or, where proxies are allowed, by proxy; or
- 10 (b) where the rules of the association make provision for the manner in which the poll may be demanded—in accordance with those rules.

(3) A declaration by the person chairing the meeting as to the result of a poll taken pursuant to a demand as referred to in subsection (2) is prima facie evidence of the matter so declared.

Application of Companies (New South Wales) Code.

- 15 6. Except as otherwise expressly provided by this Act, nothing in the Companies (New South Wales) Code applies to or in respect of an incorporated association.

PART II.

INCORPORATION.

20 Eligibility for incorporation.

7. (1) Subject to this Act, an association formed or carried on for any lawful object and consisting of not less than 5 members is eligible to be incorporated under this Act.

(2) Notwithstanding subsection (1), an association is not eligible to
25 be incorporated under this Act if the association—

- (a) is carried on for the object of trading or securing pecuniary gain for its members;
- (b) has a capital divided into shares or stock held by members of the association;

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- (c) holds property in which the members of the association have a disposable interest, whether directly or in the form of shares or stock in the capital of the association, or otherwise;
- (d) is a trade union registered under the Trade Union Act 1881;
- 5 (e) is registered or required or authorised to be registered under the Friendly Societies Act, 1912, the Permanent Building Societies Act, 1967, or the Credit Union Act, 1969, or is a society specified in the Second Schedule to the Co-operation Act, 1923;
- 10 (f) is a company within the meaning of the Companies (New South Wales) Code, other than a company limited by guarantee within the meaning of that Code; or
- (g) is an association which is, or is included in a class of associations which is, prescribed for the purposes of this subsection.

(3) The incorporation of an association under this Act is valid
15 notwithstanding that the association was not eligible to be so incorporated.

Authority to apply for incorporation.

8. (1) An association which is eligible to be incorporated under this Act may, by special resolution—

- 20 (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the association under this Act;
- (b) approve a statement of objects of the proposed incorporated association; and
- 25 (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association.

(2) For the purpose of forming themselves into an incorporated association, 5 or more persons together may, in respect of a proposed association which would be eligible to be incorporated under this Act—

- 30 (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the proposed association under this Act;

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- (b) approve a statement of objects of the proposed incorporated association;
- (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association; and
- (d) nominate 2 or more of their number to be the first members of the committee of the proposed incorporated association.

(3) A person authorised under subsection (1) or (2) to incorporate an association or proposed association may make application to the Commission for the incorporation of the association or proposed association under this Act and may perform all such acts and do all such things as may be necessary for securing the incorporation of the association or proposed association under this Act, notwithstanding, in the case of an association referred to in subsection (1), anything to the contrary in the rules, if any, of the association.

Application for incorporation.

9. An application for the purposes of section 8 shall be in the prescribed form and—

(a) shall state—

- (i) the proposed name of the incorporated association, being a name under which an association may be incorporated in accordance with section 12;
 - (ii) the place where the principal place of administration of the incorporated association is proposed to be situated;
 - (iii) the name and address in the State of the applicant;
 - (iv) the names and addresses of the persons who will be the first members of the committee of the proposed incorporated association, as provided by section 21; and
 - (v) such other particulars as may be prescribed;
- (b) shall be accompanied by a copy of the statement of objects of the proposed incorporated association that has been approved as referred to in section 8;

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- 5 (c) shall be accompanied by a copy of the rules of the proposed incorporated association, being rules that comply with section 11 and which have been approved as referred to in section 8 or a statement that adoption of the model rules as the rules of the proposed incorporated association has been so approved;
- (d) shall be accompanied by a notice in the prescribed form specifying particulars of any trusts relating to the association, together with a copy of any deed or other instrument creating or embodying the trusts;
- 10 (e) shall be accompanied by a statutory declaration made by the applicant declaring—
- (i) that the applicant is authorised in accordance with section 8 to apply for the incorporation of the association or proposed association under this Act;
- 15 (ii) that the particulars contained in the application are true; and
- (iii) that the copies of the rules and of any trusts, deeds or other instruments accompanying the application are true copies;
- 20 (f) shall be accompanied by such other documents as may be prescribed; and
- (g) shall be accompanied by the prescribed fee.

Certificate of incorporation.

25 **10. (1)** Subject to subsection (2), where an application is made in accordance with section 9, the Commission shall incorporate the association or proposed association under this Act by granting in respect of it a certificate of incorporation in the prescribed form.

(2) The Commission may refuse to incorporate an association or proposed association pursuant to subsection (1) if the Commission is satisfied
30 that incorporation of the association or proposed association under this Act would be inappropriate or inconvenient—

(a) by reason of the Commission's assessment of—

- (i) the likely scale or nature of the activities of the association or proposed association;

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- 5 (ii) the likely value or nature of the property of the association or proposed association; or
- (iii) the extent or nature of the dealings which the association or proposed association has, or is likely to have, with the public; or
- (b) for any other prescribed reason.

Rules of incorporated associations.

11. (1) The rules of an incorporated association or proposed incorporated association comply with this section if—
- 10 (a) they make provision, whether by adoption of the model rules or otherwise, for—
- (i) the several matters specified in Schedule 1; and
- (ii) such other matters as may be prescribed; and
- 15 (b) they are divided into paragraphs which are designated by letters in alphabetical order or are numbered consecutively.

(2) Subject to this Act, the rules of an incorporated association bind the association and the members of the association to the same extent as if the rules had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the

20 rules.

Names.

12. (1) Except with the consent of the Minister, an association shall not be incorporated under a name that is in the opinion of the Commission undesirable or is a name, or a name of a kind, under which the Minister has

25 for the purposes of this Act directed the Commission not to incorporate an association.

(2) An association shall not be incorporated under a name that has not been reserved in respect of the association under section 13.

(3) An incorporated association shall have at the end of its name

30 the word "Incorporated" or the abbreviation "Inc."

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(4) The name of an incorporated association shall appear in legible characters on all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or executed by or on behalf of the association and if default is made in complying with this subsection the association shall be guilty of an offence and liable to a penalty not exceeding \$200.

Reservation of name.

10 13. (1) A person may apply to the Commission in the prescribed form accompanied by the prescribed fee for the reservation of a name set out in the application as—

- (a) the name of a proposed incorporated association; or
- (b) the name to which an incorporated association proposes to change its name.

15 (2) If the Commission is satisfied that an application made under subsection (1) for the reservation of a name is made in good faith and the name is available for reservation, the Commission shall reserve the name for a period of 3 months from the date of lodgment of the application and, where the Commission so reserves the name, the name shall be deemed to have
20 been reserved from that date.

(3) Where—

- (a) at any time during a period for which a name is reserved under this section (whether or not pursuant to the exercise on a previous occasion or previous occasions of a power under this section) an
25 application is made to the Commission for an extension of that period; and
- (b) the Commission is satisfied that the application is made in good faith,

the Commission may extend that period for a further period of 3 months.

30 (4) The reservation of a name under this section in respect of a proposed incorporated association or an incorporated association does not of itself entitle the proposed incorporated association or the incorporated association to be incorporated by that name, either originally or on a change of name.

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Change of name.

14. (1) An incorporated association may by special resolution and with the approval of the Commission change its name.

(2) Where an incorporated association has passed a special resolution for the change of its name, the public officer of the association may make application to the Commission for its approval to the change of name.

(3) An application under subsection (2) shall be in the prescribed form and—

- 10 (a) shall be made within the prescribed period after the date of the meeting of the incorporated association at which the special resolution was passed;
- (b) shall be accompanied by such verification of the application as is prescribed; and
- (c) shall be accompanied by the prescribed fee.

15 (4) Where an application is made under this section, the Commission shall not approve a change of name of an incorporated association unless the proposed new name is a name under which an association may be incorporated in accordance with section 12.

20 (5) Where an application is made under this section and the Commission approves the change of name of an incorporated association, the Commission shall issue a certificate of incorporation in the prescribed form in respect of the incorporated association under its new name.

25 (6) Neither a change of name of an incorporated association pursuant to this Act nor the issue of a certificate of incorporation under subsection (5) in respect of the change operates—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the incorporated association or its continuity as a body corporate;
- 30 (c) to affect the date of incorporation of the incorporated association;
- (d) to affect the property, or the rights or obligations, of the incorporated association; or

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(e) to render defective any legal proceedings by or against the incorporated association,

and any legal proceedings that might have been continued or commenced by or against the association in its former name may be continued or
5 commenced by or against the association in its new name.

PART III.

INCORPORATED ASSOCIATIONS.

Effect of incorporation.

15. (1) On and from the date specified as the date of incorporation in a
10 certificate of incorporation of an association granted under this Act (other than under section 14 (5)), but subject to this Act and the rules of the incorporated association—

- 15 (a) in the case of a certificate granted under section 10, the persons who were the members of the association immediately before that date or, where the certificate is granted in respect of a proposed association as referred to in section 8 (2), the persons who under that subsection authorised incorporation of the proposed association;
- 20 (b) in the case of a certificate granted under section 47, the persons who were, immediately before that date, the members of the incorporated associations which were parties to the amalgamation to which the certificate relates; or
- 25 (c) in the case of a certificate granted under section 48, the persons who, immediately before that date, were the members of the company or society in respect of which the application under that section was made,

together with any other persons who from time to time become members of the incorporated association (as from the time they become members), are an incorporated association by the name set out in the certificate, subject to any
30 change of name effected by the issue of a new certificate of incorporation under section 14 (5),

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(2) The incorporated association—

- (a) is capable forthwith of performing all the functions of a body corporate;
- (b) is capable of suing and being sued;
- 5 (c) has perpetual succession and shall have a common seal; and
- (d) has power to acquire, hold and dispose of property.

(3) Schedule 2 has effect in relation to an incorporated association.**Rights and liabilities of members and officers.**

10 **16. (1)** Subject to this Act and the rules of the incorporated association, a member or officer of an incorporated association shall not by reason only of being such a member or officer be liable to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges and expenses of the winding up of the association.

15 **(2)** Subject to this Act, membership of an incorporated association does not confer upon members of the association any right, title or interest, whether legal or equitable, in the property of the association.

Powers of incorporated associations.

20 **17. (1)** Subject to this Act, an incorporated association has the rights, the powers and the privileges of a natural person and, without limiting the generality of the foregoing, has power—

- (a) to grant a floating charge on property of the association;
- (b) to procure the association to be registered or recognised as a body corporate in any place outside the State; and
- (c) to do any act that it is authorised to do by any other law.

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(2) The rules of an incorporated association may restrict or prohibit the exercise by the association of any of the powers referred to in subsection (1).

(3) An incorporated association has the capacity to exercise its powers in a place outside the State.

Restrictions on incorporated associations.

18. (1) Subject to this Act, an incorporated association shall not—

- (a) exercise any power that the association is prohibited, by the rules of the association, from exercising;
- 10 (b) exercise any power contrary to a restriction on the exercise of that power contained in the rules of the association; or
- (c) do any act otherwise than in pursuance of the objects of the association.

(2) An officer of an incorporated association shall not be in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention by the association of subsection (1).

(3) An act of an incorporated association, including the making of an agreement by an incorporated association and a transfer of property to or by an incorporated association, is not invalid by reason only that the doing of the act is prohibited by subsection (1) or by the rules of the association.

(4) An act of an officer of an incorporated association is not invalid by reason only that the doing of the act is prohibited by subsection (2).

(5) The fact that—

- 25 (a) the doing of an act by an incorporated association was or would be prohibited by subsection (1) or by the rules of the association; or
- (b) the doing of an act by an officer of an incorporated association was or would be prohibited by subsection (2),

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may be asserted or relied on only in—

- (c) a prosecution of a person for an offence against this Act;
- (d) proceedings against the association by a member of the association to restrain the doing of any act by the association;
- 5 (e) proceedings by the association, or by a member of the association, against a present or former officer of the association; or
- (f) an application by the Commission or by a member of the association to wind up the association.

PART IV.

10

AFFAIRS OF INCORPORATED ASSOCIATIONS,

Objects and rules.

19. (1) The objects of an incorporated association are the objects stated in the statement of objects that accompanied the application for its incorporation under this Act, as altered by the incorporated association from time to
15 time in accordance with section 20.

(2) The rules of an incorporated association are—

- (a) where the application for incorporation of the association was accompanied by a copy of rules that complied with section 11—those rules as altered by the incorporated association from time to
20 time in accordance with section 20; or
- (b) except where paragraph (a) applies—the model rules as in force from time to time, as altered from time to time by the incorporated association in accordance with section 20.

(3) Where in relation to any matter the model rules make provision
25 but the rules of an incorporated association do not make provision, the provision of the model rules shall, in relation to that matter, be deemed to be included in the rules of the incorporated association.

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(4) An object or a rule of an incorporated association is of no effect if it is inconsistent with this Act or contrary to law.

Alteration of objects and rules.

20. (1) An incorporated association may, by special resolution, alter its statement of objects or its rules.

(2) The public officer of an incorporated association shall, within 1 month after the passing of a special resolution altering the statement of objects or the rules of an incorporated association, lodge with the Commission notice in the prescribed form, verified as prescribed and accompanied by the prescribed fee, setting out particulars of the alteration.

Penalty: \$100.

(3) An alteration of the statement of objects or the rules of an incorporated association has effect when subsection (2) is complied with in respect of the alteration.

15 Committee of incorporated association.

21. (1) Unless the rules of an incorporated association otherwise provide, the first members of the committee of the incorporated association are—

- 20 (a) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (1)—the members of the committee of the association immediately before the association was incorporated;
- 25 (b) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (2)—the persons nominated pursuant to that subsection to be the first members of the committee;
- 30 (c) in the case of an incorporated association formed by the amalgamation of incorporated associations pursuant to section 47—the persons specified in the application for that amalgamation under section 46 as nominated to be the first members of the committee of the amalgamated incorporated association; or

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- 5 (d) in the case of a company or society incorporated as an incorporated association pursuant to section 48—the persons who had the management of the society or who were directors of the company, as the case may be, immediately before the date of its incorporation under this Act.

(2) Where a change occurs in the membership of the committee of an incorporated association, the association shall, within 14 days after the change occurs, give notice of the change to the Commission in the prescribed form.

10 Penalty: \$100.

Public officer.

22. (1) Unless the rules of the incorporated association otherwise provide, the first public officer of an incorporated association is—

- 15 (a) in the case of an incorporated association incorporated pursuant to an application under section 9—the person who made the application; or
- (b) in the case of an incorporated association incorporated pursuant to an application under section 46 or 48—the person nominated in the application as the first public officer.

20 (2) Unless the rules of the association otherwise provide, the public officer of an incorporated association may hold any other office of the association.

Vacancy in office of public officer.

25 23. (1) Where at any time there is a vacancy in the office of public officer of an incorporated association, the committee of the association shall, within 14 days after the vacancy arises—

- (a) give notice of the occurrence of the vacancy to the Commission in the prescribed form; and
- (b) appoint a person to fill the vacancy.

30 (2) Where the committee of an incorporated association fails to comply with subsection (1), each member of the committee is guilty of an offence and liable to a penalty not exceeding \$200.

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(3) A person is not eligible to be appointed as public officer of an incorporated association unless—

- (a) the person has attained the age of 18 years; and
- (b) the person is resident in the State.

5 (4) The acts of the public officer of an incorporated association are not invalid by reason only of any defect that may be discovered in the appointment or qualification of the public officer.

Casual vacancy in office of public officer.

24. (1) An incorporated association may remove the association's public
10 officer from that office.

(2) The public officer of an incorporated association shall be deemed to have vacated the office if the public officer—

- (a) dies;
- (b) resigns the office;
- 15 (c) is removed from office;
- (d) 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;
- 20 (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (f) ceases to be resident in the State.

25 Address of public officer.

25. (1) The public officer of an incorporated association shall, within 14 days after becoming public officer, give notice to the Commission in the prescribed form, accompanied by the prescribed fee, of the fact and of his or her full name and address in the State.

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(2) Where a public officer changes his or her address in the State, the public officer shall, within 14 days after the change, give notice of the change in the prescribed form, accompanied by the prescribed fee.

Penalty: \$100.

5 Annual general meeting.

26. (1) Subject to subsection (2), an incorporated association shall, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the association, convene an annual general meeting of its members.

10 (2) An incorporated association shall hold its first annual general meeting—

(a) within the period of 18 months after its incorporation under this Act; and

15 (b) within the period of 2 months after the expiration of the first financial year of the association.

(3) The Commission may, upon application being made by an incorporated association, subject to such conditions as the Commission thinks fit—

(a) extend the period of 6 months referred to in subsection (1) or the period of 18 months referred to in subsection (2); or

20 (b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held.

(4) An incorporated association is not in default in holding an annual general meeting under subsection (1) or (2) if, pursuant to an extension or
25 permission under subsection (3), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) or (2), as the case may be, to be held, but is held within the extended period or in the calendar year in which under subsection (3) it is permitted to be held.

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(5) An application by an incorporated association for an extension of a period or for permission under subsection (3) shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required by subsection (1) or (2), as the case may be, to be held.

(6) At the annual general meeting of an incorporated association, the committee of the association shall submit to members of the association a statement which is not misleading and which gives a true and fair view of the following:—

- 10 (a) the income and expenditure of the association during its last financial year;
- (b) the assets and liabilities of the association at the end of its last financial year;
- 15 (c) the mortgages, charges and other securities of any description affecting any of the property of the association at the end of its last financial year;
- (d) in respect of each trust of which the association was trustee during a period, being the whole or any part of the last financial year of the association—
 - 20 (i) the income and expenditure of the trust during that period;
 - (ii) the assets and liabilities of the trust during that period; and
 - (iii) the mortgages, charges and other securities of any description affecting any of the property of the trust at the end of
 - 2.5 that period.

(7) Where an incorporated association fails to comply with the provisions of this section, the incorporated association and each member of the committee of the association is guilty of an offence and liable to a penalty not exceeding \$200.

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Lodgment of accounts, etc.

27. (1) The public officer of an incorporated association shall, within 1 month after the date of each annual general meeting of the association, lodge with the Commission in the prescribed form, verified as prescribed, a
5 statement—

- (a) containing the particulars referred to in section 26 (6) and such other particulars as may be prescribed;
- 10 (b) accompanied by a certificate signed by a person who attended the meeting, being a member of the committee of the incorporated association, to the effect that the statement has been submitted to the members at an annual general meeting of the incorporated association;
- (c) accompanied by a copy of the terms of any resolution passed at that meeting concerning that statement; and
- 15 (d) accompanied by the prescribed fee.

Penalty: \$200.

(2) The Commission may, on the application (accompanied by the prescribed fee) of the public officer of an incorporated association, if it thinks fit, extend or further extend the period for lodging a statement under
20 subsection (1).

(3) An application for an extension under subsection (2) may be made, and the power of the Commission under that subsection may be exercised, notwithstanding that the period referred to in subsection (1) has expired.

25 (4) The Commission may, by notice in writing given to an incorporated association, exempt the public officer of the association either generally or in relation to a specified year from compliance with the provisions of subsection (1) in relation to the association and may, by notice in writing given to an incorporated association, revoke any general exemption given
30 under this subsection to the public officer of the association.

*Associations Incorporation 1984***Particulars of trusts to be notified.**

28. An incorporated association shall, within 14 days after becoming a trustee of a trust, lodge with the Commission notice in the prescribed form specifying particulars of the trust, together with a copy of any deed or other instrument creating or embodying the trust.

PART V.**CONTRACTS, DEBTS, ETC., OF INCORPORATED ASSOCIATIONS.****DIVISION 1.—General.****Entering into contracts.**

10 29. (1) A person acting under the express or implied authority of an incorporated association may enter into, vary or discharge a contract in the name of or on behalf of the association in the same manner as if the contract were entered into, varied or discharged by a natural person.

(2) The entering into, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the incorporated association and other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, under the common seal of an incorporated association is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in the contract or other document or in the matter to which the contract or other document relates.

(4) Nothing in this section prevents an incorporated association from entering into, varying or discharging a contract under its common seal.

25 (5) Nothing in this section affects the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the entering into, variation or discharge of a contract.

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

5 Agent.

30. (1) An incorporated association may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent to execute deeds on the association's behalf, and a deed signed by such an agent on behalf of the association and under
10 the agent's seal binds the association and has the same effect as if it were under the common seal of the association.

(2) The authority of an agent empowered pursuant to subsection (1), as between the incorporated association and a person dealing with the agent, continues during the period (if any) mentioned in the instrument conferring
15 the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with the agent.

DIVISION 2.—*Pre-incorporation contracts.*

Interpretation.

20 **31.** In this Division—

(a) a reference to a non-existent incorporated association purporting to enter into a contract is a reference to—

25 (i) a person executing a contract in the name of an incorporated association, where no such incorporated association exists; or

(ii) a person purporting to enter into a contract as agent or trustee for a proposed incorporated association;

30 (b) a reference to a person who purports to execute a contract on behalf of a non-existent incorporated association is a reference to a person who executes a contract or purports to enter into a contract as referred to in paragraph (a) (i) or (ii); and

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- (c) a reference, in relation to the purported entry into a contract by a non-existent incorporated association, to the incorporation of the association is a reference to—
- 5 (i) where a person has executed a contract in the name of an incorporated association and no such incorporated association exists—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the incorporated association in the name of which the person executed the contract; or
- 10 (ii) where a person has purported to enter into a contract as agent or trustee for a proposed incorporated association—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the proposed incorporated association.

15 Ratification of pre-incorporation contracts.**32. (1) Where—**

- (a) a non-existent incorporated association purports to enter into a contract; and
- 20 (b) the association is incorporated within a reasonable time after the contract is purported to be entered into,
- the incorporated association may, within a reasonable time after it is incorporated, ratify the contract.

(2) Where an incorporated association ratifies a contract as provided by subsection (1), the association is bound by, and is entitled to the benefit
52 of, that contract as if the association had been incorporated before the contract was entered into and had been party to the contract.

(3) Where—

- (a) a person purports to enter into a contract as agent or trustee for a proposed incorporated association; and
- 30 (b) the association is incorporated within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the association is incorporated,

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then, notwithstanding any rule of law or equity, the agent or trustee does not have any right of indemnity against the incorporated association in respect of the contract.

Liability of person executing pre-incorporation contract.

5 **33. (1)** Where a non-existent incorporated association purports to enter into a contract and—

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

the other party or each of the other parties to the contract may, subject to subsections (3) and (6), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent
15 incorporated association an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the incorporated association if—

- 20 (c) where the association has not been incorporated as referred to in paragraph (a)—the association had been incorporated and had ratified the contract as provided by section 32; or
- (d) where the association has been incorporated as referred to in paragraph (b)—the incorporated association had ratified the contract as provided by section 32,

and the contract had been discharged by reason of a breach of the contract
25 constituted by the refusal or failure of the incorporated association to perform any obligation under the contract.

(2) Where proceedings are brought to recover damages under subsection (1) in relation to a contract purported to be entered into by a non-existent incorporated association and the association has been incorporated,
30 the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following orders:—

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

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

(3) Where, in proceedings to recover damages under subsection (1) 5 in relation to a contract purported to be entered into by a non-existent incorporated association the court in which the proceedings are brought makes an order under subsection (2) (a), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not 10 been made.

(4) Where—

- (a) a non-existent incorporated association purports to enter into a contract;
- 15 (b) the association is incorporated and ratifies the contract as provided by section 32;
- (c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the incorporated association to perform all or any of its obligations under the contract; and
- 20 (d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the incorporated association for damages for breach of the contract,

the court in which the proceedings are brought may, subject to subsection (6), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of 25 the incorporated association to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the incorporated association has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

(5) Where a person purports, whether alone or together with another 30 person or other persons, to execute a contract on behalf of a non-existent incorporated association, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, consent to the first-mentioned person being exempted from any liability in relation to the contract.

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(6) Where a person has, as provided by subsection (5), consented to the exemption of another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent incorporated association—

- 5 (a) notwithstanding subsection (1), that first-mentioned person is not entitled to recover damages from that other person in relation to that contract; and
- (b) a court shall not, in proceedings under subsection (4), order that
- 10 other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the incorporated association has been, or may be, found liable to pay to that first-mentioned person.

Contract in substitution for pre-incorporation contract.**34. If—**

- 15 (a) a non-existent incorporated association purports to enter into a contract;
- (b) the association is incorporated; and
- (c) the incorporated association and the other party or other parties
- 20 to the contract enter into a contract in substitution for the first-mentioned contract,

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

25 discharged.

Effect of Division on other rights and liabilities.

35. Any rights or liabilities of a person under this Division (including rights or liabilities under an order made by a court under this Division) in relation to a contract are in substitution for any rights that the person

30 would have, or any liabilities to which the person would be subject, as the case may be, apart from this Division, in relation to the contract,

*Associations Incorporation 1984***Manner of ratification.**

36. For the purposes of this Division, a contract may be ratified by an incorporated association in the same manner as a contract may be entered into by an incorporated association under section 29 and the provisions of section 5 29 have effect as if—

- (a) a reference in that section to the entering into of a contract included a reference to the ratification of a contract; and
- (b) the reference in subsection (3) of that section to a contract executed, or purporting to have been executed, under the common seal of an incorporated association included a reference to a contract ratified, or purporting to have been ratified, under the common seal of an incorporated association.

DIVISION 3.—Offences.**Interpretation.**

15 37. (1) This Division applies to an incorporated association—

- (a) that has been wound up or is in the course of being wound up;
- (b) the incorporation of which has been cancelled by the Commission; or
- (c) that is unable to pay its debts.

20 (2) In this Division, “appropriate officer” means—

- (a) in relation to an incorporated association that has been or is being wound up—the liquidator; or
- (b) in relation to an incorporated association the incorporation of which has been cancelled by the Commission or which is unable to pay its debts—the Commission.

25 (3) For the purposes of this section, an incorporated association shall be deemed to be unable to pay its debts if, but 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.

Offences relating to incurring of debts or fraudulent conduct.

38. (1) If an incorporated association incurs a debt and—

(a) immediately before the time the debt is incurred—

(i) there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they become due; or

(ii) there are reasonable grounds to expect that, if the association incurs the debt, it will not be able to pay all its debts as and when they become due; and

(b) the association is, at the time the debt is incurred, or becomes at a later time, an association to which this Division applies,

any person who was a member of the committee of the association at the time the debt was incurred is guilty of an offence and liable to a penalty not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or to both such penalty and imprisonment, and the association and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

(2) 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

(b) that, at the time the debt was incurred, the defendant did not have reasonable cause to expect—

(i) that the association would not be able to pay all its debts as and when they became due; or

(ii) that, if the association incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of the debt.

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(4) Where subsection (1) renders a person or persons liable to pay a debt incurred by an incorporated 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
5 respect of the amount so paid.

(5) If—

(a) an incorporated association does any act (including the entering into of a contract or transaction) with intent to defraud creditors of the association or of any other person or for any other
10 fraudulent purpose; and

(b) the association is at the time it does the act, or becomes at a later time, 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 and liable to a penalty not
15 exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or to both such penalty and imprisonment.

Certificate evidence.

39. (1) A certificate issued by the proper officer of a court stating that a person specified in the certificate—

20 (a) was convicted of an offence under section 38 (1) in relation to a debt specified in the certificate incurred by an incorporated association so specified; or

(b) was convicted of an offence under section 38 (5) in relation to an incorporated association specified in the certificate,

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

(2) A document purporting to be a certificate issued under subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

30 **Powers of Court.**

40. (1) Where a person has been convicted of an offence under section 38 (1) in respect of the incurring of a debt, the Court, on the application of the Commission or of the person to whom the debt is payable, may, if it thinks

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it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.

5 (2) Where a person has been convicted of an offence under section 38 (5), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the association of the amount required to satisfy so much of
10 the debts of the association as the Court thinks proper.

(3) For the purposes of subsection (2), in relation to an association in respect of which a conviction referred to in that subsection relates—

(a) the appropriate officer; and

15 (b) a member or creditor of the association authorised by the Commission to make an application under that subsection,
are prescribed persons.

(4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

20 (5) In particular, the Court may order that the liability of the person under the declaration shall be a charge—

(a) on a debt or obligation due from the association to the person; or

25 (b) on a right or interest under a charge on any property of the association held by or vested in the person liable or a person on behalf of the person liable, or a person claiming as assignee from or through the person liable or a person acting on behalf of the person liable.

30 (6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).

(7) For the purpose of subsection (5), “assignee” includes a person to whom or in whose favour, by the direction of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created,

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but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

- 5 (8) On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence personally or call witnesses.

Certain rights not affected.

41. Nothing in section 38 (1) or 40 (1) or (2) affects any rights of a
10 person to indemnity, subrogation or contribution.

PART VI.**INSURANCE.****Interpretation.**

42. In this Part, "approved insurer" means a person, or a person
15 belonging to a class of persons, approved under section 156 of the Strata Titles Act, 1973, as an approved insurer for the purposes of Division 5 of Part IV of that Act.

Returns by approved insurers.

43. An approved insurer shall—
20 (a) during the month of July in each year forward a return in the prescribed form to the Commission giving details of all insurances effected or renewed by incorporated associations with the insurer pursuant to section 44 during the period of 12 months ending on the previous 30th June; and

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- (b) within 14 days after any insurance effected or renewed with the insurer by an incorporated association pursuant to section 44 lapses or is cancelled, notify the Commission giving details of the lapsing or cancellation.

5 Penalty: \$100.

Insurance.

44. (1) An incorporated association shall effect and maintain insurance with an approved insurer against liability of the incorporated association arising out of—

- 10 (a) an occurrence causing death or bodily injury to a person or damage to property; and
- (b) such other occurrences as may be prescribed.

(2) Subsection (1) does not apply to or in respect of an incorporated association if the members of the association are each liable to contribute in
15 a winding up of the association in respect of a liability referred to in subsection (1) (a) or (b) to an amount which is not less than the amount of the cover required in respect of the liability under subsection (3).

(3) Insurance effected pursuant to subsection (1) shall be for a cover—

- 20 (a) in respect of an occurrence referred to in subsection (1) (a)—of not less than \$2,000,000 or, where some other amount is prescribed, not less than that other amount; and
- (b) in respect of an occurrence prescribed for the purposes of subsection (1) (b)—of not less than the amount prescribed in respect
25 of that occurrence.

Liability of members of committee.

45. (1) Where an incorporated association which is required pursuant to section 44 to effect and maintain insurance in respect of a liability—

- (a) incurs the liability; and

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- (b) is not, at the time the liability is incurred, insured with an approved insurer against the liability for the amount required by section 44 (3) in respect of the liability,

a person who was a member of the committee of the association at the time the liability was incurred is liable, subject to subsection (2), to contribute in a winding up of the association to the extent of the liability.

(2) The liability under subsection (1) of a member of the committee of an incorporated association to contribute in a winding up of the association in respect of a liability of the association—

- 10 (a) shall be reduced by the amount of any insurance effected by the association with an approved insurer in respect of the liability, being insurance in force at the time the liability is incurred;
- (b) is a liability only in such amount as is sufficient to enable the payment of the debts and liabilities of the association and the costs, charges and expenses of the winding up; and
- 15 (c) is in addition to any other liability the member may have to contribute in the winding up.

(3) Where 2 or more persons are liable under subsection (1) to contribute in respect of the same liability of an incorporated association, their liability to contribute is joint and several.

(4) It is a defence to a claim for contribution from a person pursuant to this section in respect of a liability of an incorporated association that—

- (a) at the time the liability was incurred the person had taken all reasonable steps to ensure that the association had effected insurance with an approved insurer against the liability for the amount required by section 44 (3) in respect of the liability; and
- 25 (b) either—
- (i) at the time the liability was incurred the person was unaware that the association was not so insured; or
- 30 (ii) the fact that the incorporated association was not so insured having come to the person's knowledge before that time, the person gave notice of the fact to the Commission promptly after the fact came to the person's knowledge.

PART VII.**AMALGAMATION OF ASSOCIATIONS AND TRANSFERS OF INCORPORATION.****Application for amalgamation.**

46. (1) Any 2 or more incorporated associations may apply to be
5 amalgamated as an incorporated association under this Act.

(2) An application shall not be made under subsection (1) unless the terms of amalgamation, the statement of objects and the rules of the proposed amalgamated incorporated association are approved by a special resolution of each of the incorporated associations.

10 **(3)** An application under subsection (1) may be made by the public officers of the incorporated associations in the prescribed form and shall—

(a) be accompanied by a copy of the statement of objects of the proposed amalgamated incorporated association;

15 (b) be accompanied by a copy of the rules of the proposed amalgamated incorporated association;

(c) be accompanied by a notice in the prescribed form of the passing of the special resolutions referred to in subsection (2);

(d) set out—

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

25 (ii) the name and address in the State of a person resident in the State who has been nominated as the first public officer of the proposed amalgamated incorporated association, being a person who has attained the age of 18 years;

(iii) the names of the persons who have been nominated as the first members of the committee of the proposed amalgamated incorporated association;

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- (iv) the place where the principal place of administration of the amalgamated incorporated association is proposed to be situated; and
 - (v) such other particulars as may be prescribed; and
- 5 (e) be accompanied by the prescribed fee.

Certificate of incorporation of amalgamated associations.

47. If the Commission is satisfied that each of the incorporated associations making an application under section 46 has complied with the provisions of this Act and of the regulations and that the statement of
10 objects and the rules of the incorporated association to be formed by the amalgamation are not contrary to this Act or the regulations, the Commission shall incorporate under this Act the association formed by the amalgamation by granting in respect of it a certificate of incorporation in the prescribed form.

15 Application to bring company or co-operative society under Act.

48. (1) A company limited by guarantee within the meaning of the Companies (New South Wales) Code or a society registered under the Co-operation Act, 1923 (not being a society the capital of which is divided into shares or stock), may apply for incorporation under this Act where—
- 20 (a) the company or society has—
 - (i) in the case of a company, passed a special resolution approving the making of the application; or
 - (ii) in the case of a society, resolved in accordance with its rules that the application be made;
 - 25 (b) the objects of the company or society are objects for which an incorporated association may lawfully be carried on; and
 - (c) the company or society has rules that comply with this Act or, upon incorporation under this Act, that will so comply, whether by reason of the adoption of new rules or the model rules or the
30 alteration of its articles of association or former rules.

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(2) A company or society that intends to make an application under subsection (1) may, notwithstanding any other law to the contrary, make an alteration of its articles of association or rules, or adopt new rules or the model rules, to have effect from the date on which a certificate of incorporation is granted to it under this Act as if it were an incorporated association and the articles or rules were the rules of an incorporated association.

(3) An application by a company or society under subsection (1) shall be in the prescribed form and—

10 (a) shall state—

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

15 (ii) the place where the principal place of administration of the incorporated association is proposed to be situated; and

(iii) the name and address in the State of a member who is resident in the State and who has been nominated as the first public officer of the proposed incorporated association, being a person who has attained the age of 18 years;

20 (b) shall be accompanied by—

(i) a statement of objects as proposed to be in force upon its incorporation under this Act;

25 (ii) a copy of its articles of association or rules as proposed to be in force upon its incorporation under this Act or a statement that its rules will be the model rules;

(iii) a notice in the prescribed form specifying particulars of any trusts relating to the company or society, together with a copy of any deed or other instrument creating or embodying the trusts; and

30 (iv) the name, address and occupation of each of its directors;

(c) shall contain such other particulars as may be prescribed; and

(d) shall be accompanied by the prescribed fee.

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(4) Where an application is made under this section, the Commission, if satisfied that there is no reasonable cause why the company or society should not be incorporated under this Act and that the company or society is not carried on for the object of trading or securing pecuniary
5 gain for its members, shall—

- (a) incorporate the company or society under this Act by granting in respect of it a certificate of incorporation in the prescribed form;
- (b) in the case of a society, give notice of the incorporation of the
10 society under this Act to the Registrar of Co-operative Societies; and
- (c) cause a notice of the incorporation of the company or society under this Act to be published in the Gazette.

(5) Section 4 applies for the purposes of the interpretation of the reference in subsection (4) to trading or securing pecuniary gain as if a
15 reference in section 4 to an association were a reference to a company or society.

Effect of transfer of incorporation.

49. (1) Subject to this section, upon the incorporation of a company or society as an incorporated association pursuant to section 48—

- 20 (a) the company or society shall be dissolved and none of the provisions of the Companies (New South Wales) Code or the Co-operation Act, 1923, shall, after its incorporation under that section, apply to the company or society; and
- 25 (b) the Commission (in the case of a company) or the Registrar of Co-operative Societies (in the case of a society) shall cancel the registration of the company or society.

(2) The incorporation of a company or society as an incorporated association pursuant to section 48 does not affect the identity of the company or society which shall be deemed to be the same body before and after the
30 incorporation and no act, matter or thing shall be affected or abated by the incorporation and, in particular, any claim by or against the company or society subsisting immediately before its incorporation pursuant to that section may be continued by or against the incorporated association in the name of the company or society or commenced by or against the incorporated
35 association in the name of the incorporated association.

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(3) Without limiting the generality of subsection (2), nothing in subsection (1)—

- (a) affects any right, privilege, obligation or liability acquired or incurred under the Code or Act referred to in subsection (1);
 - 5 (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against that Code or Act; or
 - (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
- 10 and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

PART VIII.

WINDING UP AND CANCELLATION OF INCORPORATION.

15 **Voluntary winding up.**

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

(2) Subject to this Act, the provisions of the Companies (New South Wales) Code relating to the voluntary winding up of companies apply, 20 so far as they are applicable and with such modifications as may be prescribed, to and in relation to the voluntary winding up of an incorporated association.

Winding up by the Court.

51. (1) The Court may order the winding up of an incorporated 25 association if—

- (a) the incorporated association has by special resolution resolved that it be wound up by the Court;

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- (b) the incorporated association does not commence its operations within 1 year after the date of its incorporation under this Act or suspends its operations for a whole year;
- (c) the incorporated association is unable to pay its debts;
- 5 (d) the incorporated association has traded or secured pecuniary gain for its members;
- (e) the incorporated association has, as trustee, traded or secured pecuniary gain for members of the incorporated association;
- 10 (f) the incorporated association has engaged in activities inconsistent with its statement of objects;
- (g) the committee of the incorporated association has acted in affairs of the association in the interests of the committee or of members of the committee rather than in accordance with the statement of objects of the association, or in any other manner whatever that
15 appears to the Court to be unfair or unjust to members of the association;
- (h) the Minister has by notice under section 56 directed the incorporated association to become registered as a company under the
20 Companies (New South Wales) Code or to become registered as a society under the Co-operation Act, 1923, and the association has not become so registered within the time fixed by, and in accordance with any conditions specified in, the notice;
- (i) the incorporated association would, if not incorporated under this Act, not be eligible to be so incorporated; or
- 25 (j) the Court is of the opinion that it is just and equitable that the incorporated association be wound up.

(2) An application to the Court for the winding up of an incorporated association may be made by the incorporated association or by a member or creditor of the incorporated association or by the Commission.

- 30 (3) Subject to this Act, the provisions of the Companies (New South Wales) Code relating to the winding up of bodies other than companies apply, so far as they are applicable and with such modifications as may be prescribed, to and in relation to the winding up by the Court of an incorporated association.

Application of Companies (New South Wales) Code.

52. For the purposes of the application of the Companies (New South Wales) Code under sections 50 and 51, a reference in that Code—

- 5 (a) to a company or body shall be read and construed as a reference to an incorporated association;
- (b) to the directors of a company shall be read and construed as a reference to the members of the committee of an incorporated association;
- 10 (c) to the secretary of a company shall be read and construed as a reference to the public officer of an incorporated association; and
- (d) to the principal place of business of a company shall be read and construed as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commission.

15 Distribution of surplus property.

53. (1) In this section, a reference to the surplus property of an incorporated 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.

20 **(2)** In a winding up of an incorporated association, the surplus property of the association shall, subject to any trust affecting that property or any part of it, vest in an association (whether or not incorporated under this Act) which—

- 25 (a) has objects substantially similar to those of the incorporated association being wound up;
- (b) is not carried on for the object of trading or securing pecuniary gain for its members;
- (c) has provision in its rules requiring the property of the association to be distributed, in a dissolution of the association, to another association which—
30 (i) has objects substantially similar to those of the dissolved association; and

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- (ii) is not carried on for the object of trading or securing pecuniary gain for its members; and
 - (d) is nominated for the purpose—
 - (i) by the rules of the incorporated association being wound up;
 - (ii) if not nominated by the rules—by a special resolution of the incorporated association being wound up; or
 - (iii) if not nominated by the rules or a special resolution—by the Commission.
- 10 (3) A person aggrieved by the operation of this section in relation to the surplus property of an incorporated association may appeal to the Court which may make such orders as to the disposal of the surplus property as to the Court appears just.

Cancellation of incorporation.

- 15 **54. (1)** Where the Commission has reasonable cause to believe that an incorporated association—
- (a) is not in operation;
 - (b) is engaged in trading or securing pecuniary gain for its members;
 - (c) is, as trustee, engaged in trading or securing pecuniary gain for members of the association;
 - (d) was incorporated under this Act by reason of fraud or mistake; or
 - (e) has not during the preceding period of 3 years convened an annual general meeting in accordance with section 26,

the Commission may send by certified post addressed to the association at
25 the address of the public officer of the association last notified under this Act to the Commission or (where there is a vacancy in the office of public officer) at the address which appears from the Commission's records to be the address of the association, and publish in a newspaper circulating generally in the State, a notice stating the ground or grounds for the proposed
30 cancellation of the incorporation of the association and stating that, if a reply showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later, the incorporation of the association will be cancelled by notice published in the Gazette.

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(2) Unless—

(a) the Commission is satisfied that within 2 months after the date of sending or publishing a notice under subsection (1), whichever is the later, cause has been shown to the effect that the incorporated association—

(i) is in operation;

(ii) is not and has not been engaged in trading or securing pecuniary gain for its members;

(iii) is not and has not been, as trustee, engaged in trading or securing pecuniary gain for members of the incorporated association;

(iv) was not incorporated by reason of fraud or mistake; or

(v) has during the preceding period of 3 years convened an annual general meeting in accordance with section 26,

as the case may require; or

(b) the Court on the application of an aggrieved person otherwise orders,

the Commission may, by notice published in the Gazette, cancel the incorporation of the association.

(3) Where the Commission cancels the incorporation of an incorporated association under subsection (2), the Commission shall send to the public officer of the association at the address of the public officer last notified under this Act to the Commission or (where there is a vacancy in the office of public officer) to a member of the committee of the association at the address which appears from the Commission's records to be the address of the association a notice in the prescribed form of the cancellation.

(4) If the Commission is satisfied that the incorporation of an incorporated association was cancelled as the result of an error on the part of the Commission, the Commission may reinstate the incorporation of the association, and thereupon the association shall be deemed to have continued in existence as if its incorporation had not been cancelled.

(5) Notwithstanding the cancellation of the incorporation of an association, any liability of the public officer and of each officer and member of the incorporated association continues and may be enforced as if the incorporation of the association had not been cancelled.

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(6) Where, before the Commission cancels the incorporation of an association under subsection (2), the incorporated association has commenced to be wound up under section 50 or 51—

- 5 (a) the Commission may cancel the incorporation notwithstanding the commencement of the winding up; and
- (b) the cancellation of the incorporation does not affect the winding up.

Vesting of property after cancellation of incorporation.

55. (1) Where the incorporation of an incorporated association (not being an incorporated association the winding up of which commenced 10 before the cancellation) is cancelled under section 54—

- (a) the property of the association vests in the Commission; and
- (b) subject to subsection (3), the Commission may give such directions as it deems just for or with respect to the payment of the debts and liabilities of the association, the distribution of its property and 15 the winding up of its affairs and—
- (i) 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; 20 and
- (ii) may do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of the Commission's powers under this section.

(2) The Commission is entitled to be paid out of the property of an 25 incorporated association the reasonable costs incurred by the Commission in the exercise of its powers under this section in relation to the association.

(3) Section 53 applies to and in respect of the vesting under this section of property of an incorporated association remaining after satisfaction of the debts and liabilities of the association and the payment of any amount 30 under subsection (2) in the same way as that section applies to and in respect of the vesting of that property in a winding up of an incorporated association.

Registration under the Companies (New South Wales) Code or the Co-operation Act, 1923.

56. (1) An incorporated association may, with the approval of the Minister and subject to such conditions as may be specified in the approval, become—

- (a) registered as a company under the Companies (New South Wales) Code; or
- (b) registered as a society within the meaning of the Co-operation Act, 1923,

10 in the manner prescribed.

(2) Where the Minister is satisfied that the continued incorporation of an association under this Act would be inappropriate or inconvenient—

(a) by reason of the Minister's assessment of—

- 15 (i) the scale or nature of the activities of the incorporated association;
- (ii) the value or nature of the property of the incorporated association; or
- (iii) the extent or nature of the dealings which the incorporated association has with the public; or

20 (b) for any other reason which to the Minister appears sufficient, the Minister may, by notice to the incorporated association, direct the association to become—

- (c) registered as a company under the Companies (New South Wales) Code; or
- 25 (d) registered as a society within the meaning of the Co-operation Act, 1923,

within the period (being not less than 3 months), and subject to any conditions, specified in the notice.

Effect of transfer of incorporation.

57. (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to—

- 5 (a) the registration of the association as a company under the Companies (New South Wales) Code; or
- (b) the registration of the association as a society within the meaning of the Co-operation Act, 1923.

(2) Subject to this section, upon a transfer of incorporation by an incorporated association—

- 10 (a) the incorporated association shall be dissolved and none of the provisions of this Act shall, after the transfer of incorporation, apply to the association; and
- (b) the Commission shall cancel the incorporation of the association under this Act.

- 15 (3) The transfer of incorporation by an incorporated association does not affect the identity of the association which shall be deemed to be the same body before and after the transfer of incorporation and no act, matter or thing shall be affected or abated by the transfer of incorporation and, in particular, any claim by or against the association subsisting immediately
- 20 before the transfer of incorporation may be continued by or against the company or society formed by the transfer of incorporation in the name of the incorporated association or commenced by or against the company or society so formed in the name of the company or society.

(4) Without limiting the generality of subsection (3), nothing in

25 subsection (2)—

- (a) affects any right, privilege, obligation or liability acquired or incurred under this Act;
- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or

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

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

Appeal.

58. A person aggrieved by any act, omission or decision of a liquidator or provisional liquidator of an incorporated association may appeal to the
10 Court in respect of the act, omission or decision, and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as the Court thinks fit.

PART IX.**MISCELLANEOUS.****15 Register.**

59. (1) The Commission shall keep a register for the purposes of this Act in such form and containing such particulars as the Commission thinks fit.

(2) The Commission shall keep a copy of a certificate of incorporation granted under section 10, 14, 47 or 48 and a reference in this section
20 to a document lodged with the Commission includes a reference to such a copy.

(3) A person may, upon payment of the prescribed fee—

- (a) inspect any document lodged with the Commission, not being a document that has been destroyed or otherwise disposed of; or

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(b) require a copy of, or extract from, any document that the person is entitled to inspect pursuant to paragraph (a) to be given, or given and certified, by the Commission.

(4) Where a reproduction or transparency of a document lodged with the Commission has been incorporated in the register kept under subsection (1), a reference in subsection (3) (a) to inspection of a document so lodged shall be read and construed as a reference to inspection of the reproduction or transparency.

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

(6) The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain it, destroy or dispose of—

- 15 (a) any document lodged or registered in respect of an incorporated association that has been dissolved or has ceased to be registered for not less than 10 years; or
- (b) any document a transparency of which has been incorporated in the register kept under subsection (1).

20 Constructive notice.

60. A person shall not be taken to have knowledge of—

- (a) the statement of objects or the rules of an incorporated association or any of the contents of the statement of objects or the rules of an incorporated association;
- 25 (b) a document or the contents of a document; or
- (c) any particulars,

by reason only—

- (d) that the statement of objects, the rules, the document or the particulars has or have been lodged with the Commission; or
- 30 (e) that the statement of objects, the rules, the document or the particulars is or are referred to in any other document that has been lodged with the Commission.

Compliance with rules and authority of public officer.

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

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

unless the person—

- 10 (c) has actual knowledge of that fact; or
- (d) ought to have knowledge of that fact by reason of the person's connection or relationship with the association.

Evidentiary provision.

62. (1) A certificate of the Commission to the effect—

- 15 (a) that, on a date specified in the certificate, a specified association was, or was not, an incorporated association;
- (b) that, on a date specified in the certificate, no incorporated association was incorporated under this Act by a name so specified;
- (c) that a requirement of this Act specified in the certificate—
 - 20 (i) had or had not been complied with at a date or within a period so specified; or
 - (ii) had been complied with at a date so specified but not before that date;
- (d) that, on a date specified in the certificate, a person so specified was, or was not, the public officer of an incorporated association so
25 specified, as appearing from the Commission's records;
- (e) that, on a date specified in the certificate, the address of the public officer of a specified incorporated association last notified under this Act to the Commission was the address specified in the
30 certificate; or

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- (f) that a copy of the statement of objects or the rules of, or trusts relating to, an incorporated association specified in the certificate is a true copy of that statement or those rules or trusts as at a date so specified,

5 is prima facie evidence of the matter or matters so certified.

(2) A certificate of incorporation of an association granted under section 10, 14, 47 or 48 is conclusive evidence of the incorporation of the association under this Act on the date specified in the certificate as the date of incorporation.

10 Service of documents.

63. (1) A document may be served on an incorporated association—

- 15 (a) by addressing it to the association and leaving it at, or by sending it by post to, the address of the public officer of the association last notified under this Act to the Commission whether or not, at the time the document is so left or sent, there is a vacancy in the office of public officer of the association;
- (b) by delivering a copy of the document personally to each of 2 members of the committee of the association addressed to the association; or
- 20 (c) in such manner as the Commission may in the special circumstances of the case direct.

(2) The public officer or a member of the committee of an incorporated association who receives a document addressed to the association shall, as soon as practicable after receiving the document, bring it to the
25 attention of the committee of the association.

(3) Where a person who is not the public officer or a member of the committee of an incorporated association—

- (a) receives a document addressed to the association; and
- 30 (b) was within the period of 12 months before receiving the document the public officer or a member of the committee of the association, the person shall, as soon as practicable after receiving the document, bring it to the attention of the committee of the association.

Penalty: \$100.

*Associations Incorporation 1984***Payment of fees on lodgment of documents.**

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

Powers of Commission in relation to documents.

65. (1) The Commission may refuse to register or receive a document submitted to it for lodgment under this Act where the Commission is of the opinion that the document—

- 10 (a) contains matter contrary to law;
- (b) contains matter that is false or misleading in a material particular;
- (c) by reason of an omission or misdescription has not been duly completed;
- 15 (d) does not comply with the requirements of this Act or the regulations; or
- (e) contains an error, alteration or erasure.

(2) Where the Commission refuses under subsection (1) to register or receive a document, the Commission may request that—

- 20 (a) the document be appropriately amended or completed and resubmitted;
- (b) a fresh document be submitted in its place; or
- (c) where the document has not been duly completed, a supplementary document in the prescribed form be lodged.

Trading, etc., by incorporated association.

25 66. (1) An incorporated association shall not—

- (a) trade;
- (b) secure pecuniary gain for its members; or
- (c) as trustee, trade or secure pecuniary gain for members of the incorporated association.

30 Penalty: \$500.

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- (2) Where an incorporated association contravenes subsection (1), any members and officers of the association who by reason of the operation of section 70 are deemed to have contravened that subsection also are jointly and severally liable to any creditor of the association for all debts and
- 5 liabilities incurred by the association in or in consequence of the trading or the securing of pecuniary gain for members of the association.

- (3) The contravention by an incorporated association of subsection (1) does not affect the validity of any transaction.

Production and inspection of records.

- 10 67. (1) In this section, "records" includes—

- (a) any document, register and other record of information; and
- (b) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents
- 15 as are necessary to explain the methods and calculations by which accounts are made up,

however compiled, recorded or stored.

- (2) The powers of the Commission under subsection (3), or the powers of an authorised person under subsection (4), shall not be exercised
- 20 except in circumstances that relate to a matter that constitutes or may constitute—

- (a) a contravention of, or failure to comply with, a provision of this Act or the regulations; or
- (b) an offence relating to an incorporated association that involves
- 25 fraud or dishonesty or concerns the management of affairs of the association.

- (3) The Commission may at any time, by notice in writing, give a direction to—

- (a) an incorporated association; or

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- (b) a person who is or has been an officer of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, an incorporated association (including an incorporated association that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the association as are so specified.

(4) A person authorised by the Commission for the purpose may, at any reasonable time, enter any premises or place in which the Commission or authorised person has reasonable cause to believe the association is acting in furtherance of its purposes or in which any records relating to the affairs of the association are kept, and may—

- (a) require any person at that place or on those premises to furnish such information as the authorised person may reasonably require;
- (b) search that place or those premises; and
- (c) inspect, take and retain possession of, and take copies of, any records found in or upon that place or those premises relating to the affairs of the association.

(5) A person shall not assault, hinder, obstruct or interfere with an authorised person in the exercise of the powers conferred by subsection (4) on the authorised person.

Penalty: \$500.

(6) A person shall not—

- (a) when required under subsection (3) to produce a record—
- (i) refuse or neglect to produce the record; or
- (ii) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record; or
- (b) when required under subsection (4) to furnish information—
- (i) refuse or neglect to furnish the information; or

Associations Incorporation 1984

- (ii) furnish information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when furnishing the information.

Penalty: \$500.

- 5 (7) It is a defence to any prosecution for refusal or neglect to produce a record required to be produced under subsection (3) if the person charged proves that the record has been destroyed or disposed of in accordance with the provisions of this Act or the regulations.

- 10 (8) Any information furnished pursuant to a requirement made under subsection (4) (a) shall not, if at the time of furnishing the information the person objected to doing so on the ground that it might tend to incriminate the person, be admissible in evidence in any prosecution against that person for any offence or in any proceedings relating to any offence, other than an offence under subsection (5) or (6).

15 False or misleading statements.

68. Where, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission or in a declaration made under this Act or in a document submitted to a meeting of members of an incorporated association, a person—

- 20 (a) makes or authorises the making of a statement that to the person's knowledge is false or misleading in any material particular; or
- (b) omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in any material respect,

- 25 the person is guilty of an offence and liable to a penalty not exceeding \$500.

Offence of using certain names.

- 69.** Where a person or an association or other group of persons, not being a body corporate or an association incorporated under this or any other Act or under an Act or law in force in any other place, uses a name or title
- 30 of which the word "Incorporated" or any abbreviation or imitation thereof forms part, or uses a name or title of which the abbreviation "Inc." or any

Associations Incorporation 1984

imitation thereof forms part, the person, association or group and each member of the association or group is guilty of an offence and liable to a penalty not exceeding \$200.

Offences by officers, etc.

- 5 **70. (1)** Where an incorporated association contravenes, whether by act or omission, any provision of this Act or the regulations, the public officer of the association and each member of the committee of the association shall be deemed to have contravened the same provision unless that officer or member satisfies the court that—
- 10 (a) the association contravened the provision without his or her knowledge;
- (b) he or she was not in a position to influence the conduct of the association in relation to its contravention of the provision; or
- 15 (c) he or she, being in such a position, used all due diligence to prevent the contravention of the provision by the association.

(2) An officer or a member of an incorporated association who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly knowingly concerned in or party to the commission by the association of an offence against this Act or the regulations shall be deemed to have
20 committed that offence and is punishable accordingly.

(3) A person may be proceeded against and convicted under a provision pursuant to subsection (1) or (2) whether or not the incorporated association has been proceeded against or convicted under that provision.

(4) Nothing in this section prejudices or affects any liability imposed
25 by a provision of this Act or the regulations on an incorporated association by which an offence against that provision is actually committed.

Proceedings for offences.

71. Proceedings for an offence against a provision of this Act or the regulations shall be disposed of summarily before a court of petty sessions
30 constituted by a stipendiary magistrate sitting alone.

Appeals from decisions of Commission.

72. A person aggrieved by the refusal of the Commission to incorporate an association or to register or receive a document, or by any other act, omission or decision of the Commission (other than an act or decision of the Commission that is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive or final), may, within such period as may be prescribed, appeal to the Court, which may confirm, reverse or modify the refusal, act or decision, or remedy the omission, as the case may be, and make such orders and give such directions in the matter as the Court thinks fit.

Regulations.

73. (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—

- (a) prescribing rules as model rules, being rules that make provision for the several matters that are specified in Schedule 1, whether or not they make provision for other matters;
 - 20 (b) the refunding of the whole or any part of a fee which has been paid to the Commission in respect of an application under this Act which is withdrawn or refused by the Commission; or
 - (c) prescribing the books, documents and other records to be kept by incorporated associations.
 - 25 (2) A provision of a regulation may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - 30 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

Associations Incorporation 1984

(3) A regulation may impose a penalty not exceeding \$200 for any offence against the regulation.

SCHEDULE 1.

(Secs. 11, 73.)

5 **MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION
 AND IN MODEL RULES.**

Membership qualifications.

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

Register of members.

- 10 2. The register of members of the incorporated association.

Fees, subscriptions, etc.

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

Members' liabilities.

- 15 4. The liability (if any) of members of the incorporated association 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.

Disciplining of members.

- 20 5. The procedure (if any) for the disciplining of members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.

Committee.

6. The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as "the committee") and—

- 25 (a) the election or appointment of members of the committee;
 (b) the terms of office of members of the committee;

*Associations Incorporation 1984*SCHEDULE 1—*continued*.MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION AND IN
MODEL RULES—*continued*.

- 5 (c) the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;
- (d) the filling of casual vacancies occurring on the committee; and
- (e) the quorum and procedure at meetings of the committee.

General meetings—calling of.

- 10 7. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.

General meetings—procedure.

8. The quorum and procedure at general meetings of members of the incorporated association and whether members are entitled to vote by proxy at general meetings.

General meetings—notices.

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

Funds—source.

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

20 Funds—management.

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

Alteration of objects.

- 25 12. The manner of altering the statement of objects of the incorporated association.

Rules.

13. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

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SCHEDULE 1—*continued.*

MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION AND IN
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Common seal.

- 5 14. Provisions for the custody and use of the common seal of the incorporated association.

Custody of books, etc.

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

Inspection of books, etc.

- 10 16. The inspection by members of the incorporated association of books and documents of the incorporated association.
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SCHEDULE 2.

(Sec. 15.)

PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC., OF INCORPORATED ASSOCIATIONS.

15 Interpretation.

1. In this Schedule, "former association", in relation to an incorporated association, means—
- (a) the association or other body which was incorporated under this Act to form the incorporated association; or
- 20 (b) in the case of an amalgamated association incorporated under section 47—
an incorporated association which was a party to the amalgamation.

Vesting of property.

2. (1) Upon the incorporation of an association or other body under this Act, any property that, immediately before that incorporation—
- 25 (a) was vested in a former association of the incorporated association; or

Associations Incorporation 1984

SCHEDULE 2—*continued*.

PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued*.

- 5 (b) was held by a person, in trust or otherwise, for or on behalf of a former association of the incorporated association or for its objects,

shall, subject to this Act and to the extent that the property was so vested or held, vest in the incorporated association.

- (2) Property which vests in an incorporated association pursuant to subclause (1)—

- 10 (a) becomes vested subject to any mortgage, charge, encumbrance, lien, lease, covenant, contract or liability (whether or not contingent) affecting the property immediately before incorporation of the association under this Act; and
- 15 (b) shall not be dealt with contrary to the provisions of any trust affecting the property immediately before incorporation of the association under this Act, being provisions as to the purposes for which the property may or is required to be applied.

Construction of certain instruments.

3. (1) Where under an instrument having effect after the incorporation of an association under this Act (other than a will made by a testator who died before that incorporation), any property would or may, had that incorporation not occurred, be transferable to or recoverable by a former association of the incorporated association or any person for or on behalf of such a former association or for its objects, the instrument shall, on and after the date of that incorporation, be read and construed and take effect as if a reference therein to the former association or, as the case may be, to that person were a reference to the incorporated association.

- (2) In subclause (1), "instrument" means—

- (a) a will;
- 30 (b) an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special; or
- (c) any other instrument whereby a person alienates property or confers a power of appointment or other power or authority to dispose of property.

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.***Claims, liabilities, etc.**

5 4. (1) After the incorporation of an association or other body under this Act—

- 10 (a) all debts, money and claims, liquidated and unliquidated, that, immediately before that incorporation were due or payable to or recoverable by a former association of the incorporated association or by members of such a former association as members, shall be debts due and money payable to and claims recoverable by the incorporated association;
- 15 (b) all suits, actions and proceedings pending immediately before that incorporation at the suit of a former association of the incorporated association or members of such a former association as members shall be respectively suits, actions and proceedings pending at the suit of the incorporated association and all suits, actions and proceedings so pending at the suit of any person against a former association of the incorporated association or members of such a former association as members shall be respectively suits, actions and proceedings pending at the suit of that person against the incorporated association;
- 20 (c) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by a former association of the incorporated association or members of such a former association as members and in force immediately before that incorporation shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the incorporated association;
- 25 (d) the incorporated association may enforce and realise any security or charge existing immediately before that incorporation in favour of a former association of the incorporated association or members of such a former association as members and may exercise any powers thereby conferred on such a former association or on members of such a former association as members as if the security or charge were a security or charge in favour of the incorporated association;
- 30 (e) all debts, money and claims, liquidated and unliquidated, that, immediately before that incorporation, were due or payable by or recoverable against a former association of the incorporated association or members of such a former association as members shall be debts due and money payable by, and claims recoverable against, the incorporated association; and
- 35 (f) all liquidated and unliquidated claims for which a former association of the incorporated association or members of such a former association as members would, but for its incorporation or amalgamation under this Act, have been liable shall be liquidated and unliquidated claims for which the incorporated association shall be liable.
- 40

(2) Subclause (1) has effect subject to Part V.

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.***Transfer of property by trustee.**

- 5 5. (1) Where property vests in an incorporated association pursuant to this Schedule, any person previously holding the property on trust shall not, upon delivering or transferring the property to the association, thereafter be liable or accountable for the property or be bound to see to the application, distribution or appropriation of the property.
- 10 (2) The receipt of the public officer of an incorporated association shall be sufficient discharge to a trustee delivering or transferring property to the association pursuant to this Schedule as to the property so delivered or transferred.

Certificate evidence.

- 15 6. (1) A certificate, in the prescribed form and verified as prescribed, of the public officer of an incorporated association to the effect that property specified in the certificate was, immediately before the incorporation of the association under this Act, vested in a specified former association of the incorporated association or was held by a person, in trust or otherwise, for or on behalf of such a former association or for its objects. shall—
- 20 (a) in any action, suit or other proceeding, civil or criminal, be prima facie evidence of the matters so certified; and
- (b) be prima facie evidence of the matters so certified in favour of the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.
- 25 (2) A certificate of the Commission in the prescribed form to the effect that an association or other body specified in the certificate is a former association of an incorporated association so specified is prima facie evidence of the matter so certified in favour of—
- 30 (a) a person, or a person claiming through or under a person, dealing with the incorporated association to which the certificate relates in good faith and for valuable consideration and without notice of any defect or error in the certificate; and
- 35 (b) the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.***Requirement for conveyance, etc.**

- 5 7. The vesting of property in an incorporated association pursuant to this Schedule has effect without any conveyance, transfer, assignment or assurance.

Relief against forfeiture.

- 10 8. A leasehold or other interest in property does not determine or become liable to determination or forfeiture, by re-entry or otherwise, by reason only of the operation of this Schedule or of any disposition of property to an incorporated association made pursuant to this Schedule.

Attornment not necessary.

9. No attornment to an incorporated association by any lessee of land vested in the association by reason of the operation of this Schedule shall be necessary.

15 Stamp duty, etc.

10. A document or an instrument executed or registered only for—
(a) a purpose ancillary to, or consequential on, the operation of this Schedule;
or
(b) the purpose of giving effect to this Schedule,
20 shall not be liable to stamp duty or to any fee or charge payable under any Act for registration.

ASSOCIATIONS INCORPORATION ACT, 1984, No. 143

NEW SOUTH WALES.



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ASSOCIATIONS INCORPORATION ACT, 1984, No. 143

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 143, 1984.

An Act to make provision with respect to the incorporation of certain associations and the regulation of those associations after incorporation; and for other purposes. [Assented to, 4th December, 1984.]

Associations Incorporation 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Associations Incorporation Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"agent" includes attorney;

"association" includes—

- (a) a society, club, institution or other body; and
- (b) an incorporated association;

"Commission" means the Corporate Affairs Commission constituted by the Corporate Affairs Commission Act, 1981;

"committee", in relation to an association, means the body which governs or has the management of the association;

"Court" means the Supreme Court of New South Wales;

Associations Incorporation 1984

“date of incorporation”, in relation to an incorporated association, means the date of incorporation of the association under this Act;

“financial year”, in relation to an incorporated 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 incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of 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 incorporated association (subject to the requirements of section 26 as to the holding of annual general meetings of the association) resolves, commencing at the expiration of the previous financial year of the incorporated association;

“incorporated association” means an association or other body incorporated under this Act;

“member”, in relation to an association, means a person who is, under the rules of the association, a member of the association or, where the rules do not provide for membership of the association, a person who is a member of the committee of the association;

“model rules” means the model rules prescribed under section 73;

“officer”, in relation to an association, includes—

- (a) a member of the committee of the association;
- (b) the public officer of the association;
- (c) a secretary, treasurer, executive officer or employee of the association; and
- (d) a person occupying or acting in any of those positions, whether or not validly appointed to occupy or duly authorised to act in the position,

but does not include a patron or the holder of some other honorary office that confers no right to participate in the administration of the affairs of the association;

Associations Incorporation 1984

“property” includes real and personal property, any estate or interest in any property, real or personal, any debt, any thing in action, and any other right or interest, whether in possession or not;

“public officer”, in relation to an incorporated association, means the person who is for the time being the public officer of the association under this Act;

“regulation” means a regulation made under this Act;

“rules”, in relation to an association, includes the constitution, regulations and by-laws, if any, of the association.

Association trading or securing pecuniary gain.

4. For the purposes of this Act, an association shall not be deemed to trade or to secure pecuniary gain for its members or to be formed or carried on for the object of trading or securing pecuniary gain for its members by reason only that—

- (a) the association itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the members of the association or any of them;
- (b) the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal object of the association and, where the transactions are with the public, the transactions—
 - (i) are not substantial in number or value in relation to the other activities of the association; or
 - (ii) consist of admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organised for the promotion of the objects of the association;
- (c) the association is established for the protection of a trade, business, industry or calling in which the members of the association are engaged or interested, and the association itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling;

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- (d) members of the association derive pecuniary gain through enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes;
- (e) any member of the association derives pecuniary gain from the association by way of bona fide payment of remuneration;
- (f) any member of the association derives from it pecuniary gain to which the member would be entitled if the member were not a member of the association;
- (g) members of the association compete for trophies or prizes in contests directly related to the objects of the association; or
- (h) the association—
 - (i) engages in trade which is; or
 - (ii) secures for its members pecuniary gain which is, of a class prescribed for the purposes of this section.

Special resolution.

5. (1) For the purposes of this Act, a resolution of an association is a special resolution if—

- (a) it is passed by a majority which comprises not less than three-quarters of such members of the association as, being entitled under the rules of the association so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules; or
- (b) where it is made to appear to the Commission that it is not possible or practicable for the resolution to be passed in the manner specified in paragraph (a)—the resolution is passed in a manner specified by the Commission.

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(2) At any meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person chairing the meeting that the resolution has been carried as a special resolution shall be prima facie evidence of the fact unless, during the meeting at which the resolution is submitted, a poll is demanded—

- (a) except where paragraph (b) applies, by at least 3 members of the association present in person or, where proxies are allowed, by proxy; or
- (b) where the rules of the association make provision for the manner in which the poll may be demanded—in accordance with those rules.

(3) A declaration by the person chairing the meeting as to the result of a poll taken pursuant to a demand as referred to in subsection (2) is prima facie evidence of the matter so declared.

Application of Companies (New South Wales) Code.

6. Except as otherwise expressly provided by this Act, nothing in the Companies (New South Wales) Code applies to or in respect of an incorporated association.

PART II.**INCORPORATION.****Eligibility for incorporation.**

7. (1) Subject to this Act, an association formed or carried on for any lawful object and consisting of not less than 5 members is eligible to be incorporated under this Act.

(2) Notwithstanding subsection (1), an association is not eligible to be incorporated under this Act if the association—

- (a) is carried on for the object of trading or securing pecuniary gain for its members;
- (b) has a capital divided into shares or stock held by members of the association;

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- (c) holds property in which the members of the association have a disposable interest, whether directly or in the form of shares or stock in the capital of the association, or otherwise;
- (d) is a trade union registered under the Trade Union Act 1881;
- (e) is registered or required or authorised to be registered under the Friendly Societies Act, 1912, the Permanent Building Societies Act, 1967, or the Credit Union Act, 1969, or is a society specified in the Second Schedule to the Co-operation Act, 1923;
- (f) is a company within the meaning of the Companies (New South Wales) Code, other than a company limited by guarantee within the meaning of that Code; or
- (g) is an association which is, or is included in a class of associations which is, prescribed for the purposes of this subsection.

(3) The incorporation of an association under this Act is valid notwithstanding that the association was not eligible to be so incorporated.

Authority to apply for incorporation.

8. (1) An association which is eligible to be incorporated under this Act may, by special resolution—

- (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the association under this Act;
- (b) approve a statement of objects of the proposed incorporated association; and
- (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association.

(2) For the purpose of forming themselves into an incorporated association, 5 or more persons together may, in respect of a proposed association which would be eligible to be incorporated under this Act—

- (a) authorise a person (not being a person under 18 years of age) who is resident in the State to incorporate the proposed association under this Act;

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- (b) approve a statement of objects of the proposed incorporated association;
- (c) approve rules of the proposed incorporated association which comply with section 11 or approve the adoption of the model rules as the rules of the proposed incorporated association; and
- (d) nominate 2 or more of their number to be the first members of the committee of the proposed incorporated association.

(3) A person authorised under subsection (1) or (2) to incorporate an association or proposed association may make application to the Commission for the incorporation of the association or proposed association under this Act and may perform all such acts and do all such things as may be necessary for securing the incorporation of the association or proposed association under this Act, notwithstanding, in the case of an association referred to in subsection (1), anything to the contrary in the rules, if any, of the association.

Application for incorporation.

9. An application for the purposes of section 8 shall be in the prescribed form and—

- (a) shall state—
 - (i) the proposed name of the incorporated association, being a name under which an association may be incorporated in accordance with section 12;
 - (ii) the place where the principal place of administration of the incorporated association is proposed to be situated;
 - (iii) the name and address in the State of the applicant;
 - (iv) the names and addresses of the persons who will be the first members of the committee of the proposed incorporated association, as provided by section 21; and
 - (v) such other particulars as may be prescribed;
- (b) shall be accompanied by a copy of the statement of objects of the proposed incorporated association that has been approved as referred to in section 8;

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- (c) shall be accompanied by a copy of the rules of the proposed incorporated association, being rules that comply with section 11 and which have been approved as referred to in section 8 or a statement that adoption of the model rules as the rules of the proposed incorporated association has been so approved;
- (d) shall be accompanied by a notice in the prescribed form specifying particulars of any trusts relating to the association, together with a copy of any deed or other instrument creating or embodying the trusts;
- (e) shall be accompanied by a statutory declaration made by the applicant declaring—
 - (i) that the applicant is authorised in accordance with section 8 to apply for the incorporation of the association or proposed association under this Act;
 - (ii) that the particulars contained in the application are true; and
 - (iii) that the copies of the rules and of any trusts, deeds or other instruments accompanying the application are true copies;
- (f) shall be accompanied by such other documents as may be prescribed; and
- (g) shall be accompanied by the prescribed fee.

Certificate of incorporation.

10. (1) Subject to subsection (2), where an application is made in accordance with section 9, the Commission shall incorporate the association or proposed association under this Act by granting in respect of it a certificate of incorporation in the prescribed form.

(2) The Commission may refuse to incorporate an association or proposed association pursuant to subsection (1) if the Commission is satisfied that incorporation of the association or proposed association under this Act would be inappropriate or inconvenient—

- (a) by reason of the Commission's assessment of—
 - (i) the likely scale or nature of the activities of the association or proposed association;

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- (ii) the likely value or nature of the property of the association or proposed association; or
 - (iii) the extent or nature of the dealings which the association or proposed association has, or is likely to have, with the public; or
- (b) for any other prescribed reason.

Rules of incorporated associations.

11. (1) The rules of an incorporated association or proposed incorporated association comply with this section if—

- (a) they make provision, whether by adoption of the model rules or otherwise, for—
 - (i) the several matters specified in Schedule 1; and
 - (ii) such other matters as may be prescribed; and
- (b) they are divided into paragraphs which are designated by letters in alphabetical order or are numbered consecutively.

(2) Subject to this Act, the rules of an incorporated association bind the association and the members of the association to the same extent as if the rules had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the rules.

Names.

12. (1) Except with the consent of the Minister, an association shall not be incorporated under a name that is in the opinion of the Commission undesirable or is a name, or a name of a kind, under which the Minister has for the purposes of this Act directed the Commission not to incorporate an association.

(2) An association shall not be incorporated under a name that has not been reserved in respect of the association under section 13.

(3) An incorporated association shall have at the end of its name the word "Incorporated" or the abbreviation "Inc.".

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(4) The name of an incorporated association shall appear in legible characters on all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or executed by or on behalf of the association and if default is made in complying with this subsection the association shall be guilty of an offence and liable to a penalty not exceeding \$200.

Reservation of name.

13. (1) A person may apply to the Commission in the prescribed form accompanied by the prescribed fee for the reservation of a name set out in the application as—

- (a) the name of a proposed incorporated association; or
- (b) the name to which an incorporated association proposes to change its name.

(2) If the Commission is satisfied that an application made under subsection (1) for the reservation of a name is made in good faith and the name is available for reservation, the Commission shall reserve the name for a period of 3 months from the date of lodgment of the application and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

(3) Where—

- (a) at any time during a period for which a name is reserved under this section (whether or not pursuant to the exercise on a previous occasion or previous occasions of a power under this section) an application is made to the Commission for an extension of that period; and
- (b) the Commission is satisfied that the application is made in good faith,

the Commission may extend that period for a further period of 3 months.

(4) The reservation of a name under this section in respect of a proposed incorporated association or an incorporated association does not of itself entitle the proposed incorporated association or the incorporated association to be incorporated by that name, either originally or on a change of name.

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Change of name.

14. (1) An incorporated association may by special resolution and with the approval of the Commission change its name.

(2) Where an incorporated association has passed a special resolution for the change of its name, the public officer of the association may make application to the Commission for its approval to the change of name.

(3) An application under subsection (2) shall be in the prescribed form and—

- (a) shall be made within the prescribed period after the date of the meeting of the incorporated association at which the special resolution was passed;
- (b) shall be accompanied by such verification of the application as is prescribed; and
- (c) shall be accompanied by the prescribed fee.

(4) Where an application is made under this section, the Commission shall not approve a change of name of an incorporated association unless the proposed new name is a name under which an association may be incorporated in accordance with section 12.

(5) Where an application is made under this section and the Commission approves the change of name of an incorporated association, the Commission shall issue a certificate of incorporation in the prescribed form in respect of the incorporated association under its new name.

(6) Neither a change of name of an incorporated association pursuant to this Act nor the issue of a certificate of incorporation under subsection (5) in respect of the change operates—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the incorporated association or its continuity as a body corporate;
- (c) to affect the date of incorporation of the incorporated association;
- (d) to affect the property, or the rights or obligations, of the incorporated association; or

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- (e) to render defective any legal proceedings by or against the incorporated association,

and any legal proceedings that might have been continued or commenced by or against the association in its former name may be continued or commenced by or against the association in its new name.

PART III.**INCORPORATED ASSOCIATIONS.****Effect of incorporation.**

15. (1) On and from the date specified as the date of incorporation in a certificate of incorporation of an association granted under this Act (other than under section 14 (5)), but subject to this Act and the rules of the incorporated association—

- (a) in the case of a certificate granted under section 10, the persons who were the members of the association immediately before that date or, where the certificate is granted in respect of a proposed association as referred to in section 8 (2), the persons who under that subsection authorised incorporation of the proposed association;
- (b) in the case of a certificate granted under section 47, the persons who were, immediately before that date, the members of the incorporated associations which were parties to the amalgamation to which the certificate relates; or
- (c) in the case of a certificate granted under section 48, the persons who, immediately before that date, were the members of the company or society in respect of which the application under that section was made,

together with any other persons who from time to time become members of the incorporated association (as from the time they become members), are an incorporated association by the name set out in the certificate, subject to any change of name effected by the issue of a new certificate of incorporation under section 14 (5).

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(2) The incorporated association—

- (a) is capable forthwith of performing all the functions of a body corporate;
- (b) is capable of suing and being sued;
- (c) has perpetual succession and shall have a common seal; and
- (d) has power to acquire, hold and dispose of property.

(3) Schedule 2 has effect in relation to an incorporated association.**Rights and liabilities of members and officers.**

16. (1) Subject to this Act and the rules of the incorporated association, a member or officer of an incorporated association shall not by reason only of being such a member or officer be liable to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges and expenses of the winding up of the association.

(2) Subject to this Act, membership of an incorporated association does not confer upon members of the association any right, title or interest, whether legal or equitable, in the property of the association.

Powers of incorporated associations.

17. (1) Subject to this Act, an incorporated association has the rights, the powers and the privileges of a natural person and, without limiting the generality of the foregoing, has power—

- (a) to grant a floating charge on property of the association;
- (b) to procure the association to be registered or recognised as a body corporate in any place outside the State; and
- (c) to do any act that it is authorised to do by any other law.

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(2) The rules of an incorporated association may restrict or prohibit the exercise by the association of any of the powers referred to in subsection (1).

(3) An incorporated association has the capacity to exercise its powers in a place outside the State.

Restrictions on incorporated associations.

18. (1) Subject to this Act, an incorporated association shall not—

- (a) exercise any power that the association is prohibited, by the rules of the association, from exercising;
- (b) exercise any power contrary to a restriction on the exercise of that power contained in the rules of the association; or
- (c) do any act otherwise than in pursuance of the objects of the association.

(2) An officer of an incorporated association shall not be in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention by the association of subsection (1).

(3) An act of an incorporated association, including the making of an agreement by an incorporated association and a transfer of property to or by an incorporated association, is not invalid by reason only that the doing of the act is prohibited by subsection (1) or by the rules of the association.

(4) An act of an officer of an incorporated association is not invalid by reason only that the doing of the act is prohibited by subsection (2).

(5) The fact that—

- (a) the doing of an act by an incorporated association was or would be prohibited by subsection (1) or by the rules of the association; or
- (b) the doing of an act by an officer of an incorporated association was or would be prohibited by subsection (2),

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may be asserted or relied on only in—

- (c) a prosecution of a person for an offence against this Act;
 - (d) proceedings against the association by a member of the association to restrain the doing of any act by the association;
 - (e) proceedings by the association, or by a member of the association, against a present or former officer of the association; or
 - (f) an application by the Commission or by a member of the association to wind up the association.
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PART IV.

AFFAIRS OF INCORPORATED ASSOCIATIONS.

Objects and rules.

19. (1) The objects of an incorporated association are the objects stated in the statement of objects that accompanied the application for its incorporation under this Act, as altered by the incorporated association from time to time in accordance with section 20.

(2) The rules of an incorporated association are—

- (a) where the application for incorporation of the association was accompanied by a copy of rules that complied with section 11—those rules as altered by the incorporated association from time to time in accordance with section 20; or
- (b) except where paragraph (a) applies—the model rules as in force from time to time, as altered from time to time by the incorporated association in accordance with section 20.

(3) Where in relation to any matter the model rules make provision but the rules of an incorporated association do not make provision, the provision of the model rules shall, in relation to that matter, be deemed to be included in the rules of the incorporated association.

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(4) An object or a rule of an incorporated association is of no effect if it is inconsistent with this Act or contrary to law.

Alteration of objects and rules.

20. (1) An incorporated association may, by special resolution, alter its statement of objects or its rules.

(2) The public officer of an incorporated association shall, within 1 month after the passing of a special resolution altering the statement of objects or the rules of an incorporated association, lodge with the Commission notice in the prescribed form, verified as prescribed and accompanied by the prescribed fee, setting out particulars of the alteration.

Penalty: \$100.

(3) An alteration of the statement of objects or the rules of an incorporated association has effect when subsection (2) is complied with in respect of the alteration.

(4) An alteration of the rules of an incorporated association is of no effect unless those rules, as so altered, comply with section 11.

Committee of incorporated association.

21. (1) Unless the rules of an incorporated association otherwise provide, the first members of the committee of the incorporated association are—

- (a) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (1)—the members of the committee of the association immediately before the association was incorporated;
- (b) in the case of an association incorporated pursuant to the application of a person authorised under section 8 (2)—the persons nominated pursuant to that subsection to be the first members of the committee;
- (c) in the case of an incorporated association formed by the amalgamation of incorporated associations pursuant to section 47—the persons specified in the application for that amalgamation under section 46 as nominated to be the first members of the committee of the amalgamated incorporated association; or

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- (d) in the case of a company or society incorporated as an incorporated association pursuant to section 48—the persons who had the management of the society or who were directors of the company, as the case may be, immediately before the date of its incorporation under this Act.

(2) Where a change occurs in the membership of the committee of an incorporated association, the association shall, within 14 days after the change occurs, give notice of the change to the Commission in the prescribed form.

Penalty: \$100.

Public officer.

22. (1) Unless the rules of the incorporated association otherwise provide, the first public officer of an incorporated association is—

- (a) in the case of an incorporated association incorporated pursuant to an application under section 9—the person who made the application; or
- (b) in the case of an incorporated association incorporated pursuant to an application under section 46 or 48—the person nominated in the application as the first public officer.

(2) Unless the rules of the association otherwise provide, the public officer of an incorporated association may hold any other office of the association.

Vacancy in office of public officer.

23. (1) Where at any time there is a vacancy in the office of public officer of an incorporated association, the committee of the association shall, within 14 days after the vacancy arises—

- (a) give notice of the occurrence of the vacancy to the Commission in the prescribed form; and
- (b) appoint a person to fill the vacancy.

(2) Where the committee of an incorporated association fails to comply with subsection (1), each member of the committee is guilty of an offence and liable to a penalty not exceeding \$200.

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(3) A person is not eligible to be appointed as public officer of an incorporated association unless—

- (a) the person has attained the age of 18 years; and
- (b) the person is resident in the State.

(4) The acts of the public officer of an incorporated association are not invalid by reason only of any defect that may be discovered in the appointment or qualification of the public officer.

Casual vacancy in office of public officer.

24. (1) An incorporated association may remove the association's public officer from that office.

(2) The public officer of an incorporated association shall be deemed to have vacated the office if the public officer—

- (a) dies;
- (b) resigns the office;
- (c) is removed from office;
- (d) 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) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (f) ceases to be resident in the State.

Address of public officer.

25. (1) The public officer of an incorporated association shall, within 14 days after becoming public officer, give notice to the Commission in the prescribed form, accompanied by the prescribed fee, of the fact and of his or her full name and address in the State.

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(2) Where a public officer changes his or her address in the State, the public officer shall, within 14 days after the change, give notice of the change in the prescribed form, accompanied by the prescribed fee.

Penalty: \$100.

Annual general meeting.

26. (1) Subject to subsection (2), an incorporated association shall, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the association, convene an annual general meeting of its members.

(2) An incorporated association shall hold its first annual general meeting—

- (a) within the period of 18 months after its incorporation under this Act; and
- (b) within the period of 2 months after the expiration of the first financial year of the association.

(3) The Commission may, upon application being made by an incorporated association, subject to such conditions as the Commission thinks fit—

- (a) extend the period of 6 months referred to in subsection (1) or the period of 18 months referred to in subsection (2); or
- (b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held.

(4) An incorporated association is not in default in holding an annual general meeting under subsection (1) or (2) if, pursuant to an extension or permission under subsection (3), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) or (2), as the case may be, to be held, but is held within the extended period or in the calendar year in which under subsection (3) it is permitted to be held.

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(5) An application by an incorporated association for an extension of a period or for permission under subsection (3) shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required by subsection (1) or (2), as the case may be, to be held.

(6) At the annual general meeting of an incorporated association, the committee of the association shall submit to members of the association a statement which is not misleading and which gives a true and fair view of the following:—

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

(7) Where an incorporated association fails to comply with the provisions of this section, the incorporated association and each member of the committee of the association is guilty of an offence and liable to a penalty not exceeding \$200.

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Lodgment of accounts, etc.

27. (1) The public officer of an incorporated association shall, within 1 month after the date of each annual general meeting of the association, lodge with the Commission in the prescribed form, verified as prescribed, a statement—

- (a) containing the particulars referred to in section 26 (6) and such other particulars as may be prescribed;
- (b) accompanied by a certificate signed by a person who attended the meeting, being a member of the committee of the incorporated association, to the effect that the statement has been submitted to the members at an annual general meeting of the incorporated association;
- (c) accompanied by a copy of the terms of any resolution passed at that meeting concerning that statement; and
- (d) accompanied by the prescribed fee.

Penalty: \$200.

(2) The Commission may, on the application (accompanied by the prescribed fee) of the public officer of an incorporated association, if it thinks fit, extend or further extend the period for lodging a statement under subsection (1).

(3) An application for an extension under subsection (2) may be made, and the power of the Commission under that subsection may be exercised, notwithstanding that the period referred to in subsection (1) has expired.

(4) The Commission may, by notice in writing given to an incorporated association, exempt the public officer of the association either generally or in relation to a specified year from compliance with the provisions of subsection (1) in relation to the association and may, by notice in writing given to an incorporated association, revoke any general exemption given under this subsection to the public officer of the association.

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Particulars of trusts to be notified.

28. An incorporated association shall, within 14 days after becoming a trustee of a trust, lodge with the Commission notice in the prescribed form specifying particulars of the trust, together with a copy of any deed or other instrument creating or embodying the trust.

PART V.**CONTRACTS, DEBTS, ETC., OF INCORPORATED ASSOCIATIONS.****DIVISION 1.—General.****Entering into contracts.**

29. (1) A person acting under the express or implied authority of an incorporated association may enter into, vary or discharge a contract in the name of or on behalf of the association in the same manner as if the contract were entered into, varied or discharged by a natural person.

(2) The entering into, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the incorporated association and other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, under the common seal of an incorporated association is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in the contract or other document or in the matter to which the contract or other document relates.

(4) Nothing in this section prevents an incorporated association from entering into, varying or discharging a contract under its common seal.

(5) Nothing in this section affects the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the entering into, variation or discharge of a contract.

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

Agent.

30. (1) An incorporated association may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent to execute deeds on the association's behalf, and a deed signed by such an agent on behalf of the association and under the agent's seal binds the association and has the same effect as if it were under the common seal of the association.

(2) The authority of an agent empowered pursuant to subsection (1), as between the incorporated association and a person dealing with the agent, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with the agent.

DIVISION 2.—*Pre-incorporation contracts.*

Interpretation.

31. In this Division—

- (a) a reference to a non-existent incorporated association purporting to enter into a contract is a reference to—
 - (i) a person executing a contract in the name of an incorporated association, where no such incorporated association exists; or
 - (ii) a person purporting to enter into a contract as agent or trustee for a proposed incorporated association;
- (b) a reference to a person who purports to execute a contract on behalf of a non-existent incorporated association is a reference to a person who executes a contract or purports to enter into a contract as referred to in paragraph (a) (i) or (ii); and

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- (c) a reference, in relation to the purported entry into a contract by a non-existent incorporated association, to the incorporation of the association is a reference to—
 - (i) where a person has executed a contract in the name of an incorporated association and no such incorporated association exists—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the incorporated association in the name of which the person executed the contract; or
 - (ii) where a person has purported to enter into a contract as agent or trustee for a proposed incorporated association—the incorporation of an association that, having regard to all the circumstances, is reasonably identifiable with the proposed incorporated association.

Ratification of pre-incorporation contracts.**32. (1) Where—**

- (a) a non-existent incorporated association purports to enter into a contract; and
- (b) the association is incorporated within a reasonable time after the contract is purported to be entered into,

the incorporated association may, within a reasonable time after it is incorporated, ratify the contract.

(2) Where an incorporated association ratifies a contract as provided by subsection (1), the association is bound by, and is entitled to the benefit of, that contract as if the association had been incorporated before the contract was entered into and had been party to the contract.

(3) Where—

- (a) a person purports to enter into a contract as agent or trustee for a proposed incorporated association; and
- (b) the association is incorporated within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the association is incorporated,

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then, notwithstanding any rule of law or equity, the agent or trustee does not have any right of indemnity against the incorporated association in respect of the contract.

Liability of person executing pre-incorporation contract.

33. (1) Where a non-existent incorporated association purports to enter into a contract and—

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

the other party or each of the other parties to the contract may, subject to subsections (3) and (6), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent incorporated association an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the incorporated association if—

- (c) where the association has not been incorporated as referred to in paragraph (a)—the association had been incorporated and had ratified the contract as provided by section 32; or
- (d) where the association has been incorporated as referred to in paragraph (b)—the incorporated association had ratified the contract as provided by section 32,

and the contract had been discharged by reason of a breach of the contract constituted by the refusal or failure of the incorporated association to perform any obligation under the contract.

(2) Where proceedings are brought to recover damages under subsection (1) in relation to a contract purported to be entered into by a non-existent incorporated association and the association has been incorporated, the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following orders:—

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

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

(3) Where, in proceedings to recover damages under subsection (1) in relation to a contract purported to be entered into by a non-existent incorporated association the court in which the proceedings are brought makes an order under subsection (2) (a), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

(4) Where—

- (a) a non-existent incorporated association purports to enter into a contract;
- (b) the association is incorporated and ratifies the contract as provided by section 32;
- (c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the incorporated association to perform all or any of its obligations under the contract; and
- (d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the incorporated association for damages for breach of the contract,

the court in which the proceedings are brought may, subject to subsection (6), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the incorporated association to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the incorporated association has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

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

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(6) Where a person has, as provided by subsection (5), consented to the exemption of another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent incorporated association—

- (a) notwithstanding subsection (1), that first-mentioned person is not entitled to recover damages from that other person in relation to that contract; and
- (b) a court shall not, in proceedings under subsection (4), order that other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the incorporated association has been, or may be, found liable to pay to that first-mentioned person.

Contract in substitution for pre-incorporation contract.**34. If—**

- (a) a non-existent incorporated association purports to enter into a contract;
- (b) the association is incorporated; and
- (c) the incorporated association and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract,

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

Effect of Division on other rights and liabilities.

35. Any rights or liabilities of a person under this Division (including rights or liabilities under an order made by a court under this Division) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this Division, in relation to the contract.

Manner of ratification.

36. For the purposes of this Division, a contract may be ratified by an incorporated association in the same manner as a contract may be entered into by an incorporated association under section 29 and the provisions of section 29 have effect as if—

- (a) a reference in that section to the entering into of a contract included a reference to the ratification of a contract; and
- (b) the reference in subsection (3) of that section to a contract executed, or purporting to have been executed, under the common seal of an incorporated association included a reference to a contract ratified, or purporting to have been ratified, under the common seal of an incorporated association.

DIVISION 3.—Offences.**Interpretation.**

37. (1) This Division applies to an incorporated association—

- (a) that has been wound up or is in the course of being wound up;
- (b) the incorporation of which has been cancelled by the Commission; or
- (c) that is unable to pay its debts.

(2) In this Division, “appropriate officer” means—

- (a) in relation to an incorporated association that has been or is being wound up—the liquidator; or
- (b) in relation to an incorporated association the incorporation of which has been cancelled by the Commission or which is unable to pay its debts—the Commission.

(3) For the purposes of this section, an incorporated association shall be deemed to be unable to pay its debts if, but 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.

Offences relating to incurring of debts or fraudulent conduct.

38. (1) If an incorporated association incurs a debt and—

(a) immediately before the time the debt is incurred—

- (i) there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they become due; or
- (ii) there are reasonable grounds to expect that, if the association incurs the debt, it will not be able to pay all its debts as and when they become due; and

(b) the association is, at the time the debt is incurred, or becomes at a later time, an association to which this Division applies,

any person who was a member of the committee of the association at the time the debt was incurred is guilty of an offence and liable to a penalty not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or to both such penalty and imprisonment, and the association and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

(2) 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
- (b) that, at the time the debt was incurred, the defendant did not have reasonable cause to expect—
 - (i) that the association would not be able to pay all its debts as and when they became due; or
 - (ii) that, if the association incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of the debt.

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(4) Where subsection (1) renders a person or persons liable to pay a debt incurred by an incorporated 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.

(5) If—

(a) an incorporated association does any act (including the entering into of a contract or transaction) with intent to defraud creditors of the association or of any other person or for any other fraudulent purpose; and

(b) the association is at the time it does the act, or becomes at a later time, 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 and liable to a penalty not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or to both such penalty and imprisonment.

Certificate evidence.

39. (1) A certificate issued by the proper officer of a court stating that a person specified in the certificate—

(a) was convicted of an offence under section 38 (1) in relation to a debt specified in the certificate incurred by an incorporated association so specified; or

(b) was convicted of an offence under section 38 (5) in relation to an incorporated association specified in the certificate,

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

(2) A document purporting to be a certificate issued under subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

Powers of Court.

40. (1) Where a person has been convicted of an offence under section 38 (1) in respect of the incurring of a debt, the Court, on the application of the Commission or of the person to whom the debt is payable, may, if it thinks

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it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.

(2) Where a person has been convicted of an offence under section 38 (5), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the association of the amount required to satisfy so much of the debts of the association as the Court thinks proper.

(3) For the purposes of subsection (2), in relation to an association in respect of which a conviction referred to in that subsection relates—

(a) the appropriate officer; and

(b) a member or creditor of the association authorised by the Commission to make an application under that subsection,

are prescribed persons.

(4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(5) In particular, the Court may order that the liability of the person under the declaration shall be a charge—

(a) on a debt or obligation due from the association to the person; or

(b) on a right or interest under a charge on any property of the association held by or vested in the person liable or a person on behalf of the person liable, or a person claiming as assignee from or through the person liable or a person acting on behalf of the person liable.

(6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).

(7) For the purpose of subsection (5), “assignee” includes a person to whom or in whose favour, by the direction of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created,

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but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

(8) On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence personally or call witnesses.

Certain rights not affected.

41. Nothing in section 38 (1) or 40 (1) or (2) affects any rights of a person to indemnity, subrogation or contribution.

PART VI.

INSURANCE.

Interpretation.

42. In this Part, "approved insurer" means a person, or a person belonging to a class of persons, approved under section 156 of the Strata Titles Act, 1973, as an approved insurer for the purposes of Division 5 of Part IV of that Act.

Returns by approved insurers.

43. An approved insurer shall, within 14 days after any insurance effected or renewed with the insurer by an incorporated association pursuant to section 44 lapses or is cancelled, notify the Commission giving details of the lapsing or cancellation.

Penalty: \$100.

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Insurance.

44. (1) An incorporated association shall effect and maintain insurance with an approved insurer against liability of the incorporated association arising out of—

- (a) an occurrence causing death or bodily injury to a person or damage to property; and
- (b) such other occurrences as may be prescribed.

(2) Subsection (1) does not apply to or in respect of an incorporated association if the members of the association are each liable to contribute in a winding up of the association in respect of a liability referred to in subsection (1) (a) or (b) to an amount which is not less than the amount of the cover required in respect of the liability under subsection (3).

(3) Insurance effected pursuant to subsection (1) shall be for a cover—

- (a) in respect of an occurrence referred to in subsection (1) (a)—of not less than \$2,000,000 or, where some other amount is prescribed, not less than that other amount; and
- (b) in respect of an occurrence prescribed for the purposes of subsection (1) (b)—of not less than the amount prescribed in respect of that occurrence.

Liability of members of committee.

45. (1) Where an incorporated association which is required pursuant to section 44 to effect and maintain insurance in respect of a liability—

- (a) incurs the liability; and

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- (b) is not, at the time the liability is incurred, insured with an approved insurer against the liability for the amount required by section 44 (3) in respect of the liability,

a person who was a member of the committee of the association at the time the liability was incurred is liable, subject to subsection (2), to contribute in a winding up of the association to the extent of the liability.

(2) The liability under subsection (1) of a member of the committee of an incorporated association to contribute in a winding up of the association in respect of a liability of the association—

- (a) shall be reduced by the amount of any insurance effected by the association with an approved insurer in respect of the liability, being insurance in force at the time the liability is incurred;
- (b) is a liability only in such amount as is sufficient to enable the payment of the debts and liabilities of the association and the costs, charges and expenses of the winding up; and
- (c) is in addition to any other liability the member may have to contribute in the winding up.

(3) Where 2 or more persons are liable under subsection (1) to contribute in respect of the same liability of an incorporated association, their liability to contribute is joint and several.

(4) It is a defence to a claim for contribution from a person pursuant to this section in respect of a liability of an incorporated association that—

- (a) at the time the liability was incurred the person had taken all reasonable steps to ensure that the association had effected insurance with an approved insurer against the liability for the amount required by section 44 (3) in respect of the liability; and
 - (b) either—
 - (i) at the time the liability was incurred the person was unaware that the association was not so insured; or
 - (ii) the fact that the incorporated association was not so insured having come to the person's knowledge before that time, the person gave notice of the fact to the Commission promptly after the fact came to the person's knowledge.
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PART VII.**AMALGAMATION OF ASSOCIATIONS AND TRANSFERS OF INCORPORATION.****Application for amalgamation.**

46. (1) Any 2 or more incorporated associations may apply to be amalgamated as an incorporated association under this Act.

(2) An application shall not be made under subsection (1) unless the terms of amalgamation, the statement of objects and the rules of the proposed amalgamated incorporated association are approved by a special resolution of each of the incorporated associations.

(3) An application under subsection (1) may be made by the public officers of the incorporated associations in the prescribed form and shall—

- (a) be accompanied by a copy of the statement of objects of the proposed amalgamated incorporated association;
- (b) be accompanied by a copy of the rules of the proposed amalgamated incorporated association;
- (c) be accompanied by a notice in the prescribed form of the passing of the special resolutions referred to in subsection (2);
- (d) set out—
 - (i) the name of the incorporated association proposed to be formed by the amalgamation, being a name under which an association may be incorporated in accordance with section 12;
 - (ii) the name and address in the State of a person resident in the State who has been nominated as the first public officer of the proposed amalgamated incorporated association, being a person who has attained the age of 18 years;
 - (iii) the names of the persons who have been nominated as the first members of the committee of the proposed amalgamated incorporated association;

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- (iv) the place where the principal place of administration of the amalgamated incorporated association is proposed to be situated; and
 - (v) such other particulars as may be prescribed; and
- (e) be accompanied by the prescribed fee.

Certificate of incorporation of amalgamated associations.

47. If the Commission is satisfied that each of the incorporated associations making an application under section 46 has complied with the provisions of this Act and of the regulations and that the statement of objects and the rules of the incorporated association to be formed by the amalgamation are not contrary to this Act or the regulations, the Commission shall incorporate under this Act the association formed by the amalgamation by granting in respect of it a certificate of incorporation in the prescribed form.

Application to bring company or co-operative society under Act.

48. (1) A company limited by guarantee within the meaning of the Companies (New South Wales) Code or a society registered under the Co-operation Act, 1923 (not being a society the capital of which is divided into shares or stock), may apply for incorporation under this Act where—

- (a) the company or society has—
 - (i) in the case of a company, passed a special resolution approving the making of the application; or
 - (ii) in the case of a society, resolved in accordance with its rules that the application be made;
- (b) the objects of the company or society are objects for which an incorporated association may lawfully be carried on; and
- (c) the company or society has rules that comply with this Act or, upon incorporation under this Act, that will so comply, whether by reason of the adoption of new rules or the model rules or the alteration of its articles of association or former rules.

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(2) A company or society that intends to make an application under subsection (1) may, notwithstanding any other law to the contrary, make an alteration of its articles of association or rules, or adopt new rules or the model rules, to have effect from the date on which a certificate of incorporation is granted to it under this Act as if it were an incorporated association and the articles or rules were the rules of an incorporated association.

(3) An application by a company or society under subsection (1) shall be in the prescribed form and—

(a) shall state—

- (i) its proposed name upon incorporation, being a name under which an association may be incorporated in accordance with section 12;
- (ii) the place where the principal place of administration of the incorporated association is proposed to be situated; and
- (iii) the name and address in the State of a member who is resident in the State and who has been nominated as the first public officer of the proposed incorporated association, being a person who has attained the age of 18 years;

(b) shall be accompanied by—

- (i) a statement of objects as proposed to be in force upon its incorporation under this Act;
- (ii) a copy of its articles of association or rules as proposed to be in force upon its incorporation under this Act or a statement that its rules will be the model rules;
- (iii) a notice in the prescribed form specifying particulars of any trusts relating to the company or society, together with a copy of any deed or other instrument creating or embodying the trusts; and
- (iv) the name, address and occupation of each of its directors;

(c) shall contain such other particulars as may be prescribed; and

(d) shall be accompanied by the prescribed fee.

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(4) Where an application is made under this section, the Commission, if satisfied that there is no reasonable cause why the company or society should not be incorporated under this Act and that the company or society is not carried on for the object of trading or securing pecuniary gain for its members, shall—

- (a) incorporate the company or society under this Act by granting in respect of it a certificate of incorporation in the prescribed form;
- (b) in the case of a society, give notice of the incorporation of the society under this Act to the Registrar of Co-operative Societies; and
- (c) cause a notice of the incorporation of the company or society under this Act to be published in the Gazette.

(5) Section 4 applies for the purposes of the interpretation of the reference in subsection (4) to trading or securing pecuniary gain as if a reference in section 4 to an association were a reference to a company or society.

Effect of transfer of incorporation.

49. (1) Subject to this section, upon the incorporation of a company or society as an incorporated association pursuant to section 48—

- (a) the company or society shall be dissolved and none of the provisions of the Companies (New South Wales) Code or the Co-operation Act, 1923, shall, after its incorporation under that section, apply to the company or society; and
- (b) the Commission (in the case of a company) or the Registrar of Co-operative Societies (in the case of a society) shall cancel the registration of the company or society.

(2) The incorporation of a company or society as an incorporated association pursuant to section 48 does not affect the identity of the company or society which shall be deemed to be the same body before and after the incorporation and no act, matter or thing shall be affected or abated by the incorporation and, in particular, any claim by or against the company or society subsisting immediately before its incorporation pursuant to that section may be continued by or against the incorporated association in the name of the company or society or commenced by or against the incorporated association in the name of the incorporated association.

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(3) Without limiting the generality of subsection (2), nothing in subsection (1)—

- (a) affects any right, privilege, obligation or liability acquired or incurred under the Code or Act referred to in subsection (1);
- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against that Code or Act; or
- (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

PART VIII.

WINDING UP AND CANCELLATION OF INCORPORATION.

Voluntary winding up.

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

(2) Subject to this Act, the provisions of the Companies (New South Wales) Code relating to the voluntary winding up of companies apply, so far as they are applicable and with such modifications as may be prescribed, to and in relation to the voluntary winding up of an incorporated association.

Winding up by the Court.

51. (1) The Court may order the winding up of an incorporated association if—

- (a) the incorporated association has by special resolution resolved that it be wound up by the Court;

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- (b) the incorporated association does not commence its operations within 1 year after the date of its incorporation under this Act or suspends its operations for a whole year;
- (c) the incorporated association is unable to pay its debts;
- (d) the incorporated association has traded or secured pecuniary gain for its members;
- (e) the incorporated association has, as trustee, traded or secured pecuniary gain for members of the incorporated association;
- (f) the incorporated association has engaged in activities inconsistent with its statement of objects;
- (g) the committee of the incorporated association has acted in affairs of the association in the interests of the committee or of members of the committee rather than in accordance with the statement of objects of the association, or in any other manner whatever that appears to the Court to be unfair or unjust to members of the association;
- (h) the Minister has by notice under section 56 directed the incorporated association to become registered as a company under the Companies (New South Wales) Code or to become registered as a society under the Co-operation Act, 1923, and the association has not become so registered within the time fixed by, and in accordance with any conditions specified in, the notice;
- (i) the incorporated association would, if not incorporated under this Act, not be eligible to be so incorporated; or
- (j) the Court is of the opinion that it is just and equitable that the incorporated association be wound up.

(2) An application to the Court for the winding up of an incorporated association may be made by the incorporated association or by a member or creditor of the incorporated association or by the Commission.

(3) Subject to this Act, the provisions of the Companies (New South Wales) Code relating to the winding up of bodies other than companies apply, so far as they are applicable and with such modifications as may be prescribed, to and in relation to the winding up by the Court of an incorporated association.

*Associations Incorporation 1984***Application of Companies (New South Wales) Code.**

52. For the purposes of the application of the Companies (New South Wales) Code under sections 50 and 51, a reference in that Code—

- (a) to a company or body shall be read and construed as a reference to an incorporated association;
- (b) to the directors of a company shall be read and construed as a reference to the members of the committee of an incorporated association;
- (c) to the secretary of a company shall be read and construed as a reference to the public officer of an incorporated association; and
- (d) to the principal place of business of a company shall be read and construed as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commission.

Distribution of surplus property.

53. (1) In this section, a reference to the surplus property of an incorporated 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 incorporated association, the surplus property of the association shall, subject to any trust affecting that property or any part of it, vest in an association (whether or not incorporated under this Act) which—

- (a) has objects substantially similar to those of the incorporated association being wound up;
- (b) is not carried on for the object of trading or securing pecuniary gain for its members;
- (c) has provision in its rules requiring the property of the association to be distributed, in a dissolution of the association, to another association which—
 - (i) has objects substantially similar to those of the dissolved association; and

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- (ii) is not carried on for the object of trading or securing pecuniary gain for its members; and
- (d) is nominated for the purpose—
 - (i) by the rules of the incorporated association being wound up;
 - (ii) if not nominated by the rules—by a special resolution of the incorporated association being wound up; or
 - (iii) if not nominated by the rules or a special resolution—by the Commission.

(3) A person aggrieved by the operation of this section in relation to the surplus property of an incorporated association may apply to the Court which may make such orders as to the disposal of the surplus property as to the Court appears just.

Cancellation of incorporation.

54. (1) Where the Commission has reasonable cause to believe that an incorporated association—

- (a) is not in operation;
- (b) is engaged in trading or securing pecuniary gain for its members;
- (c) is, as trustee, engaged in trading or securing pecuniary gain for members of the association;
- (d) was incorporated under this Act by reason of fraud or mistake; or
- (e) has not during the preceding period of 3 years convened an annual general meeting in accordance with section 26,

the Commission may send by certified post addressed to the association at the address of the public officer of the association last notified under this Act to the Commission or (where there is a vacancy in the office of public officer) at the address which appears from the Commission's records to be the address of the association, and publish in a newspaper circulating generally in the State, a notice stating the ground or grounds for the proposed cancellation of the incorporation of the association and stating that, if a reply showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later, the incorporation of the association will be cancelled by notice published in the Gazette.

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(2) Unless—

- (a) the Commission is satisfied that within 2 months after the date of sending or publishing a notice under subsection (1), whichever is the later, cause has been shown to the effect that the incorporated association—
 - (i) is in operation;
 - (ii) is not and has not been engaged in trading or securing pecuniary gain for its members;
 - (iii) is not and has not been, as trustee, engaged in trading or securing pecuniary gain for members of the incorporated association;
 - (iv) was not incorporated by reason of fraud or mistake; or
 - (v) has during the preceding period of 3 years convened an annual general meeting in accordance with section 26, as the case may require; or
- (b) the Court on the application of an aggrieved person otherwise orders,

the Commission may, by notice published in the *Gazette*, cancel the incorporation of the association.

(3) Where the Commission cancels the incorporation of an incorporated association under subsection (2), the Commission shall send to the public officer of the association at the address of the public officer last notified under this Act to the Commission or (where there is a vacancy in the office of public officer) to a member of the committee of the association at the address which appears from the Commission's records to be the address of the association a notice in the prescribed form of the cancellation.

(4) If the Commission is satisfied that the incorporation of an incorporated association was cancelled as the result of an error on the part of the Commission, the Commission may reinstate the incorporation of the association, and thereupon the association shall be deemed to have continued in existence as if its incorporation had not been cancelled.

(5) Notwithstanding the cancellation of the incorporation of an association, any liability of the public officer and of each officer and member of the incorporated association continues and may be enforced as if the incorporation of the association had not been cancelled.

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(6) Where, before the Commission cancels the incorporation of an association under subsection (2), the incorporated association has commenced to be wound up under section 50 or 51—

- (a) the Commission may cancel the incorporation notwithstanding the commencement of the winding up; and
- (b) the cancellation of the incorporation does not affect the winding up.

Vesting of property after cancellation of incorporation.

55. (1) Where the incorporation of an incorporated association (not being an incorporated association the winding up of which commenced before the cancellation) is cancelled under section 54—

- (a) the property of the association vests in the Commission; and
- (b) subject to subsection (3), the Commission may give such directions as it deems just for or with respect to the payment of the debts and liabilities of the association, the distribution of its property and the winding up of its affairs and—
 - (i) 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
 - (ii) may do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of the Commission's powers under this section.

(2) The Commission is entitled to be paid out of the property of an incorporated association the reasonable costs incurred by the Commission in the exercise of its powers under this section in relation to the association.

(3) Section 53 applies to and in respect of the vesting under this section of property of an incorporated association remaining after satisfaction of the debts and liabilities of the association and the payment of any amount under subsection (2) in the same way as that section applies to and in respect of the vesting of that property in a winding up of an incorporated association.

Registration under the Companies (New South Wales) Code or the Co-operation Act, 1923.

56. (1) An incorporated association may, with the approval of the Minister and subject to such conditions as may be specified in the approval, become—

- (a) registered as a company under the Companies (New South Wales) Code; or
- (b) registered as a society within the meaning of the Co-operation Act, 1923,

in the manner prescribed.

(2) Where the Minister is satisfied that the continued incorporation of an association under this Act would be inappropriate or inconvenient—

- (a) by reason of the Minister's assessment of—
 - (i) the scale or nature of the activities of the incorporated association;
 - (ii) the value or nature of the property of the incorporated association; or
 - (iii) the extent or nature of the dealings which the incorporated association has with the public; or

(b) for any other reason which to the Minister appears sufficient, the Minister may, by notice to the incorporated association, direct the association to become—

- (c) registered as a company under the Companies (New South Wales) Code; or
- (d) registered as a society within the meaning of the Co-operation Act, 1923,

within the period (being not less than 3 months), and subject to any conditions, specified in the notice.

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Effect of transfer of incorporation.

57. (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to—

- (a) the registration of the association as a company under the Companies (New South Wales) Code; or
- (b) the registration of the association as a society within the meaning of the Co-operation Act, 1923.

(2) Subject to this section, upon a transfer of incorporation by an incorporated association—

- (a) the incorporated association shall be dissolved and none of the provisions of this Act shall, after the transfer of incorporation, apply to the association; and
- (b) the Commission shall cancel the incorporation of the association under this Act.

(3) The transfer of incorporation by an incorporated association does not affect the identity of the association which shall be deemed to be the same body before and after the transfer of incorporation and no act, matter or thing shall be affected or abated by the transfer of incorporation and, in particular, any claim by or against the association subsisting immediately before the transfer of incorporation may be continued by or against the company or society formed by the transfer of incorporation in the name of the incorporated association or commenced by or against the company or society so formed in the name of the company or society.

(4) Without limiting the generality of subsection (3), nothing in subsection (2)—

- (a) affects any right, privilege, obligation or liability acquired or incurred under this Act;
- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or

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

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

Appeal.

58. A person aggrieved by any act, omission or decision of a liquidator or provisional liquidator of an incorporated association may appeal to the Court in respect of the act, omission or decision, and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as the Court thinks fit.

PART IX.**MISCELLANEOUS.****Register.**

59. (1) The Commission shall keep a register for the purposes of this Act in such form and containing such particulars as the Commission thinks fit.

(2) The Commission shall keep a copy of a certificate of incorporation granted under section 10, 14, 47 or 48 and a reference in this section to a document lodged with the Commission includes a reference to such a copy.

(3) A person may, upon payment of the prescribed fee—

- (a) inspect any document lodged with the Commission, not being a document that has been destroyed or otherwise disposed of; or

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- (b) require a copy of, or extract from, any document that the person is entitled to inspect pursuant to paragraph (a) to be given, or given and certified, by the Commission.

(4) Where a reproduction or transparency of a document lodged with the Commission has been incorporated in the register kept under subsection (1), a reference in subsection (3) (a) to inspection of a document so lodged shall be read and construed as a reference to inspection of the reproduction or transparency.

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

(6) The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain it, destroy or dispose of—

- (a) any document lodged or registered in respect of an incorporated association that has been dissolved or has ceased to be registered for not less than 10 years; or
- (b) any document a transparency of which has been incorporated in the register kept under subsection (1).

Constructive notice.

60. A person shall not be taken to have knowledge of—

- (a) the statement of objects or the rules of an incorporated association or any of the contents of the statement of objects or the rules of an incorporated association;
- (b) a document or the contents of a document; or
- (c) any particulars,

by reason only—

- (d) that the statement of objects, the rules, the document or the particulars has or have been lodged with the Commission; or
- (e) that the statement of objects, the rules, the document or the particulars is or are referred to in any other document that has been lodged with the Commission.

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Compliance with rules and authority of public officer.

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

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

unless the person—

- (c) has actual knowledge of that fact; or
- (d) ought to have knowledge of that fact by reason of the person's connection or relationship with the association.

Evidentiary provision.

62. (1) A certificate of the Commission to the effect—

- (a) that, on a date specified in the certificate, a specified association was, or was not, an incorporated association;
- (b) that, on a date specified in the certificate, no incorporated association was incorporated under this Act by a name so specified;
- (c) that a requirement of this Act specified in the certificate—
 - (i) had or had not been complied with at a date or within a period so specified; or
 - (ii) had been complied with at a date so specified but not before that date;
- (d) that, on a date specified in the certificate, a person so specified was, or was not, the public officer of an incorporated association so specified, as appearing from the Commission's records;
- (e) that, on a date specified in the certificate, the address of the public officer of a specified incorporated association last notified under this Act to the Commission was the address specified in the certificate; or

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- (f) that a copy of the statement of objects or the rules of, or trusts relating to, an incorporated association specified in the certificate is a true copy of that statement or those rules or trusts as at a date so specified,

is prima facie evidence of the matter or matters so certified.

(2) A certificate of incorporation of an association granted under section 10, 14, 47 or 48 is conclusive evidence of the incorporation of the association under this Act on the date specified in the certificate as the date of incorporation.

Service of documents.

63. (1) A document may be served on an incorporated association—

- (a) by addressing it to the association and leaving it at, or by sending it by post to, the address of the public officer of the association last notified under this Act to the Commission whether or not, at the time the document is so left or sent, there is a vacancy in the office of public officer of the association;
- (b) by delivering a copy of the document personally to each of 2 members of the committee of the association addressed to the association; or
- (c) in such manner as the Commission may in the special circumstances of the case direct.

(2) The public officer or a member of the committee of an incorporated association who receives a document addressed to the association shall, as soon as practicable after receiving the document, bring it to the attention of the committee of the association.

(3) Where a person who is not the public officer or a member of the committee of an incorporated association—

- (a) receives a document addressed to the association; and
- (b) was within the period of 12 months before receiving the document the public officer or a member of the committee of the association,

the person shall, as soon as practicable after receiving the document, bring it to the attention of the committee of the association.

Penalty: \$100.

Payment of fees on lodgment of documents.

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

Powers of Commission in relation to documents.

65. (1) The Commission may refuse to register or receive a document submitted to it for lodgment under this Act where the Commission is of the opinion that the document—

- (a) contains matter contrary to law;
- (b) contains matter that is false or misleading in a material particular;
- (c) by reason of an omission or misdescription has not been duly completed;
- (d) does not comply with the requirements of this Act or the regulations; or
- (e) contains an error, alteration or erasure.

(2) Where the Commission refuses under subsection (1) to register or receive a document, the Commission may request that—

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

Trading, etc., by incorporated association.

66. (1) An incorporated association shall not—

- (a) trade;
- (b) secure pecuniary gain for its members; or
- (c) as trustee, trade or secure pecuniary gain for members of the incorporated association.

Penalty: \$500.

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(2) Where an incorporated association contravenes subsection (1), any members and officers of the association who by reason of the operation of section 70 are deemed to have contravened that subsection also are jointly and severally liable to any creditor of the association for all debts and liabilities incurred by the association in or in consequence of the trading or the securing of pecuniary gain for members of the association.

(3) The contravention by an incorporated association of subsection (1) does not affect the validity of any transaction.

Production and inspection of records.

67. (1) In this section, "records" includes—

- (a) any document, register and other record of information; and
- (b) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up,

however compiled, recorded or stored.

(2) The powers of the Commission under subsection (3), or the powers of an authorised person under subsection (4), shall not be exercised except in circumstances that relate to a matter that constitutes or may constitute—

- (a) a contravention of, or failure to comply with, a provision of this Act or the regulations; or
- (b) an offence relating to an incorporated association that involves fraud or dishonesty or concerns the management of affairs of the association.

(3) The Commission may at any time, by notice in writing, give a direction to—

- (a) an incorporated association; or

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- (b) a person who is or has been an officer of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, an incorporated association (including an incorporated association that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the association as are so specified.

(4) A person authorised by the Commission for the purpose may, at any reasonable time, enter any premises or place in which the Commission or authorised person has reasonable cause to believe the association is acting in furtherance of its purposes or in which any records relating to the affairs of the association are kept, and may—

- (a) require any person at that place or on those premises to furnish such information as the authorised person may reasonably require;
- (b) search that place or those premises; and
- (c) inspect, take and retain possession of, and take copies of, any records found in or upon that place or those premises relating to the affairs of the association.

(5) A person shall not assault, hinder, obstruct or interfere with an authorised person in the exercise of the powers conferred by subsection (4) on the authorised person.

Penalty: \$500.

(6) A person shall not—

- (a) when required under subsection (3) to produce a record—
 - (i) refuse or neglect to produce the record; or
 - (ii) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record; or
- (b) when required under subsection (4) to furnish information—
 - (i) refuse or neglect to furnish the information; or

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- (ii) furnish information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when furnishing the information.

Penalty: \$500.

(7) It is a defence to any prosecution for refusal or neglect to produce a record required to be produced under subsection (3) if the person charged proves that the record has been destroyed or disposed of in accordance with the provisions of this Act or the regulations.

(8) Any information furnished pursuant to a requirement made under subsection (4) (a) shall not, if at the time of furnishing the information the person objected to doing so on the ground that it might tend to incriminate the person, be admissible in evidence in any prosecution against that person for any offence or in any proceedings relating to any offence, other than an offence under subsection (5) or (6).

False or misleading statements.

68. Where, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission or in a declaration made under this Act or in a document submitted to a meeting of members of an incorporated association, a person—

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

the person is guilty of an offence and liable to a penalty not exceeding \$500.

Offence of using certain names.

69. Where a person or an association or other group of persons, not being a body corporate or an association incorporated under this or any other Act or under an Act or law in force in any other place, uses a name or title of which the word "Incorporated" or any abbreviation or imitation thereof forms part, or uses a name or title of which the abbreviation "Inc." or any

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imitation thereof forms part, the person, association or group and each member of the association or group is guilty of an offence and liable to a penalty not exceeding \$200.

Offences by officers, etc.

70. (1) Where an incorporated association contravenes, whether by act or omission, any provision of this Act or the regulations, the public officer of the association and each member of the committee of the association shall be deemed to have contravened the same provision unless that officer or member satisfies the court that—

- (a) the association contravened the provision without his or her knowledge;
- (b) he or she was not in a position to influence the conduct of the association in relation to its contravention of the provision; or
- (c) he or she, being in such a position, used all due diligence to prevent the contravention of the provision by the association.

(2) An officer or a member of an incorporated association who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly knowingly concerned in or party to the commission by the association of an offence against this Act or the regulations shall be deemed to have committed that offence and is punishable accordingly.

(3) A person may be proceeded against and convicted under a provision pursuant to subsection (1) or (2) whether or not the incorporated association has been proceeded against or convicted under that provision.

(4) Nothing in this section prejudices or affects any liability imposed by a provision of this Act or the regulations on an incorporated association by which an offence against that provision is actually committed.

Proceedings for offences.

71. Proceedings for an offence against a provision of this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Appeals from decisions of Commission.

72. A person aggrieved by the refusal of the Commission to incorporate an association or to register or receive a document, or by any other act, omission or decision of the Commission (other than an act or decision of the Commission that is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive or final), may, within such period as may be prescribed by rules of the Court, appeal to the Court, which may confirm, reverse or modify the refusal, act or decision, or remedy the omission, as the case may be, and make such orders and give such directions in the matter as the Court thinks fit.

Regulations.

73. (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—

- (a) prescribing rules as model rules, being rules that make provision for the several matters that are specified in Schedule 1, whether or not they make provision for other matters;
- (b) the refunding of the whole or any part of a fee which has been paid to the Commission in respect of an application under this Act which is withdrawn or refused by the Commission; or
- (c) prescribing the books, documents and other records to be kept by incorporated associations.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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(3) A regulation may impose a penalty not exceeding \$200 for any offence against the regulation.

SCHEDULE 1.

(Secs. 11, 73.)

MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION
AND IN MODEL RULES.**Membership qualifications.**

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

Register of members.

2. The register of members of the incorporated association.

Fees, subscriptions, etc.

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

Members' liabilities.

4. The liability (if any) of members of the incorporated association 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.

Disciplining of members.

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

Committee.

6. The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as "the committee") and—

- (a) the election or appointment of members of the committee;
- (b) the terms of office of members of the committee;

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SCHEDULE 1—*continued*.MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION AND IN
MODEL RULES—*continued*.

- (c) the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;
- (d) the filling of casual vacancies occurring on the committee; and
- (e) the quorum and procedure at meetings of the committee.

General meetings—calling of.

7. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.

General meetings—procedure.

8. The quorum and procedure at general meetings of members of the incorporated association and whether members are entitled to vote by proxy at general meetings.

General meetings—notices.

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

Funds—source.

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

Funds—management.

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

Alteration of objects.

12. The manner of altering the statement of objects of the incorporated association.

Rules.

13. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

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SCHEDULE 1—continued.**MATTERS TO BE PROVIDED FOR IN RULES OF AN INCORPORATED ASSOCIATION AND IN
MODEL RULES—continued.****Common seal.**

14. Provisions for the custody and use of the common seal of the incorporated association.

Custody of books, etc.

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

Inspection of books, etc.

16. The inspection by members of the incorporated association of books and documents of the incorporated association.

SCHEDULE 2.

(Sec. 15.)

PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC., OF INCORPORATED ASSOCIATIONS.**Interpretation.**

1. In this Schedule, "former association", in relation to an incorporated association, means—

- (a) the association or other body which was incorporated under this Act to form the incorporated association; or
- (b) in the case of an amalgamated association incorporated under section 47—
an incorporated association which was a party to the amalgamation.

Vesting of property.

2. (1) Upon the incorporation of an association or other body under this Act, any property that, immediately before that incorporation—

- (a) was vested in a former association of the incorporated association; or

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.*

- (b) was held by a person, in trust or otherwise, for or on behalf of a former association of the incorporated association or for its objects,

shall, subject to this Act and to the extent that the property was so vested or held, vest in the incorporated association.

- (2) Property which vests in an incorporated association pursuant to subclause (1)—

- (a) becomes vested subject to any mortgage, charge, encumbrance, lien, lease, covenant, contract or liability (whether or not contingent) affecting the property immediately before incorporation of the association under this Act; and
- (b) shall not be dealt with contrary to the provisions of any trust affecting the property immediately before incorporation of the association under this Act, being provisions as to the purposes for which the property may or is required to be applied.

Construction of certain instruments.

3. (1) Where under an instrument having effect after the incorporation of an association under this Act (other than a will made by a testator who died before that incorporation), any property would or may, had that incorporation not occurred, be transferable to or recoverable by a former association of the incorporated association or any person for or on behalf of such a former association or for its objects, the instrument shall, on and after the date of that incorporation, be read and construed and take effect as if a reference therein to the former association or, as the case may be, to that person were a reference to the incorporated association.

- (2) In subclause (1), "instrument" means—

- (a) a will;
- (b) an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special; or
- (c) any other instrument whereby a person alienates property or confers a power of appointment or other power or authority to dispose of property.

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.***Claims, liabilities, etc.**

4. (1) After the incorporation of an association or other body under this Act—
- (a) all debts, money and claims, liquidated and unliquidated, that, immediately before that incorporation were due or payable to or recoverable by a former association of the incorporated association or by members of such a former association as members, shall be debts due and money payable to and claims recoverable by the incorporated association;
 - (b) all suits, actions and proceedings pending immediately before that incorporation at the suit of a former association of the incorporated association or members of such a former association as members shall be respectively suits, actions and proceedings pending at the suit of the incorporated association and all suits, actions and proceedings so pending at the suit of any person against a former association of the incorporated association or members of such a former association as members shall be respectively suits, actions and proceedings pending at the suit of that person against the incorporated association;
 - (c) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by a former association of the incorporated association or members of such a former association as members and in force immediately before that incorporation shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the incorporated association;
 - (d) the incorporated association may enforce and realise any security or charge existing immediately before that incorporation in favour of a former association of the incorporated association or members of such a former association as members and may exercise any powers thereby conferred on such a former association or on members of such a former association as members as if the security or charge were a security or charge in favour of the incorporated association;
 - (e) all debts, money and claims, liquidated and unliquidated, that, immediately before that incorporation, were due or payable by or recoverable against a former association of the incorporated association or members of such a former association as members shall be debts due and money payable by, and claims recoverable against, the incorporated association; and
 - (f) all liquidated and unliquidated claims for which a former association of the incorporated association or members of such a former association as members would, but for its incorporation or amalgamation under this Act, have been liable shall be liquidated and unliquidated claims for which the incorporated association shall be liable.
- (2) Subclause (1) has effect subject to Part V.

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SCHEDULE 2—*continued*.PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued*.**Transfer of property by trustee.**

5. (1) Where property vests in an incorporated association pursuant to this Schedule, any person previously holding the property on trust shall not, upon delivering or transferring the property to the association, thereafter be liable or accountable for the property or be bound to see to the application, distribution or appropriation of the property.

(2) The receipt of the public officer of an incorporated association shall be sufficient discharge to a trustee delivering or transferring property to the association pursuant to this Schedule as to the property so delivered or transferred.

Certificate evidence.

6. (1) A certificate, in the prescribed form and verified as prescribed, of the public officer of an incorporated association to the effect that property specified in the certificate was, immediately before the incorporation of the association under this Act, vested in a specified former association of the incorporated association or was held by a person, in trust or otherwise, for or on behalf of such a former association or for its objects, shall—

- (a) in any action, suit or other proceeding, civil or criminal, be prima facie evidence of the matters so certified; and
- (b) be prima facie evidence of the matters so certified in favour of the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.

(2) A certificate of the Commission in the prescribed form to the effect that an association or other body specified in the certificate is a former association of an incorporated association so specified is prima facie evidence of the matter so certified in favour of—

- (a) a person, or a person claiming through or under a person, dealing with the incorporated association to which the certificate relates in good faith and for valuable consideration and without notice of any defect or error in the certificate; and
- (b) the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.

*Associations Incorporation 1984*SCHEDULE 2—*continued.*PROVISIONS RELATING TO PROPERTY, LIABILITIES, ETC.,
OF INCORPORATED ASSOCIATIONS—*continued.***Requirement for conveyance, etc.**

7. The vesting of property in an incorporated association pursuant to this Schedule has effect without any conveyance, transfer, assignment or assurance.

Relief against forfeiture.

8. A leasehold or other interest in property does not determine or become liable to determination or forfeiture, by re-entry or otherwise, by reason only of the operation of this Schedule or of any disposition of property to an incorporated association made pursuant to this Schedule.

Attornment not necessary.

9. No attornment to an incorporated association by any lessee of land vested in the association by reason of the operation of this Schedule shall be necessary.

Stamp duty, etc.

10. A document or an instrument executed or registered only for—

(a) a purpose ancillary to, or consequential on, the operation of this Schedule;
or

(b) the purpose of giving effect to this Schedule,

shall not be liable to stamp duty or to any fee or charge payable under any Act for registration.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,

Governor.

*Government House,
Sydney, 4th December, 1984.*