

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, June 2020*



Queensland

**No.  
A BILL for**

**An Act to amend the Associations Incorporation Act 1981, the Collections Act 1966, the Fair Trading Inspectors Act 2014, the State Penalties Enforcement Regulation 2014 and the Acts mentioned in schedule 1 for particular purposes**





Queensland

# Associations Incorporation and Other Legislation Amendment Bill 2020

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	8
2	Commencement . . . . .	8
<b>Part 2</b>	<b>Amendment of Associations Incorporation Act 1981</b>	
3	Act amended . . . . .	8
4	Replacement of pt 1, div 1, hdg (Introductory provisions) . . . . .	9
5	Relocation of pt 1, div 2, hdg (Interpretation) . . . . .	9
6	Renumbering of ss 1A and 1B . . . . .	9
7	Insertion of new s 1A . . . . .	9
	1A Main purposes . . . . .	9
8	Insertion of new s 1C . . . . .	9
	1C Relationship with Fair Trading Inspectors Act 2014 . . . . .	10
9	Amendment of s 2 (Definitions) . . . . .	10
10	Amendment of s 6 (Association may resolve to incorporate and adopt proposed rules) . . . . .	10
11	Amendment of s 9 (Form of application etc.) . . . . .	10
12	Amendment of s 16 (Register of incorporated associations) . . . . .	11
13	Amendment of s 21 (Incorporated associations are bodies corporate) . . . . .	11
14	Amendment of s 28 (Contracts) . . . . .	12
15	Amendment of s 31 (Registered name on seal) . . . . .	13
16	Replacement of pt 5, div 1 (Registration of rules) . . . . .	13
	Division 1 Rules of incorporated associations	
46	Rules of incorporated association on registration . . . . .	14
47	Additional provisions in model rules . . . . .	15
47A	Grievance procedure . . . . .	15

Contents

17	Amendment of s 48 (Application to register amendment of rules)	16
18	Amendment of s 49 (Registration of amendment) . . . . .	17
19	Omission of s 51 (Effect of amendment of model rules) . . . . .	17
20	Amendment of s 56 (Rules may allow meetings using communication technology) . . . . .	17
21	Amendment of s 58 (Definitions for div 2) . . . . .	18
22	Replacement of ss 59–59C . . . . .	20
	59 Keeping financial records . . . . .	20
	59A Preparing annual financial statement . . . . .	21
	59AA Preparing audit report . . . . .	22
	59AB Preparing verification statement . . . . .	23
	59AC Particular persons may not prepare audit report or verification statement . . . . .	25
	59B Presenting documents to annual general meeting . . . . .	26
	59BA Lodging documents with chief executive . . . . .	27
	59BB Declaration by chief executive that association is of different class . . . . .	28
	59C Inspection of financial documents by member . . . . .	29
23	Amendment of s 59D (Defence) . . . . .	29
24	Amendment of s 59E (Approved persons) . . . . .	30
25	Insertion of new s 59F . . . . .	30
	59F Chief executive may require lodgement of financial information . . . . .	30
26	Amendment of pt 7, hdg (Management committee) . . . . .	31
27	Insertion of new pt 7, div 1, hdg . . . . .	31
28	Amendment of s 61A (Eligibility for election to a management committee) . . . . .	31
29	Amendment of s 64 (Tenure of members of management committee) . . . . .	31
30	Amendment of s 66 (Management committee to ensure association has appropriate individual as secretary) . . . . .	32
31	Insertion of new pt 7, divs 2 and 3 . . . . .	32
	Division 2 Matters of material personal interest and remuneration	
	70B Disclosure of material personal interest . . . . .	32
	70C Voting on matter in which member has material personal interest . . . . .	34
	70D Disclosure of remuneration and other benefits . . . . .	35
	Division 3 Duties of officers	

	70E	Duty of care and diligence . . . . .	36
	70F	Duty of good faith . . . . .	37
	70G	Use of position . . . . .	38
	70H	Use of information . . . . .	38
	70I	Duty to prevent insolvent trading . . . . .	38
	70J	Reliance on information or advice . . . . .	39
32		Amendment of s 72 (Enforcement of rights and obligations) . . .	41
33		Amendment of s 81 (Applicant incorporated associations must have agreed rules) . . . . .	41
34		Replacement of pt 10, hdg and ss 89–91 . . . . .	41
	Part 10	Administration and winding up	
	Division 1	Voluntary administration and winding up	
	89	Voluntary administration under Corporations Act . . .	42
	90	Voluntary winding up under Corporations Act . . . . .	42
	Division 2	Winding up by Supreme Court	
	91	Grounds on which winding up may be ordered . . . . .	43
	91A	By whom application may be made . . . . .	44
	91B	Application of Corporations Act . . . . .	45
	Division 3	Miscellaneous	
	91C	Further application of miscellaneous provisions under Corporations Act . . . . .	46
35		Amendment of s 92 (Distribution of surplus assets) . . . . .	46
36		Insertion of new pt 10AA . . . . .	47
	Part 10AA	Cancellation	
	92A	Application for cancellation of incorporation . . . . .	47
	92B	Consideration of application . . . . .	48
	92C	Cancellation of incorporation on application . . . . .	49
37		Amendment of s 93 (Cancellation of incorporation) . . . . .	49
38		Amendment of s 94A (Definitions for pt 10A) . . . . .	49
39		Amendment of s 94D (Effect of reinstatement) . . . . .	50
40		Amendment of s 106 (Financial year) . . . . .	50
41		Omission of ss 119 and 119A . . . . .	50
42		Insertion of new s 119B . . . . .	50
	119B	Disclosure of information to Commissioner of the ACNC	50
43		Amendment of s 127 (Evidentiary provisions) . . . . .	51
44		Amendment of s 136 (Penalties under regulations to be limited)	51

Contents

45	Amendment of s 137 (Other matters for regulations) . . . . .	51
46	Insertion of new pt 16, div 3 . . . . .	52
	Division 3 Transitional provisions for Associations Incorporation and Other Legislation Amendment Act 2020	
151	Application for incorporation made before commencement . . . . .	52
152	Requirement for rules to include grievance procedure	53
153	Financial reporting obligations . . . . .	53
154	Disclosure of information to Commissioner of the ACNC	53
47	Renumbering of pts 10AA to 16 . . . . .	53
48	Insertion of new sch 1 . . . . .	54
	Schedule 1 Modifications to text of Corporations Act . . . . .	54
49	Amendment of schedule (Dictionary) . . . . .	56
<b>Part 3</b>	<b>Amendment of Collections Act 1966</b>	
50	Act amended . . . . .	57
51	Amendment of s 5 (Meaning of terms) . . . . .	57
52	Amendment of s 19 (Registration of charities) . . . . .	59
53	Amendment of s 23 (Effect on certificate of removal from register)	59
54	Replacement of ss 31 and 32 . . . . .	59
31	Keeping financial records . . . . .	60
32	Financial statement . . . . .	60
33	Returns . . . . .	62
33A	Chief executive may require lodgement of financial statement or return . . . . .	62
55	Amendment of s 35 (Vesting of property in the public trustee) . .	63
56	Amendment of s 35A (Disaster appeals trust fund and committee)	64
57	Insertion of new s 35E . . . . .	65
35E	Disclosure of information to Commissioner of the ACNC	65
58	Amendment of s 47 (Regulations) . . . . .	66
59	Insertion of new pt 9, div 1, hdg . . . . .	67
60	Insertion of new pt 9, div 2 . . . . .	67
	Division 2 Transitional provisions for Associations Incorporation and Other Legislation Amendment Act 2020	
49	Financial reporting obligations . . . . .	67
50	Members of disaster appeals trust fund committee . .	68
51	Disclosure of information to Commissioner of the ACNC	68
<b>Part 4</b>	<b>Amendment of Fair Trading Inspectors Act 2014</b>	

		Contents
61	Act amended .....	69
62	Amendment of s 4 (Operation of Act) .....	69
63	Insertion of new s 4A .....	69
	4A Modifying operation of Act for Associations Incorporation Act 1981 .....	69
64	Amendment of s 12 (Functions of inspectors) .....	70
65	Amendment of sch 1 (Dictionary) .....	70
<b>Part 5</b>	<b>Amendment of State Penalties Enforcement Regulation 2014</b>	
66	Regulation amended .....	71
67	Amendment of sch 1 (Infringement notice offences and fines for nominated laws) .....	71
<b>Part 6</b>	<b>Minor and consequential amendments</b>	
68	Acts amended .....	73
<b>Schedule 1</b>	<b>Acts amended</b> .....	74
	Associations Incorporation Act 1981 .....	74
	Fair Trading Inspectors Act 2014 .....	75
	Food Act 2006 .....	75
	Hospital Foundations Act 2018 .....	75
	Liquor Act 1992 .....	76
	Royal National Agricultural and Industrial Association of Queensland Act 1971 .....	76





**2020**

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# **A Bill**

for

**An Act to amend the *Associations Incorporation Act 1981*, the *Collections Act 1966*, the *Fair Trading Inspectors Act 2014*, the *State Penalties Enforcement Regulation 2014* and the Acts mentioned in schedule 1 for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Associations Incorporation and Other Legislation Amendment Act 2020*.

### **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- sections 8 and 12 to 15
- section 16, to the extent it inserts new section 47A
- sections 21 to 25, 30 to 32, 40 to 43 and 45
- section 46, to the extent it inserts new sections 152 to 154
- section 49(2) and (4)
- sections 51, 54, 57 and 58
- section 60, to the extent it inserts new sections 49 and 51
- parts 4 and 5.

## **Part 2 Amendment of Associations Incorporation Act 1981**

### **3 Act amended**

This part amends the *Associations Incorporation Act 1981*.

*Note—*

See also the amendments in schedule 1.

**4 Replacement of pt 1, div 1, hdg (Introductory provisions)**

Part 1, division 1, heading—

*omit, insert—*

**Division 1 Introduction**

**5 Relocation of pt 1, div 2, hdg (Interpretation)**

Part 1, division 2, heading—

*relocate* to before section 2.

**6 Renumbering of ss 1A and 1B**

Sections 1A and 1B—

*renumber* as sections 1B and 1D.

**7 Insertion of new s 1A**

After section 1—

*insert—*

**1A Main purposes**

The main purposes of this Act are to provide for—

- (a) a scheme for the incorporation of associations; and
- (b) matters including the corporate governance, financial accountability, and rules and membership, of incorporated associations.

**8 Insertion of new s 1C**

After section 1B, as renumbered by this Act—

[s 9]

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*insert—*

### **1C Relationship with Fair Trading Inspectors Act 2014**

- (1) The *Fair Trading Inspectors Act 2014* enacts common provisions for this Act and particular other Acts about fair trading.
- (2) Unless this Act otherwise provides in relation to the *Fair Trading Inspectors Act 2014*, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under this Act.
- (3) In this section—

***inspector*** means a person who holds office under the *Fair Trading Inspectors Act 2014* as an inspector for this Act.

*Note—*

See also the modifying provisions for this Act stated in the *Fair Trading Inspectors Act 2014*, section 4A.

## **9 Amendment of s 2 (Definitions)**

Section 2, ‘the schedule’—

*omit, insert—*

schedule 2

## **10 Amendment of s 6 (Association may resolve to incorporate and adopt proposed rules)**

Section 6(2), from ‘model rules’—

*omit, insert—*

model rules.

## **11 Amendment of s 9 (Form of application etc.)**

- (1) Section 9, heading—

*omit, insert—*

## **9 Application for incorporation**

(2) Section 9(3)—

*omit, insert—*

(3) The application must—

- (a) if the proposed rules adopted by the association under section 6(1)(b) are the model rules—state that fact and include a copy of the objects proposed for the incorporated association; or
- (b) if the proposed rules adopted by the association under section 6(1)(b) are not the model rules—be accompanied by a copy of the proposed rules and a statutory declaration by the appointed person stating that the proposed rules comply with this Act.

## **12 Amendment of s 16 (Register of incorporated associations)**

Section 16(3)—

*omit, insert—*

- (3) The register must also include a copy of each document required to be lodged under section 59BA(1) with the chief executive.

## **13 Amendment of s 21 (Incorporated associations are bodies corporate)**

Section 21(b)—

*omit, insert—*

- (b) may have a common seal; and

[s 14]

---

## **14 Amendment of s 28 (Contracts)**

- (1) Section 28, heading, after ‘Contracts’—

*insert—*

### **and execution of documents**

- (2) Section 28(1)(a)—

*omit.*

- (3) Section 28(1)(b) and (c)—

*renumber* as section 28(1)(a) and (b).

- (4) Section 28—

*insert—*

- (2A) An incorporated association may execute a document without using a common seal if the document is signed by a member of the management committee of the association and countersigned by—

- (a) the secretary of the association; or
- (b) another member of the management committee of the association; or
- (c) another person authorised by the management committee of the association.

- (2B) An incorporated association with a common seal may execute a document if the seal is attached to the document and the document is signed by a member of the management committee of the association and countersigned by—

- (a) the secretary of the association; or
- (b) another member of the management committee of the association; or
- (c) another person authorised by the management committee of the association.

- (2C) Subsections (3) and (4) are subject to any greater restriction provided for in the rules of the

incorporated association.

- (5) Section 28(2A) to (3)—  
*renumber* as section 28(3) to (6).

**15 Amendment of s 31 (Registered name on seal)**

- (1) Section 31, heading, before ‘seal’—  
*insert—*

**common**

- (2) Before section 31(1)—  
*insert—*

(1A) This section applies if an incorporated association  
has a common seal.

- (3) Section 31(1), ‘An incorporated’—  
*omit, insert—*

The

- (4) Section 31(2), ‘an incorporated’—  
*omit, insert—*

the

- (5) Section 31(1A) to (2)—  
*renumber* as section 31(1) to (3).

**16 Replacement of pt 5, div 1 (Registration of rules)**

Part 5, division 1—

*omit, insert—*

**Division 1**

**Rules of incorporated  
associations**

## **46 Rules of incorporated association on registration**

- (1) If the proposed rules adopted by an association under section 6(1)(b) are the model rules (the *adopted model rules*), on registration—
  - (a) the rules of the incorporated association consist of—
    - (i) the association's registered name; and
    - (ii) the objects for the association stated in the application for incorporation of the association; and
    - (iii) the adopted model rules; and
  - (b) the chief executive must make an entry in the register stating the adopted model rules are the rules of the association.
- (2) If the proposed rules adopted by an association under section 6(1)(b) are not the model rules, on registration—
  - (a) the rules of the incorporated association consist of—
    - (i) the association's registered name; and
    - (ii) the objects for the association stated in the application for incorporation of the association; and
    - (iii) the proposed rules; and
  - (b) the chief executive must make an entry in the register stating the association's proposed rules are the rules of the association.
- (3) An entry in the register stating an association's proposed rules are the rules of the association does not validate, or cure any defect in, the rules.



## **47 Additional provisions in model rules**

- (1) If the rules of an incorporated association do not provide for a matter, and a provision of the model rules in force after the registration of the association provides for the matter (the ***additional provision***), the rules of the incorporated association are taken to include the additional provision.
- (2) Subsection (1) does not affect the ability of an incorporated association to amend its rules under this Act.
- (3) Subsection (1) does not apply if the rules of an incorporated association provide that the subsection does not apply.

## **47A Grievance procedure**

- (1) The rules of an incorporated association may set out a grievance procedure for dealing with any dispute under the rules between—
  - (a) a member and another member; or
  - (b) a member and the management committee; or
  - (c) a member and the association.
- (2) The grievance procedure must include mediation and may provide for a person to decide the outcome of the dispute.
- (3) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (4) In applying the grievance procedure, the association must ensure that—
  - (a) each party to the dispute has been given an opportunity to be heard on the matter the subject of the dispute; and

[s 17]

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- (b) the mediator, and any person engaged under the rules to decide the outcome of the dispute, is unbiased.
- (5) If a member has initiated a grievance procedure in relation to a dispute between the member and the association, the association must not take disciplinary action against any of the following persons in relation to the matter the subject of the grievance procedure until the grievance procedure has been completed—
  - (a) the member who initiated the grievance procedure (the *complainant member*);
  - (b) a member of the association appointed by the complainant member under subsection (3) to act on behalf of the complainant member in the grievance procedure.
- (6) If the rules of an incorporated association do not set out a grievance procedure that is consistent with subsections (2), (3), (4) and (5), the rules of the association are taken to include the provisions of the model rules providing for the grievance procedure.
- (7) To remove any doubt, it is declared that subsection (6) applies even if the rules of an incorporated association provide, as permitted under section 47(3), that section 47(1) does not apply.

## **17 Amendment of s 48 (Application to register amendment of rules)**

(1) Section 48—

*insert—*

- (1A) An amendment under subsection (1) may include the replacement of the association's rules with the model rules.

(2) Section 48—

*insert—*

(4A) Subsection (6) does not apply to an amendment mentioned in subsection (2).

(3) Section 48(1A) to (8)—

*renumber* as section 48(2) to (11).

## **18 Amendment of s 49 (Registration of amendment)**

Section 49(2)—

*omit, insert—*

(2) On registration of the amendment, the incorporated association's rules are—

(a) for an amendment to replace the association's rules with the model rules—the model rules; or

(b) otherwise—the association's rules as amended.

## **19 Omission of s 51 (Effect of amendment of model rules)**

Section 51—

*omit.*

## **20 Amendment of s 56 (Rules may allow meetings using communication technology)**

(1) Section 56, heading, from 'Rules' to 'meetings'—

*omit, insert—*

### **Meetings**

(2) Section 56(1), from 'The' to 'hold'—

*omit, insert—*

An incorporated association may hold

[s 21]

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## 21 Amendment of s 58 (Definitions for div 2)

- (1) Section 58, heading, ‘div 2’—

*omit, insert—*

### **division**

- (2) Section 58, definitions *accountant*, *auditor*, *level 1 incorporated association*, *level 2 incorporated association* and *level 3 incorporated association*—

*omit.*

- (3) Section 58—

*insert—*

***accountant*** means a person holding the qualifications prescribed by regulation for this definition.

***another law*** means—

- (a) a law of the State, including, for example, the *Collections Act 1966* or the *Gaming Machine Act 1991*; or
- (b) a law of the Commonwealth or another State.

***auditor*** means a person holding the qualifications prescribed by regulation for this definition.

***audit report***, in relation to the audit of a financial statement for an incorporated association’s last reportable financial year, means a report about the audit prepared by the person carrying out the audit.

***financial record*** includes—

- (a) an invoice, receipt, order for the payment of money, bill of exchange, cheque, promissory note and voucher; and
- (b) a document of prime entry; and

- (c) a working paper or other document needed to explain—
  - (i) the methods used to prepare an incorporated association's financial statements; or
  - (ii) adjustments made in preparing an incorporated association's financial statements.

***financial statement***, for a reportable financial year of an incorporated association, means a statement containing the following information—

- (a) if the association uses accrual accounting—
  - (i) the association's income and expenditure during the year;
  - (ii) the association's balance sheet at the end of the year;
  - (iii) the mortgages, charges and securities affecting the association's property at the end of the year; or
- (b) if the association uses cash accounting—
  - (i) the association's receipts and payments during the year;
  - (ii) the association's assets and liabilities at the end of the year;
  - (iii) the mortgages, charges and securities affecting the association's property at the end of the year.

***large incorporated association*** means an incorporated association that has—

- (a) current assets of more than—
  - (i) the amount prescribed by regulation for this subparagraph; or

[s 22]

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- (ii) if no amount is prescribed under subparagraph (i)—\$100,000; or
- (b) total revenue of more than—
  - (i) the amount prescribed by regulation for this subparagraph; or
  - (ii) if no amount is prescribed under subparagraph (i)—\$100,000.

***medium incorporated association*** means an incorporated association other than a small incorporated association or a large incorporated association.

***small incorporated association*** means an incorporated association that has—

- (a) current assets of less than—
  - (i) the amount prescribed by regulation for this subparagraph; or
  - (ii) if no amount is prescribed under subparagraph (i)—\$20,000; and
- (b) total revenue of less than—
  - (i) the amount prescribed by regulation for this subparagraph; or
  - (ii) if no amount is prescribed under subparagraph (i)—\$20,000.

***verification statement*** see section 59AB(3).

## **22 Replacement of ss 59–59C**

Sections 59 to 59C—

*omit, insert—*

### **59 Keeping financial records**

- (1) The members of the management committee of an incorporated association must ensure the association keeps financial records that—

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable a true and fair financial statement for each reportable financial year of the association to be prepared; and
- (c) if the association is required under section 59AA to prepare an audit report—enable a true and fair audit report to be prepared; and
- (d) if the association is required under section 59AB to prepare a verification statement—enable a true and fair verification statement to be prepared.

Maximum penalty—

- (a) for each member of the management committee of a large incorporated association—20 penalty units; or
  - (b) for each member of the management committee of a medium incorporated association or a small incorporated association—10 penalty units.
- (2) A regulation may prescribe particular financial records to be kept by an incorporated association.

### **59A Preparing annual financial statement**

- (1) The members of the management committee of an incorporated association must ensure the association, within 6 months after the end date of each financial year for the association, prepares a financial statement for the association's last reportable financial year.

Maximum penalty—

- (a) for each member of the management committee of a large incorporated association—20 penalty units; or

[s 22]

---

- (b) for each member of the management committee of a medium incorporated association or a small incorporated association—10 penalty units.
- (2) Subsection (1) does not apply to an exempt association.
- (3) In this section—

*exempt association* means an incorporated association that is a member of an exempt class.

*exempt class* means a class of incorporated association prescribed by regulation as an exempt class for this definition.

### **59AA Preparing audit report**

- (1) This section applies to—
  - (a) a large incorporated association; or
  - (b) a medium incorporated association if the association is required under another law to have its financial statements audited; or
  - (c) a small incorporated association if the association is required under another law to have its financial statements audited.
- (2) However, this section does not apply to an exempt association.
- (3) The members of the management committee of the incorporated association must ensure the association, within 6 months after the end date of each financial year for the association—
  - (a) has the financial statement for the association's last reportable financial year audited by—
    - (i) for a large incorporated association—  
an auditor or accountant; or



- (ii) for a medium incorporated association or small incorporated association—an auditor, accountant or approved person; and
- (b) has the person who audits the financial statement under paragraph (a) prepare and sign an audit report for the audit.

Maximum penalty—

- (a) for each member of the management committee of a large incorporated association—20 penalty units; or
  - (b) for each member of the management committee of a medium incorporated association or small incorporated association—10 penalty units.
- (4) In this section—

***exempt association*** means an incorporated association that is a member of an exempt class.

***exempt class*** means a class of incorporated association prescribed by regulation as an exempt class for this definition.

### **59AB Preparing verification statement**

- (1) This section applies to—
  - (a) a medium incorporated association if the association is not required under another law to have its financial statements audited; or
  - (b) a small incorporated association if the association is not required under another law to have its financial statements audited.
- (2) However, this section does not apply to an exempt association.
- (3) The members of the management committee of

[s 22]

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the incorporated association must ensure the association, within 6 months after the end date of each financial year for the association, prepares a statement (a *verification statement*) that—

(a) for a medium incorporated association—

- (i) states that an auditor, accountant or approved person has examined the association's financial records; and
- (ii) states that the association's financial records show the association has adequate bookkeeping processes in place to correctly record and explain transactions to enable a true and fair financial statement to be prepared; and
- (iii) is signed by the auditor, accountant or approved person mentioned in subparagraph (i); or

(b) for a small incorporated association—

- (i) states that the association's financial records show the association keeps adequate financial records to correctly record and explain transactions to enable a true and fair financial statement to be prepared; and
- (ii) is signed by the association's president or treasurer.

Maximum penalty for each member of the management committee—10 penalty units.

(4) In this section—

*exempt association* means an incorporated association that is a member of an exempt class.

*exempt class* means a class of incorporated association prescribed by regulation as an exempt class for this definition.

---

**59AC Particular persons may not prepare audit report or verification statement**

- (1) A person must not audit a financial statement for an incorporated association under section 59AA, or prepare a verification statement for an incorporated association under section 59AB(3)(a), if the person is—
- (a) the secretary, or a member of the management committee, of the association; or
  - (b) an employee of the association; or
  - (c) a partner, employer or employee of the secretary, or a partner, employer or employee of a member of the management committee, of the association; or
  - (d) a spouse of a person mentioned in paragraph (a), (b) or (c); or
  - (e) wholly or partly dependent on a person mentioned in paragraph (a), (b) or (c).

Maximum penalty—10 penalty units.

- (2) A person who is a partner in an unincorporated body must not audit a financial statement for an incorporated association under section 59AA, or prepare a verification statement for an incorporated association under section 59AB(3)(a), if subsection (1) prohibits any of the partners of the unincorporated body from auditing the financial statement, or preparing the verification statement.

Maximum penalty—10 penalty units.

*Example for subsection (2)—*

A and B are partners in an accounting firm. A is a member of the association's management committee. A can not conduct an audit because of subsection (1). B also can not conduct an audit because of subsection (2).

[s 22]

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### **59B Presenting documents to annual general meeting**

- (1) The members of the management committee of an incorporated association must ensure the association, within 6 months after the end date of each financial year for the association, presents each of the following documents to the association's annual general meeting for adoption—
  - (a) if the association is required under section 59A to prepare a financial statement for the association's last reportable financial year—the financial statement prepared under section 59A(1);
  - (b) if the association is required under section 59AA to prepare an audit report—the audit report prepared and signed under section 59AA(3);
  - (c) if the association is required under section 59AB to prepare a verification statement—the verification statement prepared and signed under section 59AB(3).

Maximum penalty—

- (a) for each member of the management committee of a large incorporated association—20 penalty units; or
  - (b) for each member of the management committee of a medium incorporated association or a small incorporated association—10 penalty units.
- (2) A regulation may prescribe particular documents that the members of the management committee of an exempt association must ensure are presented at the association's annual general meeting.

### **59BA Lodging documents with chief executive**

- (1) An incorporated association mentioned in section 59B(1) must lodge each of the following documents with the chief executive within 1 month after the day the documents are presented under section 59B to the association's annual general meeting—
  - (a) if the association is required under section 59A to prepare a financial statement for the association's last reportable financial year—a copy of the financial statement for the association's last reportable financial year—
    - (i) as adopted at the annual general meeting, signed and dated by the president or treasurer of the association; or
    - (ii) as presented to the annual general meeting, if it is not adopted at the meeting, signed and dated by the president or treasurer of the association;
  - (b) if the association is required under section 59AA to prepare an audit report in relation to the association's last reportable financial year—a copy of the audit report prepared and signed under section 59AA(3);
  - (c) if the association is required under section 59AB to prepare a verification statement in relation to the association's last reportable financial year—a copy of the verification statement prepared and signed under section 59AB(3);
  - (d) a return in the approved form.
- (2) The documents lodged under subsection (1) must be accompanied by the prescribed fee.
- (3) If the incorporated association does not comply

[s 22]

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with subsection (1), each of the following persons commits an offence—

- (a) the secretary of the association;
- (b) the president of the association;
- (c) the treasurer of the association.

Maximum penalty—4 penalty units.

### **59BB Declaration by chief executive that association is of different class**

- (1) An incorporated association may, for a financial year, ask the chief executive in writing to make a declaration stating that the association is taken to be a medium incorporated association or small incorporated association for the financial year.
- (2) The chief executive may make or refuse to make the declaration.
- (3) The chief executive may make the declaration only if the chief executive is satisfied there are special and unusual circumstances justifying the declaration.
- (4) If the chief executive makes the declaration, the chief executive—
  - (a) must state whether the association is taken to be a medium incorporated association or small incorporated association for the financial year; and
  - (b) may impose conditions on the association.
- (5) This section applies despite section 58, definitions *large incorporated association*, *medium incorporated association* and *small incorporated association*.

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### **59C Inspection of financial documents by member**

- (1) This section applies if a member of an incorporated association asks the association to—
  - (a) make a financial document of the association available for inspection by the member at a mutually convenient time and place; or
  - (b) give the member a copy of a financial document of the association.
- (2) The association's secretary must comply with the request within 28 days after the request is made.  
Maximum penalty—4 penalty units.
- (3) The incorporated association may require the member to pay the reasonable costs of giving a copy of the financial document.
- (4) In this section—

*financial document*, of an association, means—

- (a) a financial statement for a reportable financial year of the association; or
- (b) if the association is required under section 59AA to prepare an audit report—an audit report prepared and signed under section 59AA(3); or
- (c) if the association is required under section 59AB to prepare a verification statement—a verification statement prepared and signed under section 59AB(3).

### **23 Amendment of s 59D (Defence)**

Section 59D, 'provision was complied with.'—

*omit, insert—*

association complied with the provision.

[s 24]

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## **24 Amendment of s 59E (Approved persons)**

- (1) Section 59E(a), ‘section 59’—

*omit, insert—*

section 59AA

- (2) Section 59E(b)—

*omit, insert—*

(b) prepare a verification statement under section 59AB(3)(a); or

(c) audit, verify or examine financial information under section 59F.

## **25 Insertion of new s 59F**

After section 59E—

*insert—*

### **59F Chief executive may require lodgement of financial information**

- (1) The chief executive may direct an incorporated association—
- (a) to give the chief executive, within a stated period and in a stated way, stated financial information, including, for example, financial records, relating to the association; and
  - (b) to cause the financial information mentioned in paragraph (a) to be audited, verified or examined by an auditor, accountant or approved person.
- (2) If the incorporated association does not comply with the direction, each of the following persons commit an offence—
- (a) the secretary of the association;
  - (b) the president of the association;



(c) the treasurer of the association.

Maximum penalty—20 penalty units.

- (3) To remove any doubt, it is declared that this section also applies to an exempt association under section 59A, 59AA or 59AB.

**26 Amendment of pt 7, hdg (Management committee)**

Part 7, heading, ‘committee’—

*omit.*

**27 Insertion of new pt 7, div 1, hdg**

Part 7, before section 60—

*insert—*

**Division 1                      Management committee**

**28 Amendment of s 61A (Eligibility for election to a management committee)**

- (1) Section 61A(1)(a), after ‘convicted’—

*insert—*

of an offence

- (2) Section 61A(2)—

*omit.*

- (3) Section 61A(1A)—

*renumber* as section 61A(2).

**29 Amendment of s 64 (Tenure of members of management committee)**

- (1) Section 64(2)(d), after ‘convicted’—

*insert—*

[s 30]

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of an offence

(2) Section 64(3)—

*omit.*

**30 Amendment of s 66 (Management committee to ensure association has appropriate individual as secretary)**

(1) Section 66, heading, ‘individual’—

*omit, insert—*

**person**

(2) Section 66(1), ‘individual’—

*omit, insert—*

**adult**

**31 Insertion of new pt 7, divs 2 and 3**

Part 7—

*insert—*

<b>Division 2</b>	<b>Matters of material personal interest and remuneration</b>
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**70B Disclosure of material personal interest**

- (1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee.

Maximum penalty—60 penalty units.

- (2) A member of the management committee of an

incorporated association who has a material personal interest in a matter being considered at a management committee meeting must disclose the nature and extent of the interest at the next general meeting of the association.

Maximum penalty—60 penalty units.

- (3) Subsections (1) and (2) do not apply in relation to a material personal interest—
- (a) that exists only because the member—
    - (i) is an employee of the association; or
    - (ii) is a member of a class of persons for whose benefit the association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (4) If a member of the management committee of an incorporated association discloses a material personal interest in a contract or proposed contract under this section, and the member has complied with section 70C(1) or the member's interest is not required to be disclosed because of subsection (3)—
- (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and
  - (b) the member is not liable to account for profits derived from the contract.
- (5) A disclosure of a material personal interest required under subsection (1) or (2) must give details of—
- (a) the nature and extent of the interest; and

[s 31]

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- (b) how the interest is related to the activities of the association.
- (6) The members of the management committee of an incorporated association must ensure the details mentioned in subsection (5) are—
  - (a) recorded in the minutes of the meeting of the management committee at which the disclosure is made; and
  - (b) if a member of the association asks for the details—given to the member.

Maximum penalty for each member of the management committee—4 penalty units.

### **70C Voting on matter in which member has material personal interest**

- (1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a meeting of the management committee must not—
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.

Maximum penalty—60 penalty units.

- (2) Subsection (1) does not apply in relation to a material personal interest—
  - (a) that exists only because the member belongs to a class of person for whose benefit the association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (3) Subsection (1) does not apply if the management committee, other than the members who have a

material personal interest in the matter, decide the member who has a material personal interest in the matter may—

- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.
- (4) If the management committee decides under subsection (3) that a member of the committee who has a material personal interest in a matter may be present at a meeting while the matter is being considered, or may vote on the matter, the committee must ensure that—
- (a) the committee's decision is recorded in the minutes of the meeting and disclosed at the next general meeting of the association; and
  - (b) details of the committee's decision are given to a member of the association, if requested by the member.

Maximum penalty for each member of the management committee—4 penalty units.

- (5) If there are not enough management committee members to form a quorum to consider a matter because of subsection (1)—
- (a) 1 or more committee members, including the members who have a material personal interest in the matter, may call a general meeting; and
  - (b) the general meeting may pass a resolution to deal with the matter.

## **70D Disclosure of remuneration and other benefits**

- (1) The members of the management committee of an incorporated association must ensure the prescribed details of the remuneration paid or

[s 31]

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other benefits given for the financial year to the following persons, if any, is presented to the association's annual general meeting in the way prescribed by regulation—

- (a) each member of the management committee of the association;
- (b) each senior staff member of the association;
- (c) each relative of a person mentioned in paragraph (a) or (b).

Maximum penalty for each member of the management committee—10 penalty units.

- (2) In this section—

***relative***, of a person, means a spouse, parent, sibling, child, grandparent or grandchild of the person.

***remuneration***—

- (a) includes salary, allowances and other entitlements; and
- (b) does not include reimbursement of out of pocket expenses.

***senior staff member***, of an incorporated association, means a person who—

- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the activities of the association; or
- (b) has the capacity to affect significantly the association's financial standing.

## **Division 3            Duties of officers**

### **70E Duty of care and diligence**

- (1) An officer of an incorporated association must

exercise the officer's powers and discharge the officer's duties with the degree of care and diligence that a reasonable person would exercise if that person—

- (a) were an officer of the association in the association's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the association as, the officer.

Maximum penalty—60 penalty units.

- (2) An officer of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and the officer's equivalent duties at common law and in equity, in relation to the judgment if the officer—
  - (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) is informed about the subject matter of the judgment to the extent the officer reasonably believes to be appropriate; and
  - (d) reasonably believes the judgment is in the best interests of the association.

- (3) In this section—

***business judgment*** means any decision to take or not to take action in relation to a matter relevant to the operations of the incorporated association.

## **70F Duty of good faith**

An officer of an incorporated association must exercise the officer's powers and discharge the officer's duties—

[s 31]

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- (a) in good faith in the best interests of the association; and
- (b) for a proper purpose.

Maximum penalty—60 penalty units.

### **70G Use of position**

An officer of an incorporated association must not improperly use the officer's position to—

- (a) gain, directly or indirectly, a pecuniary benefit or material advantage for the officer or another person; or
- (b) cause detriment to the association.

Maximum penalty—60 penalty units.

### **70H Use of information**

A person who obtains information because the person is, or has been, an officer of an incorporated association must not improperly use the information to—

- (a) gain, directly or indirectly, a pecuniary benefit or material advantage for the person or another person; or
- (b) cause detriment to the association.

Maximum penalty—60 penalty units.

### **70I Duty to prevent insolvent trading**

- (1) A person who was a member of the management committee of an incorporated association, or took part in the management of an incorporated association, at the time the association incurred a debt commits an offence if—



- (a) the association was insolvent at the time the debt was incurred or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- (b) immediately before the debt was incurred—
  - (i) there were reasonable grounds to expect that the association was insolvent; or
  - (ii) there were reasonable grounds to expect that, if the association incurred the debt, the association would become insolvent.

Maximum penalty—60 penalty units.

- (2) In any proceedings against a person under subsection (1) it is a defence if the accused proves that—
  - (a) the debt was incurred without the accused's express or implied authority or consent; or
  - (b) at the time the debt was incurred, because of illness or for some other good reason, the accused did not take part in the management of the association; or
  - (c) at the time the debt was incurred, the accused had reasonable grounds to expect, and did expect, that the association was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.

## **70J Reliance on information or advice**

- (1) This section applies if the reasonableness of the reliance of an officer of an incorporated association on information or advice given to the officer arises in a proceeding brought to decide whether the officer has performed a duty under

[s 31]

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this Act or an equivalent duty at common law or in equity.

- (2) Unless the contrary is proved, the officer's reliance on the information or advice is taken to be reasonable if—
  - (a) the information or advice was given or prepared by—
    - (i) an employee of the association whom the officer reasonably believed to be reliable and competent in relation to the matters concerned; or
    - (ii) a professional advisor or expert in relation to the matters that the officer reasonably believed to be within that person's professional or expert competence; or
    - (iii) another officer of the association in relation to matters within the other officer's authority; or
    - (iv) a sub-committee of the association of which the officer was not a member in relation to matters within the sub-committee's authority; and
  - (b) the reliance was made—
    - (i) in good faith; and
    - (ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the association and the complexity of the structure of the association.

**32 Amendment of s 72 (Enforcement of rights and obligations)**

(1) Section 72—

*insert—*

(1A) However, an incorporated association, or a member of an incorporated association, can not make an application under subsection (1) in relation to a dispute under the rules unless the association or member has made reasonable attempts to resolve the dispute under the grievance procedure in the association's rules.

(2) Section 72(1A) and (2)—

*renumber* as section 72(2) and (3).

**33 Amendment of s 81 (Applicant incorporated associations must have agreed rules)**

Section 81(2)—

*omit, insert—*

(2) The proposed common rules may be the model rules.

**34 Replacement of pt 10, hdg and ss 89–91**

Part 10, heading and sections 89 to 91—

*omit, insert—*

**Part 10**

**Administration and winding up**

**Division 1**

**Voluntary administration and winding up**

## **89 Voluntary administration under Corporations Act**

- (1) This section provides for the voluntary administration under the Corporations Act of an incorporated association.
- (2) Subsection (3) is made for the purposes of the *Corporations (Ancillary Provisions) Act 2001*, part 3.
- (3) The voluntary administration of the incorporated association is declared to be an applied Corporations legislation matter in relation to the prescribed provisions, subject to the following changes—
  - (a) the changes to the provisions of the Corporations Act mentioned in schedule 1;
  - (b) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3, prescribed by regulation.
- (4) In this section—  
***prescribed provisions*** means—
  - (a) the Corporations Act, part 5.3A; and
  - (b) the Corporations Act, schedule 2 to the extent it relates to the Corporations Act, part 5.3A.

## **90 Voluntary winding up under Corporations Act**

- (1) This section applies to an incorporated association that has surplus property to be distributed on winding up.
- (2) The incorporated association may be wound up voluntarily if the association so resolves by special resolution.
- (3) A copy of the special resolution must be lodged with the chief executive within 1 month after the

passing of the resolution.

- (4) Subsection (5) is made for the purposes of the *Corporations (Ancillary Provisions) Act 2001*, part 3.
- (5) The voluntary winding up of the incorporated association is declared to be an applied Corporations legislation matter in relation to the prescribed provisions, subject to the following changes—
  - (a) the changes to the provisions of the Corporations Act mentioned in schedule 1;
  - (b) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3, prescribed by regulation.
- (6) In this section—

***prescribed provisions*** means—

  - (a) the Corporations Act, parts 5.5 and 5.6; and
  - (b) the Corporations Act, schedule 2 to the extent it relates to the Corporations Act, parts 5.5 and 5.6.

## **Division 2            Winding up by Supreme Court**

### **91    Grounds on which winding up may be ordered**

The Supreme Court may order the winding up of an incorporated association if—

- (a) the association has suspended its operations, or has in effect been dormant, for at least 1 year; or

[s 34]

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- (b) the members of the association are reduced in number so as not to constitute a quorum at a general meeting; or
- (c) the association is unable to pay its debts as and when they become due and payable; or
- (d) the association carries on any operation by which any member of the association makes a financial gain contrary to this Act; or
- (e) the association engages in activities inconsistent with its objects; or
- (f) the affairs of the association are conducted in a way that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more members or in a way that is contrary to the interests of the members as a whole; or
- (g) an act or omission, or proposed act or omission, by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more members or in a way that is contrary to the interests of the members as a whole; or
- (h) the incorporation of the association was obtained by fraud or mistake; or
- (i) the Supreme Court considers it is just and equitable that the incorporated association be wound up.

### **91A By whom application may be made**

An application to the Supreme Court for the winding up of an incorporated association may be made by—

- (a) the incorporated association; or

- (b) a member of the incorporated association; or
- (c) the chief executive; or
- (d) if the application is based on the ground mentioned in section 91(c)—a creditor.

### **91B Application of Corporations Act**

- (1) This section provides for the winding up by the Supreme Court under the Corporations Act of an incorporated association.
- (2) Subsection (3) is made for the purposes of the *Corporations (Ancillary Provisions) Act 2001*, part 3.
- (3) The winding up by the Supreme Court of the incorporated association is declared to be an applied Corporations legislation matter in relation to the prescribed provisions, subject to the following changes—
  - (a) the changes to the provisions of the Corporations Act mentioned in schedule 1;
  - (b) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3, prescribed by regulation.
- (4) In this section—  
***prescribed provisions*** means—
  - (a) the Corporations Act, parts 5.7 and 5.7B, divisions 1 and 2; and
  - (b) the Corporations Act, schedule 2 to the extent it relates to the Corporations Act, parts 5.7 and 5.7B, divisions 1 and 2.

## **Division 3            Miscellaneous**

[s 35]

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### **91C Further application of miscellaneous provisions under Corporations Act**

Any matter declared under this part to be an applied Corporations legislation matter is, in addition, an applied Corporations legislation matter in relation to the Corporations Act, part 5.9, divisions 3 and 4, subject to the following changes—

- (a) the changes to the provisions of the Corporations Act mentioned in schedule 1;
- (b) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3, prescribed by regulation.

### **35 Amendment of s 92 (Distribution of surplus assets)**

- (1) Section 92(1) and (3), definition *surplus assets*, ‘winding-up’—

*omit, insert—*

winding up

- (2) Section 92(2)(a), ‘Governor in Council may by regulation’—

*omit, insert—*

chief executive may by gazette notice

- (3) Section 92(2)(c)—

*omit, insert—*

- (c) the chief executive may by gazette notice vary the trusts or purposes mentioned in paragraph (b) and may by the same or another gazette notice vest those surplus assets or any part of them in stated entities for stated purposes; and

- (4) Section 92(2A), ‘section 91’—

*omit, insert—*



this part

### **36 Insertion of new pt 10AA**

After section 92—

*insert—*

## **Part 10AA Cancellation**

### **92A Application for cancellation of incorporation**

- (1) An application may be made to the chief executive to cancel the incorporation of an incorporated association if the association—
  - (a) has no outstanding debts or liabilities; and
  - (b) has paid all fees and penalties applying to it under this Act; and
  - (c) is not a party to any legal proceedings.
- (2) The application may be made only by—
  - (a) if the association has passed a special resolution under its rules approving the making of the application—the association; or
  - (b) if the association is under voluntary administration—the administrator of the association.
- (3) The application must be in the approved form and accompanied by—
  - (a) a declaration by the applicant—
    - (i) that all of the matters mentioned in subsection (1) exist in relation to the association; and

[s 36]

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- (ii) that the applicant is qualified under subsection (2) to make the application; and
    - (iii) setting out the reasons why the applicant has formed the view that the incorporation of the association should be cancelled; and
  - (b) if subsection (2)(a) applies—a copy of the special resolution passed by the association—
    - (i) approving the making of the application; and
    - (ii) providing for the distribution of the surplus assets of the association; and
  - (c) the prescribed fee.
- (4) If the application is made by an association that has passed a special resolution mentioned in subsection (2)(a), the application must be made within 1 month after the passing of the special resolution.
- (5) In this section—
- surplus assets*, in relation to the cancellation of the incorporation of an association, means those assets that remain after the liabilities of the association have been discharged and the costs and expenses of the cancellation have been paid.

## **92B Consideration of application**

- (1) The chief executive may make any inquiries necessary to establish the validity of any information provided in a declaration under section 92A(3)(a).
- (2) The chief executive may require the applicant to provide further information or documents to

enable the chief executive to decide the application.

### **92C Cancellation of incorporation on application**

- (1) The chief executive must cancel the incorporation of an incorporated association on an application made under section 92A if the chief executive is satisfied of the matters mentioned in section 92A(1).
- (2) However, if the application is made under section 92A(2)(a), the chief executive must not cancel the incorporation of the association unless the association has given the chief executive evidence of the distribution of the surplus assets of the association under the special resolution.

### **37 Amendment of s 93 (Cancellation of incorporation)**

Section 93, heading, after ‘incorporation’—

*insert—*

**by chief executive**

### **38 Amendment of s 94A (Definitions for pt 10A)**

- (1) Section 94A, heading ‘pt 10A’—

*omit, insert—*

**part**

- (2) Section 94A, definitions *deregistered association*, paragraph (a) and *deregistration*, paragraph (a), ‘section 91’—

*omit, insert—*

**part 10**

- (3) Section 94A, definitions *deregistered association*, paragraph (c) and *deregistration*, paragraph (c), ‘section 93’—

*omit, insert—*

[s 39]

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section 92C or 93

**39 Amendment of s 94D (Effect of reinstatement)**

Section 94D(1)(c), ‘chief executive’—

*omit, insert—*

public trustee

**40 Amendment of s 106 (Financial year)**

Section 106, from ‘association’—

*omit, insert—*

association.

**41 Omission of ss 119 and 119A**

Sections 119 and 119A—

*omit.*

**42 Insertion of new s 119B**

Before section 120—

*insert—*

**119B Disclosure of information to Commissioner of the ACNC**

(1) For the purpose of enabling or assisting the commissioner to perform or exercise any of the functions or powers of the commissioner, the chief executive may—

(a) enter into an arrangement with the commissioner; and

(b) under the arrangement, disclose information obtained under this Act about an ACNC registered entity to the commissioner.

(2) In this section—

*ACNC registered entity* means a charity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).

*commissioner* means the Commissioner of the Australian Charities and Not-for-profits Commission under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).

**43 Amendment of s 127 (Evidentiary provisions)**

Section 127(1)(d), from ‘financial document’ to ‘division 2’—

*omit, insert—*

document required to be lodged under section 59BA(1) with the chief executive, or given under section 59F to the chief executive

**44 Amendment of s 136 (Penalties under regulations to be limited)**

(1) Section 136, ‘by a regulation’—

*omit, insert—*

by regulation

(2) Section 136, ‘4 penalty units’—

*omit, insert—*

20 penalty units

**45 Amendment of s 137 (Other matters for regulations)**

Section 137—

*insert—*

(2) If a provision of this Act empowers a regulation to prescribe, for a particular purpose, a class of

[s 46]

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incorporated association, the regulation may prescribe a class by reference to—

- (a) the revenue, assets, or other financial characteristics of an incorporated association; or
- (b) whether an incorporated association is registered under an Act of the Commonwealth or a State; or
- (c) whether an incorporated association is required to prepare and submit financial statements under an Act of the Commonwealth or a State; or
- (d) the objects for an incorporated association; or
- (e) any other matter relevant to the purpose.

#### **46 Insertion of new pt 16, div 3**

Part 16—

*insert—*

### **Division 3**

### **Transitional provisions for Associations Incorporation and Other Legislation Amendment Act 2020**

#### **151 Application for incorporation made before commencement**

- (1) This section applies if, before the commencement, an application for incorporation of an association was made under section 9 and immediately before the commencement, the application had not been finally dealt with.

- (2) The chief executive must decide the application under the Act as in force immediately before the commencement.

### **152 Requirement for rules to include grievance procedure**

The requirement under section 47A for the rules of an incorporated association to set out a grievance procedure as mentioned in that section applies whether the association was incorporated before or after the commencement.

### **153 Financial reporting obligations**

The obligations under part 6, division 2 of an incorporated association, or members of the management committee of an incorporated association, apply to an incorporated association, or members of the management committee of an incorporated association, whether the association was incorporated before or after the commencement.

### **154 Disclosure of information to Commissioner of the ACNC**

- (1) The power of the chief executive under section 119B to enter into an arrangement with, or disclose information to, the commissioner applies in relation to information obtained under this Act whether before or after the commencement.
- (2) In this section—  
*commissioner* see section 119B(2).

## **47 Renumbering of pts 10AA to 16**

Parts 10AA to 16—

[s 48]

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*renumber* as parts 11 to 18.

#### **48 Insertion of new sch 1**

Before the schedule—

*insert—*

### **Schedule 1 Modifications to text of Corporations Act**

sections 89, 90, 91B and 91C

- 1 A reference to a company or body is to be read as a reference to an incorporated association.
- 2 A reference in part 5.7 to a part 5.7 body is to be read as a reference to an incorporated association.
- 3 A reference to the board of a body corporate is to be read as a reference to the management committee of an incorporated association.
- 4 A reference to the directors of a company is to be read as a reference to the members of the management committee of an incorporated association.
- 5 A reference to the secretary of a company is to be read as a reference to the secretary of an incorporated association or the person carrying out the functions ordinarily carried out by the secretary of an incorporated association.
- 6 A reference to an officer of a company is to be read as a reference to an officer of an incorporated association.



- 7 A reference to a former officer or past officer of a company is to be read as a reference to a former officer or past officer of an incorporated association.
- 8 A reference to the principal place of business of a company is to be read as a reference to the nominated address for an incorporated association.
- 9 A reference to a company carrying on business is to be read as a reference to an incorporated association pursuing its objects or purposes.
- 10 A reference to ASIC is to be read as a reference to the chief executive.
- 11 A reference to the Court is to be read as a reference to the Supreme Court.
- 12 A reference to the deregistration of a company is to be read as a reference to the cancellation of the incorporation of an association.
- 13 A reference to the constitution of a company is to be read as a reference to the rules of an incorporated association.
- 14 A reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act.
- 15 A reference to a registered company auditor or an auditor is to be read as a reference to a person, firm or company authorised to audit the financial statements of an incorporated association under this Act.
- 16 A reference to a contributory of a company is to be read as a reference to a member of an incorporated association, to the extent the member is personally liable under section 27 of this Act.

[s 49]

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## 49 Amendment of schedule (Dictionary)

- (1) Schedule, definition *own rules*—

*omit.*

- (2) Schedule, definitions *audit report*, *financial document*, *financial statement*, *level 1 incorporated association*, *level 2 incorporated association* and *level 3 incorporated association*—

*omit.*

- (3) Schedule—

*insert—*

***rehabilitation period***, in relation to a conviction of a person, means the later of the following periods to end—

- (a) the period of 5 years starting on the day the conviction is recorded;
- (b) if the person serves a term of imprisonment for the conviction—the period of 5 years starting on the day the person is released from prison;
- (c) if an order of a court made in relation to the conviction has not been satisfied within the period mentioned in paragraph (a) or (b)—the period of 5 years starting on the day the order is satisfied.

- (4) Schedule—

*insert—*

***another law***, for part 6, division 2, see section 58.

***audit report***, for part 6, division 2, see section 58.

***financial record***, for part 6, division 2, see section 58.

***financial statement***, for a reportable financial year of an incorporated association, for part 6,

division 2, see section 58.

***large incorporated association***, for part 6, division 2, see section 58.

***medium incorporated association***, for part 6, division 2, see section 58.

***small incorporated association***, for part 6, division 2, see section 58.

***verification statement***, for part 6, division 2, see section 58.

- (5) Schedule, definition *rules*, ‘and regulations’—  
*omit.*
- (6) Schedule—  
*number* as schedule 2.

## Part 3                      Amendment of Collections Act 1966

### 50      Act amended

This part amends the *Collections Act 1966*.

### 51      Amendment of s 5 (Meaning of terms)

- (1) Section 5(1), definitions *accounts*, *financial statements* and *records*—  
*omit.*
- (2) Section 5(1)—  
*insert—*

***exempt association*** means an association whose objects are a community purpose sanctioned under this Act that is a member of an exempt class.

[s 51]

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***exempt charity*** means a charity that is a member of an exempt class.

***exempt class*** means—

- (a) for an association whose objects are a community purpose sanctioned under this Act—a class of association prescribed by regulation as an exempt class for this paragraph; or
- (b) for a charity—a class of charity prescribed by regulation as an exempt class for this paragraph.

***financial record*** includes—

- (a) an invoice, receipt, order for the payment of money, bill of exchange, cheque, promissory note and voucher; and
- (b) a document of prime entry; and
- (c) a working paper or other document needed to explain—
  - (i) the methods used to prepare an entity's financial statements; or
  - (ii) adjustments made in preparing an entity's financial statements.

***financial statement***, for a reportable financial period of an entity, means a statement containing the following information—

- (a) if the entity uses accrual accounting—
  - (i) the entity's income and expenditure during the period;
  - (ii) the entity's balance sheet at the end of the period;
  - (iii) the mortgages, charges and securities affecting the entity's property at the end of the period; or

- (b) if the entity uses cash accounting—
  - (i) the entity's receipts and payments during the period;
  - (ii) the entity's assets and liabilities at the end of the period;
  - (iii) the mortgages, charges and securities affecting the entity's property at the end of the period.

**records** includes—

- (a) agreements, books, correspondence, minutes, vouchers and other documents; and
- (b) financial records.

**reportable financial period**, of an entity, means the period for the entity prescribed by regulation for this definition.

**52 Amendment of s 19 (Registration of charities)**

Section 19(2) to (4)—

*omit.*

**53 Amendment of s 23 (Effect on certificate of removal from register)**

Section 23, 'section 19(9)'—

*omit, insert—*

section 19(15)

**54 Replacement of ss 31 and 32**

Sections 31 and 32—

*omit, insert—*

### **31 Keeping financial records**

- (1) This section applies to each of the following entities—
  - (a) a charity registered under this Act;
  - (b) an association whose objects are a community purpose sanctioned under this Act.
- (2) The entity must—
  - (a) keep financial records correctly recording and explaining its financial transactions, financial performance and financial position; and
  - (b) keep the financial records in a way that—
    - (i) enables a true and fair financial statement to be prepared; and
    - (ii) if the entity is required under section 32 to have the financial statement for a reportable financial year audited or verified—enables the financial statement to be conveniently and properly audited or verified.

Maximum penalty—20 penalty units.

- (3) A regulation may prescribe particular financial records to be kept by an entity mentioned in subsection (1).

### **32 Financial statement**

- (1) This section applies to each of the following entities—
  - (a) a charity registered under this Act, other than an exempt charity;

- (b) an association whose objects are a community purpose sanctioned under this Act, other than an exempt association;
  - (c) a promoter of an appeal for support for a purpose to which part 3 applies.
- (2) The entity must prepare a financial statement for the entity's last reportable financial period as required under this section.

Maximum penalty—20 penalty units.

- (3) The financial statement must—
- (a) be prepared within the period prescribed by regulation; and
  - (b) include the information prescribed by regulation; and
  - (c) be audited or verified in the way prescribed by regulation, including, for example, by an independent entity holding the qualifications prescribed by regulation.
- (4) If a financial statement is required to be audited under subsection (3)(c), the auditor has the powers of an inspector under this Act for the audit.
- (5) The entity must lodge the following documents with the chief executive as required under this section—
- (a) the financial statement for the entity's last reportable financial period, as prepared under this section;
  - (b) any document relating to the audit or verification of the financial statement for the entity's last reportable financial period, as mentioned in subsection (3)(c).

Maximum penalty—20 penalty units.

- (6) The documents mentioned in subsection (5) must

[s 54]

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be lodged in the way and within the period—

- (a) prescribed by regulation; or
- (b) as directed by the chief executive.

### **33 Returns**

- (1) This section applies to each of the following entities—
  - (a) a charity registered under this Act, other than an exempt charity;
  - (b) an association whose objects are a community purpose sanctioned under this Act, other than an exempt association;
  - (c) a promoter of an appeal for support for a purpose to which part 3 applies.
- (2) The entity must lodge a return as required under this section with the chief executive.  
Maximum penalty—20 penalty units.
- (3) The return must contain the information prescribed by regulation.
- (4) The return must be lodged in the way and within the period prescribed by regulation.

### **33A Chief executive may require lodgement of financial statement or return**

- (1) This section applies to each of the following entities—
  - (a) a charity registered under this Act;
  - (b) an association whose objects are a community purpose sanctioned under this Act;
  - (c) a promoter of an appeal for support for a purpose to which part 3 applies.



- (2) The chief executive may direct the entity to do any of the following—
  - (a) prepare a financial statement for a reportable financial year of the entity;
  - (b) prepare a return containing the information stated in the direction;
  - (c) lodge the financial statement mentioned in paragraph (a) or return mentioned in paragraph (b) within a period stated in the direction;
  - (d) cause information contained in the financial statement mentioned in paragraph (a) to be audited or verified by an appropriately qualified person prescribed by regulation.
- (3) The entity must comply with the direction.  
Maximum penalty—20 penalty units.
- (4) To remove any doubt, it is declared that this section also applies to an exempt charity or exempt association.

## **55 Amendment of s 35 (Vesting of property in the public trustee)**

- (1) Section 35(1), ‘Where the Governor in Council’—

*omit, insert—*

This section applies if the chief executive

- (2) Section 35(1)(g)—

*omit, insert—*

- (g) that a majority of at least three-quarters of the governing body or of the persons who are trustees or who have the control of any property raised by, or resulting from any appeal for support for any charitable purpose or community purpose, have

[s 56]

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consented to any or all of the property being  
vested in the public trustee.

- (3) Section 35(1), from ‘a regulation may’ to ‘in the public trustee.’—

*omit.*

- (4) Section 35—

*insert—*

- (1A) The chief executive may, by gazette notice, vest  
all or any of the property in the public trustee.

- (5) Section 35(2), ‘subsection (3) the property vested in the public trustee under the regulation shall be’—

*omit, insert—*

subsection (4), the property vested in the public  
trustee is

- (6) Section 35(3), ‘A regulation’—

*omit, insert—*

A gazette notice

- (7) Section 35(4), ‘regulation’—

*omit, insert—*

gazette notice

- (8) Section 35(1A) to (5)—

*renumber* as section 35(2) to (6).

## **56 Amendment of s 35A (Disaster appeals trust fund and committee)**

- (1) Section 35A(3) and (4)—

*omit, insert—*

- (3) The public trustee and the chief executive are, ex  
officio, members of the committee.

- (4) The chief executive must appoint 3 other

members of the committee (each an ***appointed member***).

(2) Section 35A—

*insert—*

(5A) An appointed member is to be paid the remuneration and other allowances decided by the chief executive.

(3) Section 35A(7)—

*omit, insert—*

(7) The chief executive is the chairperson of the committee.

(4) Section 35A(9), (10) and (11), ‘Governor in Council’—

*omit, insert—*

chief executive

(5) Section 35A(18)—

*omit.*

(6) Section 35A(5A) to (17)—

*renumber* as section 35A(6) to (18).

## 57 Insertion of new s 35E

After section 35D—

*insert—*

### **35E Disclosure of information to Commissioner of the ACNC**

(1) For the purpose of enabling or assisting the commissioner to perform or exercise any of the functions or powers of the commissioner, the chief executive may—

(a) enter into an arrangement with the commissioner; and

[s 58]

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(b) under the arrangement, disclose information obtained under this Act about an ACNC registered entity to the commissioner.

(2) In this section—

**ACNC registered entity** means a charity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).

**commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).

## 58 Amendment of s 47 (Regulations)

(1) Section 47(3)(zo), from ‘6 penalty units’—

*omit, insert—*

20 penalty units;

(2) Section 47—

*insert—*

(4) If a provision of this Act empowers a regulation to prescribe, for a particular purpose, a class of association or charity, the regulation may prescribe a class by reference to—

(a) the revenue, assets, or other financial characteristics of an association or charity; or

(b) whether an association or charity is registered under an Act of the Commonwealth or a State; or

(c) whether an association or charity is required to prepare and submit financial statements under an Act of the Commonwealth or a State; or

(d) the objects for an association or charity; or

(e) any other matter relevant to the purpose.

**59 Insertion of new pt 9, div 1, hdg**

Part 9, before section 48—

*insert—*

<b>Division 1</b>	<b>Transitional provision for Audit Legislation Amendment Act 2006</b>
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**60 Insertion of new pt 9, div 2**

Part 9—

*insert—*

<b>Division 2</b>	<b>Transitional provisions for Associations Incorporation and Other Legislation Amendment Act 2020</b>
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**49 Financial reporting obligations**

- (1) The obligations under section 31 about financial records apply to—
  - (a) a charity registered under this Act whether before or after the commencement; and
  - (b) an association whose objects are a community purpose sanctioned under this Act whether before or after the commencement.
- (2) The obligations under sections 32 and 33 about financial statements and returns apply to—

[s 60]

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- (a) a charity registered under this Act whether before or after the commencement, other than an exempt charity; and
- (b) an association whose objects are a community purpose sanctioned under this Act whether before or after the commencement, other than an exempt association; and
- (c) a promoter of an appeal for support for a purpose to which part 3 applies, whether the appeal is made before or after the commencement.

## **50 Members of disaster appeals trust fund committee**

- (1) This section applies if, immediately before the commencement, a person held office under section 35A as a member of the disaster appeals trust fund committee.
- (2) The person is taken to hold office under section 35A as in force after the commencement.
- (3) If, immediately before the commencement, the person held office under section 35A(7) as chairperson of the committee, the person stops holding office as chairperson on the commencement.

## **51 Disclosure of information to Commissioner of the ACNC**

- (1) The power of the chief executive under section 35E to enter into an arrangement with, or disclose information to, the commissioner applies in relation to information obtained under this Act whether before or after the commencement.
- (2) In this section—

*commissioner* see section 35E(2).

## Part 4                      Amendment of Fair Trading Inspectors Act 2014

### 61      Act amended

This part amends the *Fair Trading Inspectors Act 2014*.

*Note—*

See also the amendments in schedule 1.

### 62      Amendment of s 4 (Operation of Act)

- (1) Section 4(1)(aa) to (m)—

*renumber* as section 4(1)(c) to (q).

- (2) Section 4(1)—

*insert—*

(b) *Associations Incorporation Act 1981*;

### 63      Insertion of new s 4A

After section 4—

*insert—*

#### **4A    Modifying operation of Act for Associations Incorporation Act 1981**

- (1) The common provisions are modified for the *Associations Incorporation Act 1981* by subsections (3) to (5) (each a ***modifying provision***).
- (2) A word defined in the *Associations Incorporation Act 1981* and used in a modifying provision has the same meaning in the modifying provision as it has in that Act.

[s 64]

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- (3) In section 12 a reference to a power under this Act of an inspector for the *Associations Incorporation Act 1981* does not include a power mentioned in chapter 2, part 3, division 1.
- (4) The power for an inspector to enter a place under section 22(1)(d) includes the power to enter a place (other than a part of a place where a person resides) where an incorporated association carries out its activities, holds its general meetings or keeps its records.
- (5) Chapter 2, part 4 does not apply in relation to an inspector for the *Associations Incorporation Act 1981*.

#### **64 Amendment of s 12 (Functions of inspectors)**

- (1) Section 12(3)(a) to (e)—  
*renumber* as section 12(3)(b) to (f).
- (2) Section 12(3)—  
*insert*—
  - (a) *Associations Incorporation Act 1981*;

#### **65 Amendment of sch 1 (Dictionary)**

- (1) Schedule 1, definition *modifying provision*—  
*insert*—
  - (aa) for the *Associations Incorporation Act 1981*—see section 4A(1); or
- (2) Schedule 1, definition *modifying provision*, paragraphs (aa) to (e)—  
*renumber* as paragraphs (a) to (f).



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## Part 5                      Amendment of State Penalties Enforcement Regulation 2014

### 66        Regulation amended

This part amends the *State Penalties Enforcement Regulation 2014*.

### 67        Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Schedule 1, entry for *Associations Incorporation Act 1981*—  
*omit, insert—*

## **Associations Incorporation Act 1981**

Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)
s 17(1)	1
s 24(2)	1
s 30(2)	1
s 32	1
s 48(4)	1
s 52(2)	1
s 53(3)	1
s 54(1)	1
s 54(2)	1
s 57(1)	1

[s 67]

	<b>Column 1 Infringement notice offence</b>	<b>Column 2 Infringement notice fine (penalty units)</b>
s 59(1)	in the circumstances in paragraph (a) of the penalty	2
s 59(1)	in the circumstances in paragraph (b) of the penalty	1
s 59A(1)	in the circumstances in paragraph (a) of the penalty	2
s 59A(1)	in the circumstances in paragraph (b) of the penalty	1
s 59AA(3)	in the circumstances in paragraph (a) of the penalty	2
s 59AA(3)	in the circumstances in paragraph (b) of the penalty	1
s 59AB(3)		1
s 59AC(1)		1
s 59AC(2)		1
s 59B(1)	in the circumstances in paragraph (a) of the penalty	2
s 59B(1)	in the circumstances in paragraph (b) of the penalty	1
s 59BA(3)		1
s 59C(2)		1
s 59F(2)		2
s 65(2)		1
s 65(3)		1
s 66(1)		1
s 68(1)		1

Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)
s 68(3)	1
s 68(4)	1
s 70A(2)	1
s 70B(6)	1
s 70C(4)	1
s 70D(1)	1
s 80(2)	1
s 87(2)	1
s 93A(3)	1
s 106G(2)	1
s 106N(2)	1

**Authorised person for service of infringement notices**—an inspector appointed under the *Fair Trading Inspectors Act 2014*, section 13

## Part 6                      Minor and consequential amendments

### 68        Acts amended

Schedule 1 amends the Acts it mentions.

## **Schedule 1      Acts amended**

section 68

### **Associations Incorporation Act 1981**

#### **1      Particular references to ‘prescribed under the regulations’—**

Each of the following provisions is amended by omitting ‘prescribed under the regulations’ and inserting ‘prescribed by regulation’—

- section 76
- section 84
- schedule 2, as renumbered by this Act, definition *model rules*.

#### **2      Particular references to ‘under a regulation’—**

Each of the following provisions is amended by omitting ‘under a regulation’ and inserting ‘by regulation’—

- section 18(1)
- section 105C(3).

#### **3      Section 27, ‘winding-up’—**

*omit, insert—*

winding up

## Fair Trading Inspectors Act 2014

**1 Sections 5(1) and 7(1), from ‘by the provisions’—**

*omit, insert—*

by subsections (3) and (4) (each a *modifying provision*).

**2 Section 9(1), from ‘by the provisions’—**

*omit, insert—*

by subsections (3) to (5) (each a *modifying provision*).

## Food Act 2006

**1 Section 53(1)(b)(iii), ‘address of its registered office’—**

*omit, insert—*

incorporated association’s nominated address

**2 Section 273(1)(b)(iii), ‘registered office’—**

*omit, insert—*

nominated address

## Hospital Foundations Act 2018

**1 Section 25(2), ‘section 31’—**

*omit, insert—*

sections 32 and 33A(2)(a)

## **Liquor Act 1992**

**1      Section 4, definition *incorporated association*,  
         ‘schedule’—**

*omit, insert—*

schedule 2

## **Royal National Agricultural and Industrial Association of Queensland Act 1971**

**1      Section 17F(1)(d), ‘section 90(1)(a) to (e)’—**

*omit, insert—*

section 91

**2      Section 17F(1)(e), ‘section 93’—**

*omit, insert—*

section 92C or 93

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