

Queensland



# ASSOCIATIONS INCORPORATION ACT 1981

**Reprinted as in force on 12 September 1997  
(includes amendments up to Act No. 39 of 1997)**

**Reprint No. 2C**

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# Information about this reprint

This Act is reprinted as at 12 September 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# ASSOCIATIONS INCORPORATION ACT 1981

[as amended by all amendments that commenced on or before 12 September 1997]

**An Act to provide for the incorporation of certain associations, for the regulations of the affairs of incorporated associations, and for connected purposes**

## PART 1—PRELIMINARY

### *Division 1—Introductory provisions*

#### **Short title**

1. This Act may be cited as the *Associations Incorporation Act 1981*.

### *Division 2—Interpretation*

#### **Definitions**

2. In this Act—

**“application notice”** see—

- (a) for an application for incorporation—section 10(1)(b); or
- (b) for an application to change a name—section 36(1)(b).

**“appointed person”** see—

- (a) for part 2—section 7(1); or
- (b) for part 9, division 1—section 75(1); or
- (c) for part 9, division 2—section 82(1).

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**“approved form”** see section 130.<sup>1</sup>

**“association”** means an association, society, body or other entity formed, or carried on, for a lawful purpose.

**“branch”**, in relation to an incorporated association, means any number of members of an incorporated association controlled by a central entity who have a separate fund administered by themselves or by a committee or officers appointed by themselves.

**“committee”**, in relation to an association which is not an incorporated association, means the committee of the association or, if there is no committee thereof, the persons, however styled, having the management of the affairs of the association, and a committee shall consist of not less than 3 persons.

**“cooperative”** means a cooperative under the Cooperatives Act.

**“Cooperatives Act”** means the *Cooperatives Act 1997*.

**“incorporated association”** means an association incorporated under this Act.

**“incorporation resolutions”**, for an association, see section 6(1).

**“interim officers”** see section 8.

**“legal practitioner”** means a duly qualified barrister or solicitor of the Supreme Court of this State.

**“legal proceeding”** means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

**“management committee”** of an incorporated association means the association’s management committee formed under this Act.

**“model rules”**, for an association, means the model rules prescribed under the regulations.

**“objection notice”** see—

- (a) for an application for incorporation—section 10(2); or
- (b) for an application by an association to change its name—section 36(2).

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<sup>1</sup> Section 130 (Approval of forms)

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**“objector”** see—

- (a) for an application for incorporation—section 11; or
- (b) for an application to change an incorporated association’s name—section 37.

**“officer”** of an incorporated association means the following individuals—

- (a) the association’s president;
- (b) the association’s secretary;
- (c) the association’s treasurer;
- (d) a member of the association’s management committee;
- (e) a manager appointed by the management committee for the association.

**“own rules”** of an association means any of the association’s rules that are not the model rules.

**“parent association”**, of a branch, means the central entity of the branch if the entity is—

- (a) formed or carried on for a purpose other than providing financial gain for its members; and
- (b) incorporated under—
  - (i) this or another Act; or
  - (ii) a Commonwealth law or another State’s law; or
  - (iii) royal charter.

**“president”** of an incorporated association means the member of the association’s management committee who usually presides at management committee meetings, whatever the person’s position is called.

**“proposed rules”** for an association means the rules the association proposes will become its rules on its incorporation under this Act.

**“public trustee”** means the public trustee within the meaning of the *Public Trustee Act 1978*.

**“register”** of incorporated associations means the register of incorporated associations kept by the chief executive under section 16.

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**“repealed Acts”** means the Acts specified in the schedule repealed by section 4(1) as in force immediately before the commencement of the amendments of this Act made by the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1993*.

**“rules”** of an incorporated association includes its constitution and regulations.

**“secretary”** of an incorporated association means the person elected or appointed as the association’s secretary under this Act.

**“special resolution”** of an association means a resolution passed at a general meeting of the association by the votes of  $\frac{3}{4}$  of the members who are present and entitled to vote on the resolution.

**“treasurer”** of an incorporated association means the member of the association’s management committee responsible for the finances of the association, whatever the person’s position is called.

### *Division 3—General provisions*

#### **Special resolutions**

**3.(1)** Written notice of a proposed special resolution, and of the time and place of the general meeting at which it is proposed to move the resolution, must be given personally or by post, as required under the association’s rules, before the general meeting to each member of the association who has a right to vote on the resolution.

**(2)** The notice must state the terms of the proposed special resolution.

**(3)** A special resolution about which notice has not been given under this section has no effect.

**(4)** A declaration by the person presiding at a general meeting that a resolution has been passed at the meeting by the votes of  $\frac{3}{4}$  of the members who are present and entitled to vote on the resolution is conclusive evidence of the fact, unless a poll is demanded at the meeting.

**Whether association is formed or carried on for the purpose of financial gain for its members**

**4.(1)** An association is not formed or carried on for the purpose of financial gain for its members merely because 1 or more of the following circumstances apply to it<sup>2</sup>—

- (a) the association makes a financial gain, but no part of the gain is divided among, or received by, any of the association's members;
- (b) the association is established to protect or regulate a trade, business, industry or calling (the “**pursuit**”) engaged in by its members, or in which they are interested, but the association does not itself engage or take part in the pursuit;
- (c) the association provides its members with facilities or services;
- (d) the association trades with its members, but the trade is ancillary to its principal purpose;
- (e) the association trades with the public, but the trade is ancillary to the association's principal purpose and is not substantial when compared with its other activities;
- (f) the association makes a financial gain from—
  - (i) trading to which paragraph (d) or (e) applies; or
  - (ii) charging admission fees to displays, exhibitions, contests, sporting fixtures or other occasions conducted to promote its objects; or
  - (iii) charging subscriptions to further its objects; or
  - (iv) receiving donations to further its objects;
- (g) the members of the association are entitled to divide the property of the association between them on its dissolution;
- (h) a member of the association—
  - (i) receives a salary as an employee or officer of the association; or

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<sup>2</sup> An association is not eligible for incorporation if it has a purpose of providing financial gain for its members—see section 5(1)(c) (Eligibility for incorporation).

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- (ii) makes a financial gain from the association to which a non-member, acting instead of the member, would equally be entitled; or
- (iii) receives a trophy or prize (other than money) from the association because of a competition; or
- (iv) receives temporary assistance because of illness, injury or bereavement or other financial hardship suffered by the member.

(2) If a person receives a financial gain from an association because of the membership of the association of someone else (the “**member**”), the financial gain is taken to have been received by the member.

(3) In subsection (1)(b)—

“**association**” includes a branch or part of the association.

## **PART 2—INCORPORATION OF ASSOCIATION**

### *Division 1—Preliminary*

#### **Eligibility for incorporation**

**5.(1)** An association is not eligible for incorporation under this Act if the association—

- (a) has less than 7 members; or
- (b) is—
  - (i) a corporation; or
  - (ii) a partnership under the *Partnership Act 1891*; or
  - (iii) a friendly society under the *Friendly Societies Act 1991* or an entity that should be registered under that Act; or
  - (iv) an industrial organisation within the meaning of the *Industrial Relations Act 1990*; or

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- (v) a parents and citizens association under the *Education (General Provisions) Act 1989*; or
- (c) is formed or carried on for the purpose of providing financial gain for its members;<sup>3</sup> or
- (d) is provided for in a special Act that—
  - (i) incorporates—
    - (A) the association’s governing body; or
    - (B) the trustees holding property for the association; or
  - (ii) provides the association may sue or be sued, or hold property, in the name of the association or an officer of the association; or
  - (iii) specially regulates its affairs; or
- (e) has as its main purpose the holding of property—
  - (i) in which its members have a disposable interest; or
  - (ii) that the members have a right to divide between all or some of them; or
  - (iii) for use by some or all of its members or among persons claiming through, or nominated by, some or all of its members; or
  - (iv) for distribution of the property, or income from the property, among some or all of its members or among persons claiming through, or nominated by, some or all of its members; or
- (f) has an object of raising a fund by subscription of its members to make loans to them.

(2) However, subsection (1)(e)(iv) does not make an association ineligible for incorporation if the chief executive is satisfied the association has as its main purpose the holding of property for meeting the medical, hospital, nursing and rehabilitation costs ( the “**medical costs**”), and similar

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<sup>3</sup> Whether an association has the purpose of providing financial gain for its members see section 4 (Whether association is formed or carried on for the purpose of financial gain for its members).

and related costs, of an individual who is suffering from a serious medical condition or injury.

### **Association may resolve to incorporate and adopt proposed rules**

**6.(1)** An association may, by special resolution (the “**incorporation resolutions**”)—

- (a) decide to incorporate under this Act; and
- (b) adopt proposed rules for the incorporated association.

**(2)** The proposed rules may be the model rules or its own rules.

### **Appointment of person to apply for incorporation**

**7.(1)** After passing the incorporation resolutions, the association must, by resolution of its members, appoint an individual (the “**appointed person**”) to prepare and make an application for the association to be incorporated under this Act.

**(2)** The appointed person may do anything necessary or desirable to obtain the incorporation of the association.

**(3)** Subsection (2) has effect despite anything in the association’s rules.

### **Interim officers**

**8.(1)** After passing the incorporation resolutions, the association must also elect interim officers for the incorporated association.

**(2)** The interim officers must include a president and treasurer for the incorporated association.

**(3)** The interim officers may include a secretary and other officers for the incorporated association.<sup>4</sup>

**(4)** The interim officers are taken to hold the offices for which they are elected—

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<sup>4</sup> For the qualifications required for the secretary of an incorporated association see section 66 (Management committee to ensure association has appropriate individual as secretary).

- (a) on the association becoming incorporated; and
- (b) until office holders are elected or appointed to office by the incorporated association.

### ***Division 2—Incorporation***

#### **Form of application etc.**

**9.(1)** An application for incorporation of an association may be made to the chief executive in the approved form.

**(2)** The application must be accompanied by the information, documents and fees required under the regulations.

**(3)** The application must—

- (a) if the association’s proposed rules are the model rules—state that fact and include a copy of the objects proposed for the incorporated association; and
- (b) if the association’s proposed rules 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 rules comply with this Act.<sup>5</sup>

#### **Giving notice of application etc.**

**10.(1)** On receiving the association’s application for incorporation, the chief executive may require the association to—

- (a) give further relevant information or documents to the chief executive about the application; and
- (b) publish a notice about the application (the “**application notice**”).

**(2)** The chief executive may require the association to include in the application notice a statement that a person may object to the association’s incorporation by giving the chief executive a written notice (an “**objection**”).

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<sup>5</sup> Under the *Acts Interpretation Act 1954*, section 7 ‘Act’ includes statutory instruments made or in force under the Act.

**notice**’) clearly stating the objector’s reasons for objecting within 14 days after the notice is published.

(3) The chief executive may require the association to publish the application notice by public advertisement and other ways the chief executive considers appropriate.

(4) The chief executive may also require the association to give notice of the application in other ways, and to other persons, the chief executive considers appropriate.

### **Objections to applications for incorporation**

11. A person (an **“objector”**) may object to the association’s application for incorporation by giving the chief executive an objection notice within 14 days after the application notice is published.

### **Chief executive to make decision about application**

12. After considering the association’s application for incorporation and any objections properly made to the application, the chief executive must—

- (a) grant the application; or
- (b) refuse the application.

### **Chief executive to advise association and objectors of decision**

13.(1) Within 14 days after granting or refusing the association’s application, the chief executive must give written notice of the decision to the association and each objector.

(2) If the application is refused, the notice to the association must include the chief executive’s reasons for the decision.

(3) If the application is granted, the notice to each objector must include the chief executive’s reasons for the decision.

### **Registration of association**

14.(1) If the chief executive grants the association’s application for registration, the chief executive must register the association by entering

particulars of the association in the register.

(2) On registration—

- (a) the association is incorporated; and
- (b) the members of the association become members of the incorporated association; and
- (c) the name for the incorporated association becomes the registered name of the incorporated association.

### **Certificate of incorporation**

**15.(1)** On registration of the association, the chief executive must issue a certificate of incorporation to the association.

(2) The certificate is conclusive evidence that the requirements of this Act about the association's registration and matters preceding or incidental to the registration have been complied with.

### *Division 3—Miscellaneous*

#### **Register of incorporated associations**

**16.(1)** The chief executive must keep a register of incorporated associations.

(2) The register must include the following particulars about each incorporated association—

- (a) the association's name;
- (b) the address of the association's registered office;
- (c) the day the association's particulars are entered in the register;
- (d) other particulars the chief executive considers appropriate.

#### **Registered office**

**17.(1)** The members of the management committee of an incorporated association must ensure the association has a registered office complying

with subsection (2).

Maximum penalty for each member of the management committee—5 penalty units.

(2) The registered office must be a place in the State where a document can be served personally on a person.

*Example—*

A post office box is not a place that can be shown as a registered office.

(3) It is a defence to a prosecution of a member of a management committee for an offence against subsection (1) for the member to prove he or she took all reasonable steps to ensure the association complied with subsection (1).

(4) If the association's registered office changes, the secretary must give written notice in the approved form of the change to the chief executive within 1 month of the change.

Maximum penalty—5 penalty units.

### **Person may inspect register etc.**

18. On payment of the fee prescribed under the regulations, a person may—

- (a) inspect the register at the department's Brisbane office when the office is open to the public; and
- (b) take extracts from, or obtain a copy of details in, the register.

### **False or misleading information**

19.(1) A person must not for an application made under this part—

- (a) state anything to the chief executive the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the chief executive anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—10 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state the statement was false or misleading to the person's knowledge.

### **False, misleading or incomplete documents**

**20.(1)** A person must not give the chief executive a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—10 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement was false, misleading or incomplete to the person's knowledge.

## **PART 3—EFFECTS OF INCORPORATION**

### *Division 1—General*

#### **Incorporated associations are bodies corporate**

**21.** An incorporated association—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue or be sued in its corporate name.

***Division 2—Transition from unincorporated to incorporated association*****Property for an association**

**22.(1)** On incorporation of an association—

- (a) property held for the association or its objects, whether on trust or otherwise, becomes property of the incorporated association; and
- (b) the provisions of a trust that applied to the property immediately before incorporation continue to apply.

**(2)** The operation of section (1)(a)—

- (a) does not affect a covenant, contract or liability that applied to the property before the association's incorporation; and
- (b) relieves a person who held the property for the association or its objects, whether on trust or otherwise, from—
  - (i) liability or accountability for the property; or
  - (ii) being bound to see to the application, distribution or appropriation of the property.

**(3)** The *Stamp Act 1894* does not apply to an action done or a thing created because of this section.

**Transfer of other assets, rights and liabilities**

**23.(1)** On incorporation of an association, the association's assets, rights and liabilities become the incorporated association's assets, rights and liabilities.

**(2)** A legal proceeding by or against the association that has not been finished before the incorporation of the association may be continued and finished by or against the incorporated association.

**(3)** However, an action about a deficit in the association's funds before it incorporated may be started or continued against a trustee for, or committee member of, the association as if the association had not incorporated.

**(4)** The rights and liabilities of the parties to an action mentioned in subsection (3) are the rights and liabilities the parties would have had if the incorporation did not happen.

**Duty to notify registrar of titles of land or interest in land etc.**

**24.(1)** The secretary of an incorporated association must ask the registrar of titles, or anyone else who is required to keep a register about dealings in property, (the “**registering authority**”) to record in the appropriate register land or an interest in land gained by the association because of its incorporation under this Act.

**(2)** The secretary must make the request under subsection (1) within 30 days after the incorporated association gains the land or interest in land.

Maximum penalty—10 penalty units.

**(3)** If asked by the secretary of an incorporated association, the registering authority must make in the appropriate register all entries necessary to record the land or interest in land gained by the incorporated association because of its incorporation under this Act.

**(4)** The request must be made in a way that satisfies the usual requirements of the registering authority.

**(5)** However, the *Stamp Act 1894* does not apply to an action done or a thing created because of this section.

**(6)** The registering authority must comply with the request of the secretary under subsection (1) even if the request is made after the day mentioned in subsection (2).

***Division 3—Powers of incorporated associations*****General powers**

**25.(1)** An incorporated association has, in the exercise of its affairs, all the powers of an individual.

**(2)** An incorporated association may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in carrying out its affairs.

(3) An incorporated association may also issue secured and unsecured notes, debentures and debenture stock for the association.

### **Ultra vires transactions**

**26.(1)** No act of an incorporated association (including the entering into of an agreement by the incorporated association) and no conveyance or transfer of property, whether real or personal, to or by an incorporated association shall be invalid by reason only of the fact that the incorporated association was without capacity or power (whether by provision of this Act or by its rules or otherwise) to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in—

- (a) proceedings against the incorporated association by any member of the incorporated association to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the incorporated association;
- (b) any proceedings by the incorporated association or by any member of the incorporated association against the present or former officers of the incorporated association.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or ought to be performed or made pursuant to any contract to which the incorporated association is a party, the court having jurisdiction in the matter may, if all the parties to the contract are parties to the proceedings and if the court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the incorporated association or to other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and restraining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

**Liability of members**

**27.** A secretary, member of a management committee or member of an incorporated association as such, is not personally liable, except as provided in the rules of the incorporated association, to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges and expenses of a winding-up of the incorporated association, beyond the property of the incorporated association in the person's hands.

**Contracts**

**28.(1)** Contracts entered into by an incorporated association shall be made as follows—

- (a) a contract which, if made between private persons, would be required by law to be in writing and under seal shall be made in writing and under the common seal of the incorporated association;
- (b) a contract which, if made between private persons, would be required by law to be in writing signed by the parties to be charged therewith shall be made in writing signed by any person acting under the express or implied authority of the incorporated association;
- (c) a contract which, if made between private persons, would be valid in law although made by verbal agreement, and not reduced into writing, may be made by verbal agreement on behalf of the incorporated association by any person acting under authority of the incorporated association.

**(2)** All contracts made according to the provisions contained in this section shall be effectual in law and shall bind the incorporated association and its successors and all other parties thereto, and may be varied or discharged in the manner in which it is authorised to be made.

**(3)** A document or proceeding requiring authentication by the incorporated association may be signed by the secretary and need not be under its common seal.

## **PART 4—NAME OF INCORPORATED ASSOCIATION**

### *Division 1—Preliminary*

#### **Name of incorporated association to include ‘incorporated’ etc.**

**29.(1)** An incorporated association must have the word ‘incorporated’ or ‘inc’ as part of and at the end of its name.

**(2)** The association may use the words ‘incorporated’ or ‘inc’ interchangeably.

#### **Use of ‘incorporated’ as part of name etc.**

**30.(1)** A person or unincorporated association must not operate under, or use as its name or title, a name or title that includes the word ‘incorporated’, or an abbreviation of the word.

**(2)** A person who contravenes subsection (1), and each person having the control of the management of an association that contravenes the subsection, commits an offence.

Maximum penalty—10 penalty units.

**(3)** For this section, a person has control of the management of an association if the person is in a position to influence the association’s conduct of the association in relation to the offence.

**(4)** However, it is a defence for the person to prove that the person took all reasonable steps to ensure that the association complied with subsection (1).

#### **Name on seal**

**31.(1)** An incorporated association’s name must appear on its seal in legible characters.

**(2)** If an incorporated association’s name does not appear on its seal in legible characters, the use of the seal is not effective.

**Name of incorporated association to appear on documents**

**32.** An incorporated association must ensure a document it endorses or issues (including advertising material) has the association's name in legible characters.

Maximum penalty—5 penalty units.

***Division 2—Exemption from use of ‘incorporated’*****Incorporated association may be exempted from using word ‘incorporated’**

**33.(1)** An association may, by resolution of its members, decide to apply to the chief executive for exemption from section 29<sup>6</sup>—

- (a) at the time of incorporation of the association; or
- (b) if it is an incorporated association—at another time.

**(2)** The application must be in the approved form and be accompanied by the information, documents and fees required under the regulations.

**(3)** After considering the application, the chief executive may grant or refuse it.

**(4)** Within 14 days after granting or refusing the association's application, the chief executive must give written notice of the decision to the association.

**(5)** If the application is granted, the chief executive must require the association to notify members of the public of the grant within 30 days after being informed by the chief executive of the grant.

**(6)** The chief executive may require the association to give the notice by public advertisement and other ways the chief executive considers appropriate.

**(7)** If the application is refused, the notice to the association must include the chief executive's reasons for the decision.

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<sup>6</sup> Section 29 (Name of incorporated association to include ‘incorporated’ etc.)

***Division 3—Change of name*****Definitions for division**

**34.** In this division—

**“new name”** of an incorporated association means a name registered for the association under this division instead of its old name.

**“old name”** of an incorporated association means the name of the association immediately before its new name is registered under this division.

**“proposed new name”** of an incorporated association means a name an incorporated association decides to apply to have registered instead of its old name.

**Incorporated association may apply to change its name**

**35.(1)** An incorporated association may, by special resolution, decide to change its name.

**(2)** The incorporated association may apply to the chief executive to have the change of name registered.

**(3)** The application must be—

- (a) made within 1 month after the passing of the special resolution; and
- (b) in the approved form; and
- (c) accompanied by the information, documents and fees required under the regulations.

**Giving notice of application to change name**

**36.(1)** On receiving the incorporated association’s application to change its name, the chief executive may require the association to—

- (a) give further relevant information or documents to the chief executive about the application; or
- (b) publish a notice about the application (the **“application notice”**).

(2) The chief executive may require the association to include in the application notice a statement that a person may object to the association's change of name by giving the chief executive a written notice (an **"objection notice"**) clearly stating the objector's reasons for objecting within 14 days after the notice is published.

(3) The chief executive may require the association to publish the application notice by public advertisement and other ways the chief executive considers appropriate.

(4) The chief executive may also require the association to give notice of the application in other ways, and to other persons, the chief executive considers appropriate.

(5) The chief executive may give notice of the application in the ways, and to the persons, the chief executive considers appropriate.

### **Objections to application for change of name**

37. A person (an **"objector"**) may object to the incorporated association's application to change its name by giving the chief executive an objection notice with 14 days after the application notice is published.

### **Chief executive to advise association and objectors of decision**

38. After considering the incorporated association's application to change its name and any objections properly made to the application, the chief executive must—

- (a) grant the application; or
- (b) refuse the application.

### **Notice of decision**

39.(1) Within 14 days after granting or refusing the incorporated association's application, the chief executive must give written notice of the decision to the association and each objector.

(2) If the application is refused, the notice to the association must include the chief executive's reasons for the decision.

(3) If the application is granted, the notice to each objector must include the chief executive's reasons for the decision.

### **Registration of new name**

**40.(1)** If the chief executive grants the incorporated association's application to change its name, the chief executive must register the new name for the incorporated association by entering the name in the register.

(2) The change of name has effect only when it is registered by the chief executive.

### **New certificate of incorporation**

**41.(1)** On registration of the incorporated association's new name, the chief executive must issue the association with a new certificate of incorporation.

(2) However, the chief executive may act under subsection (1) only if the association's existing certificate of incorporation has been returned to the chief executive or the chief executive is satisfied that it has been lost or destroyed.

### **Change of name does not affect legal personality**

**42.(1)** A change of name of an incorporated association does not—

- (a) affect its legal personality or identity; or
- (b) affect a right or obligation of the association or anyone else; or
- (c) make legal proceedings by or against the association defective.

(2) Without limiting subsection (1), the change of name of the incorporated association does not affect a right, obligation or benefit the association would have had or enjoyed apart from the change of name.

(3) Also, but without limiting subsection (1), if a legal proceeding might have been continued or started by or against the incorporated association under its old name, it may be continued or started by or against it under its new name.

***Division 4—Undesirable names*****Association must not have undesirable name**

**43.(1)** An incorporated association must not have an undesirable name or an undesirable name as part of its name.

**(2)** An undesirable name for an incorporated association is a name—

- (a) a reasonable individual may mistake for—
  - (i) the name of another association incorporated under this or another Act of the State; or
  - (ii) a name—
    - (A) reserved or registered under the Corporations Law; or
    - (B) registered under the *Business Names Act 1962*; or
- (b) that may cause a reasonable individual—
  - (i) to be offended; or
  - (ii) to be deceived about the nature and identity of the association; or
- (c) the chief executive, by gazette notice, declares is an undesirable name; or
- (d) declared by regulation to be an undesirable name.

**Notice to associations having or proposing to have undesirable name**

**44.(1)** The chief executive must send a written notice to an association if the chief executive considers that—

- (a) the proposed name for the association on its incorporation is, or includes, an undesirable name; or
  - (b) the proposed new name for the incorporated association is, or includes, an undesirable name.
- (2)** The notice must—
- (a) inform the association that the chief executive considers that the proposed name, or proposed new name, for the incorporated

association is, or includes, an undesirable name; and

(b) give reasons why the name is undesirable.

(3) If the association is an incorporated association, the chief executive may send a written notice to the association—

(a) stating that the chief executive considers that the association's name is an undesirable name; and

(b) asking the association to apply for a new name for the association within 35 days of sending the notice.

(4) If the incorporated association does not comply with the request under subsection (3)(b) within 40 days after it is given the notice, the chief executive may cancel the association's incorporation.

### **Associations may be allowed to have undesirable names**

**45.(1)** An association may make a written application to the chief executive to have a name for the association that is, or includes, an undesirable name.

(2) The application may be made when applying for incorporation of the association or at any other time.

(3) The application must be in the approved form and be accompanied by the information, documents and fees required under the regulations.

(4) After considering the association's application, the chief executive must grant or refuse the application.

(5) Within 14 days after granting or refusing the association's application, the chief executive must give written notice of the decision to the association.

(6) If the application is refused, the notice to the association must include the chief executive's reasons for the decision.

(7) This section has effect despite section 43.<sup>7</sup>

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<sup>7</sup> Section 43 (Association must not have undesirable name)

## **PART 5—RULES**

### *Division 1—Registration of rules*

#### **Registration of incorporated association’s rules**

**46.(1)** If an association’s proposed rules on incorporation are the model rules, on registration of the association the chief executive must make an entry in the register stating the model rules are the rules of the association.

**(2)** On registration, the rules of the incorporated association consist of—

- (a) the association’s name; and
- (b) the objects for the association stated in the application for incorporation of the association; and
- (c) the model rules in the form in which they exist when the association is incorporated.

**(3)** If an association’s proposed rules on incorporation are its own rules, on registration of the association the chief executive must make an entry in the register stating the association’s rules are its own rules.

**(4)** On registration of the association mentioned in subsection (3), the rules of the incorporated association are its own rules.

**(5)** An entry in the register stating an association’s rules are its own rules does not validate, or cure any defect in, the rules.

#### **Matters not provided for in rules provided for in model rules**

**47.(1)** If a matter is not provided for under an incorporated association’s own rules but the matter is provided for under a provision of the model rules (the “**additional provision**”), the association’s own rules are taken to include the additional provision.

**(2)** This section does not affect the ability of an incorporated association to amend its rules under this Act.

**(3)** Subsection (1) does not apply to an incorporated association as far as its own rules provide that the subsection does not apply to the association.

***Division 2—Amending rules*****Application to register amendment of rules**

**48.(1)** An incorporated association may, by special resolution, decide to amend its rules.

**(2)** An incorporated association may apply to the chief executive to have the amendment registered.

**(2A)** Within 1 month after the special resolution mentioned in subsection (1) is passed, the association must give the application to the chief executive.

Maximum penalty—1 penalty unit.

**(3)** The application must be in the approved form and be accompanied by the information, documents and fees required under the regulations.

**(4)** The application must also be accompanied by—

- (a)** a copy of the amendment or the complete rules with the amendment clearly shown; and
- (b)** a statutory declaration by the association's secretary stating the amendment complies with this Act.<sup>8</sup>

**(5)** After considering the association's application, the chief executive must grant or refuse the application.

**(6)** Within 14 days after granting or refusing the association's application, the chief executive must give written notice of the decision to the association.

**(7)** If the application is refused, the notice to the association must include the chief executive's reasons for the decision.

**Registration of amendment**

**49.(1)** If the chief executive grants the application for registration of the amendment of the incorporated association's rules, the chief executive must

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<sup>8</sup> Under the *Acts Interpretation Act 1954*, section 7 'Act' includes statutory instruments made or in force under the Act.

register the amendment.

(2) On registration of the amendment, the incorporated association's rules are its rules as amended.

### **Effect of amended rules**

**50.(1)** In this section—

**“new rules”** of an incorporated association means the association's rules on registration of an amendment of its rules.

**“old rules”** of an incorporated association means the association's rules immediately before registration of an amendment of its rules.

**“registration”** means registration under this division.

(2) The new rules of an incorporated association do not affect a right, liability or obligation under the association's old rules.

(3) However, rights, liabilities and obligations under the old rules are extinguished to the extent they—

(a) existed between—

(i) a member of the incorporated association and the incorporated association; or

(ii) the incorporated association's members; and

(b) were not the subject of litigation immediately before the registration of the new rules.

### **Effect of amendment of model rules**

**51.(1)** This section applies if an incorporated association's rules are the model rules and the association amends its rules.

(2) On registration of the amendments, the model rules as amended become the association's own rules.

### **Chief executive may ask for copy of complete rules**

**52.(1)** The chief executive may ask the secretary of an incorporated association to send the chief executive, within 21 days of the chief executive

making the request—

- (a) a complete copy of the incorporated association's rules; and
- (b) a statutory declaration by the secretary stating that the copy of the rules sent to the chief executive is a copy of the complete rules of the incorporated association.

(2) The secretary must comply with the request.

Maximum penalty for subsection (2)—2 penalty units.

### *Division 3—Miscellaneous*

#### **Secretary must make rules available to members if asked**

**53.(1)** A member of an incorporated association may ask the association's secretary for a copy of the association's rules.

(2) The secretary may require the member to pay an amount to the secretary to cover the reasonable costs of providing the copy to the member.

(3) The secretary must give the member a complete copy of the association's rules as soon as practicable after the member pays any reasonable costs required under subsection (2).

Maximum penalty for subsection (3)—1 penalty unit.

#### **Form in which rules must be kept**

**54.** The secretary of an incorporated association must ensure the association's rules, or a copy of the rules that is given or sold to someone else, are set out in printed legible form (whether typewritten or otherwise).

Maximum penalty—5 penalty units.

## **PART 6—GENERAL OPERATION OF INCORPORATED ASSOCIATION**

### *Division 1—Meetings*

#### **First annual general meeting**

**55.** An incorporated association must hold its first annual general meeting within 18 months after the day the association is incorporated.

#### **Subsequent annual general meetings**

**56.** An incorporated association must hold subsequent annual general meetings—

- (a) at least once each year; and
- (b) within 3 months after the end of the association's previous financial year.

#### **General meetings**

**57.(1)** The members of the management committee of an incorporated association must ensure that the association complies with its rules about the calling and holding of meetings.

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

**(2)** It is a defence to a prosecution of a member of the management committee for an offence against subsection (1) for the member to prove he or she took all reasonable steps to ensure the association complied with the subsection.

**(3)** If an incorporated association makes decisions at a meeting of the association in breach of its rules about quorums for the meeting, the decisions have no effect.

***Division 2—Audits*****Audit of newly formed incorporated association**

**58.(1)** If an association is incorporated within 3 months of the end of the association's financial year, the association is not required to comply with section 59 for the financial year it is incorporated.

**(2)** However, in its first audited statement a reference to a financial year under section 59 is taken to include the financial year the association was incorporated.<sup>9</sup>

**Audit and statement**

**59.(1)** The members of the management committee of an incorporated association must ensure the association, within 3 months of the close of the financial year prescribed, or more frequently if the rules of the incorporated association so provide—

- (a) prepare a statement containing the following particulars—
  - (i) the income and expenditure of the incorporated association during its last financial year; and
  - (ii) the assets and liabilities of the incorporated association at the close of the said year; and
  - (iii) all mortgages, charges and securities of any description affecting any of the property of the incorporated association at the close of the said year;
- (b) causes the financial affairs of the incorporated association to be audited by—
  - (i) a person who is a member of The Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants; or
  - (ii) a person approved by the chief executive;

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<sup>9</sup> Section 59 (Audit and Statement) was the *Associations Incorporation Act 1981*, section 40 before being renumbered by the *Associations Incorporation Amendment Act 1995*.

*Associations Incorporation Act 1981*

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- (c) presents the audited statement to the annual general meeting for adoption.

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

(2) No person shall consent to be appointed, or act, as the auditor of an incorporated association, or prepare for or on behalf of such an incorporated association any financial statement or any report or certificate relating thereto that is required by or under this Act to be prepared by the auditor of such an incorporated association if the person is—

- (a) the secretary, or a member of the management committee, of the incorporated association;
- (b) an employee of the incorporated association;
- (c) a partner, employer, or employee of the secretary, or a partner, employer or employee of a member of the management committee, of the incorporated association.

Maximum penalty—10 penalty units.

(3) A person who is partner in any unincorporated body shall not consent to be appointed, or act, as the auditor of an incorporated association or prepare for or on behalf of an incorporated association any financial statement or any report or certificate required by or under this Act to be prepared by the auditor of such an incorporated association, if any of the partners of that unincorporated body is disqualified under subsection (2) from acting as auditor of the incorporated association.

Maximum penalty—10 penalty units.

(4) The secretary of an incorporated association shall, within 1 month after the adoption of the audited statement by the annual general meeting as required by subsection (1), or, if the chief executive (who is hereby authorised so to do) allows a longer period, within the period allowed by the chief executive, lodge with the chief executive a copy of that statement certified to be correct by the person who audited the financial affairs of the incorporated association.

Maximum penalty—4 penalty units.

(5) For the purposes of subsection (4), the chief executive may, where the chief executive considers it appropriate, exempt an incorporated

association from lodgment of the statement.

(6) The financial statement of an incorporated association shall be available for inspection by the public.

(7) The chief executive may, in any case where the chief executive considers it desirable so to do, direct in writing an incorporated association to publish in such manner and within such time as is set out in the direction, a copy of the statement certified to be correct referred to in subsection (4) and the members of the management committee must ensure the association complies in all respects with the terms of such direction.

Maximum penalty for each member of the management committee—5 penalty units.

(8) It is a defence to a prosecution of a member of a management committee for an offence against this section for the member to prove he or she took all reasonable steps to ensure this section was complied with.

## **PART 7—MANAGEMENT COMMITTEE**

### **Management committee**

**60.(1)** Subject to this Act, the business and operations of an incorporated association shall be controlled by a management committee.

(2) Every member of the management committee and any manager duly appointed by the management committee acting in the business or operations of the incorporated association shall be deemed to be the agent of the incorporated association for all purposes within its objects.

(3) The acts of a member of the management committee shall be valid notwithstanding any defect that may afterwards be discovered in the member's appointment or qualifications.

### **Membership of management committee**

**61.(1)** An incorporated association must have a management committee.

(2) All members of the management committee must be adults.

(3) The members of the management committee, other than the secretary, must be members of the incorporated association.

(4) The secretary may be a member of the incorporated association.

### **Eligibility for election to a management committee**

**61A.(1)** A person is not eligible to be elected as a member of an incorporated association's management committee if—

- (a) the person has been convicted—
  - (i) on indictment; or
  - (ii) summarily and sentenced to imprisonment, other than in default of payment of a fine; and
- (b) the rehabilitation period in relation to the conviction has not expired.

(2) In this section—

“**rehabilitation period**” has the meaning given in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **Election of management committee**

**62.(1)** The members of the management committee shall be elected at the annual general meeting or any general meeting of the incorporated association in accordance with its rules.

(2) Notwithstanding the provisions of subsection (1) the rules of an incorporated association may permit the management committee to fill a casual vacancy on the management committee.

### **Meetings of management committee**

**63.(1)** Meetings of the management committee shall be held as often as may be necessary for properly conducting the business and operations of the incorporated association, but shall be held at least once in every 4 calendar months and a quorum for a meeting shall be prescribed by the rules.

(2) The management committee may hold meetings, or allow members

to take part in its meetings, by telephone, video link or another form of communication.

### **Tenure of members of management committee**

**64.(1)** The members of the management committee shall hold office and retire and may be removed from office as prescribed by the rules.

**(2)** The office of a member of the management committee shall be vacated in such circumstances (if any) as may be prescribed by the rules of the incorporated association or if the person holding that office—

- (a) dies; or
- (b) becomes bankrupt or compounds with creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (d) is—
  - (i) convicted of an offence under this Act; or
  - (ii) convicted of an indictable offence or an offence punishable on summary conviction for which the person is sentenced to imprisonment, other than in default of payment of a fine; or
- (e) has been convicted on indictment or summarily and sentenced to imprisonment, other than in default of payment of a fine, and the rehabilitation period in relation to the conviction has not expired.

**(3)** In this section—

**“rehabilitation period”** has the meaning given in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **When secretary must be elected or appointed**

**65.(1)** This section applies to an incorporated association that did not elect an interim officer as secretary before its incorporation.

**(2)** The members of the incorporated association’s management committee must ensure a secretary is appointed or elected for the

association within 1 month after its incorporation.

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

(3) If a vacancy happens in the office of secretary for the incorporated association, the members of the management committee must ensure a secretary is appointed or elected for the association within 1 month after the vacancy happens.

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

(4) It is a defence to a prosecution of a member of the management committee for an offence against this section for the member to prove he or she took all reasonable steps to ensure this section was complied with.

### **Management committee to ensure association has appropriate individual as secretary**

**66.(1)** The management committee of an incorporated association must ensure the secretary is an individual residing in Queensland, or in another State but not more than 65 km from the Queensland border, who is—

- (a) a member of the incorporated association elected by the association as secretary; or
- (b) a member of the incorporated association's management committee appointed by the committee as secretary; or
- (c) appointed by the management committee as secretary (whether or not the individual is a member of the incorporated association).

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

(2) It is a defence to a prosecution of a member of the management committee for an offence against subsection (1) for the member to prove he or she took all reasonable steps to ensure the subsection was complied with.

**Secretary may be appointed or removed at any time**

**67.(1)** The management committee of an incorporated association may appoint and remove the association's secretary at any time.

**(2)** Subsection (1) applies despite anything in the association's rules.

**Notification of certain office holders**

**68.(1)** If an incorporated association appoints or elects a secretary for the association under section 65,<sup>10</sup> the members of the management committee must ensure the association notifies the chief executive in the approved form of the appointment or election within 1 month after it happens.

Maximum penalty for each member of the management committee—2 penalty units.

**(2)** It is a defence to a prosecution of a member of the management committee for an offence against subsection (1) for the member to prove he or she took all reasonable steps to ensure the association complied with the subsection.

**(3)** The secretary of an incorporated association must notify the chief executive in the approved form of a change to the membership of the offices of the president, secretary or treasurer within 1 month after it happens.

Maximum penalty—2 penalty units.

**(4)** The secretary of an incorporated association must notify the chief executive in the approved form of a change of the secretary's address within 1 month after it happens.

Maximum penalty—2 penalty units.

**Office of secretary**

**69.(1)** The secretary may, unless the rules of the incorporated association otherwise provide, hold any other office in the incorporated association except the office of auditor.

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<sup>10</sup> Section 65 (When secretary must be elected or appointed)

(2) The office of secretary shall become vacant if the person holding that office—

- (a) dies;
- (b) becomes bankrupt or compounds with creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (c) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (d) is—
  - (i) convicted of an offence under this Act; or
  - (ii) convicted of an indictable offence or an offence punishable on summary conviction for which the person is sentenced to imprisonment, other than in default of payment of a fine.
- (e) resigns office by writing under the person's hand addressed to the management committee of the incorporated association;
- (f) ceases to be resident in Queensland, or in another State but not more than 65 km from the Queensland border.

## **Insurance**

**70.(1)** Forthwith on receiving a certificate of incorporation, the members of the management committee must ensure the incorporated association takes out insurance in respect of damage to property, death or bodily injury occurring upon the property of the incorporated association for a cover of at least \$1 000 000, and shall keep such insurance cover current at all times.

Maximum penalty for each member of the management committee—2 penalty units.

(2) The secretary of the incorporated association shall notify the chief executive of the taking out of the insurance referred to in subsection (1), within 1 month after such insurance has been effected.

Maximum penalty—1 penalty unit.

(3) It is a defence to a prosecution of a member of a management committee for an offence against subsection (1) for the member to prove he

or she took all reasonable steps to ensure the association complied with subsection (1).

## **PART 8—RIGHTS AND OBLIGATIONS OF MEMBERS**

### **Rights of members**

**71.(1)** Upon incorporation the rules of the association shall constitute the terms of a contract between the members from time to time and the incorporated association.

**(2)** Where a member of an incorporated association is deprived by a decision of that association of a right conferred on the member by the rules of that association as a member thereof, the Supreme Court shall have jurisdiction to adjudicate upon the validity of that decision under the rules.

**(3)** An incorporated association shall be bound by the rules of natural justice in adjudicating upon the rights of its members conferred by the rules of such association on its members.

### **Enforcement of rights and obligations**

**72.(1)** The Supreme Court may, on the application of an incorporated association, or of a member thereof, make orders, including interim orders—

- (a) giving directions for the performance and observance of the rules of such incorporated association by any person who is under an obligation to perform or observe those rules;
- (b) declaring and enforcing the rights and obligations of members of such incorporated association between themselves, and the rights and obligations between such incorporated association and any member or members thereof.

**(2)** An order may be made under this section notwithstanding that no right of a proprietary nature is involved, or that the applicant has no interest in the property of the incorporated association.

**Powers of Supreme Court**

**73.(1)** The Supreme Court may, on an application brought pursuant to section 72, grant such relief as is appropriate in the circumstances.

**(2)** The Supreme Court may refuse to entertain such an application, or to make an order on such application, or may refuse an order for costs, or may make an order for costs against a party, whether successful or not, if it is of the opinion that—

- (a) the issue raised in the application is trivial;
- (b) having regard to the importance of the issue, the nature of the incorporated association, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application;
- (c) the unreasonable or improper conduct of a party has been responsible for the making of an application, or has added to the cost of the proceedings.

## **PART 9—INCORPORATION OF BRANCHES AND AMALGAMATION OF INCORPORATED ASSOCIATIONS**

### *Division 1—Incorporation of branches*

**Members of branch may resolve to incorporate**

**74.(1)** The members of a branch, or group of branches, of a parent association may decide to incorporate under this Act—

- (a) after receiving the written agreement of the parent association; and
- (b) by special resolution—
  - (i) for a branch—passed by the members of the branch; or
  - (ii) for a group of branches—passed by the members of each

branch of the group of branches.

(2) A group of branches may incorporate even if some or all of the branches are already incorporated.

### **Powers of appointed person**

**75.(1)** After passing the special resolution under section 74 the association must, by resolution of its members, appoint a person (the “**appointed person**”) to prepare an application for the branch or group of branches to be incorporated under this Act.

(2) The appointed person may do anything necessary or desirable to obtain the incorporation of the association.

(3) Subsection (2) has effect despite anything in the association’s rules.

### **Modified application of Act**

**76.** The provisions of this Act providing for the incorporation of an association<sup>11</sup> apply to the incorporation of a branch, or group of branches, with all necessary changes, all changes made by this division and any changes prescribed under the regulations.

### **Obligations of branch**

**77.(1)** This section applies to a branch, or group of branches, incorporated under this division.

(2) The incorporation of a branch, or group of branches, of a parent association does not relieve the members of the incorporated branch of a liability or obligation the members had as members of the parent association.

(3) For the branch or group of branches—

- (a) the parent association’s rules control the membership of the branch or group of branches; and
- (b) a member of the branch or group of branches—

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<sup>11</sup> For provisions dealing with the incorporation of associations see part 2.

- (i) is taken to be a member of the parent association; and
- (ii) is under the same liabilities and obligations as members of the parent association.

**Branch must have word ‘branch’ in its name etc.**

**78.** A branch, or group of branches, incorporated under this division must have as part of its name—

- (a) the word ‘branch’; and
- (b) other words identifying it as a branch.

*Example of words identifying a branch—*

A branch may identify itself by reference to its locality eg. ‘XYZ (Mt. Isa Branch) Inc.’

***Division 2—Amalgamation of incorporated associations*****Definitions for division**

**79.** In this division—

“**new association**” means an incorporated association that is incorporated because of an application to amalgamate made under this division by 2 or more old associations.

“**old association**” means an incorporated association that, with 1 or more other incorporated associations, applies under this division to form a new association.

**Members may resolve to amalgamate**

**80.(1)** An incorporated association may, by special resolution, decide to amalgamate with 1 or more other incorporated associations to form a single incorporated association.

**(2)** Within 1 month after the resolution is passed, the association must give notice of it, in the approved form, to the chief executive.

Maximum penalty—1 penalty unit.

**Applicant incorporated associations must have agreed rules**

**81.(1)** Each old association deciding to become a new association may, by special resolution—

- (a) adopt a single set of proposed rules to apply to the new association on its incorporation (the **“proposed common rules”**); and
- (b) elect interim officers for the new association.

**(2)** The proposed common rules may be—

- (a) the model rules; or
- (b) own rules.

**Appointment of appointed person to make application**

**82.(1)** After passing the special resolution, each old association must, by resolution of its members, appoint the same individual (an **“appointed person”**) to prepare an application for the old associations to be incorporated as a new association.

**(2)** The common appointed person may do anything necessary or desirable to obtain the amalgamation of the old associations to form a new association.

**(3)** Subsection (2) has effect despite anything in the old associations’ rules.

**Chief executive may require notices to be sent to creditors**

**83.(1)** After considering an application to amalgamate, the chief executive may require a secretary of an old association involved in the proposed amalgamation to give—

- (a) to the association’s creditors written notice of the application in the approved form; and
- (b) to the chief executive a statutory declaration stating the names and addresses of all of the association’s creditors and stating that each of the creditors was sent a notice under paragraph (a).

**(2)** The notice under subsection (1)(a) must include a statement that a

creditor may notify the chief executive in writing within 21 days after the notice is given to the creditor that the creditor opposes the amalgamation and the reasons for the creditor's opposition.

(3) The secretary must comply with a requirement made under subsection (1).

Maximum penalty—10 penalty units.

(4) If the chief executive receives a notice from a creditor within the time stated in a notice under subsection (1)(a), the chief executive must not grant the application without the sanction of the Supreme Court.

### **Modified application of Act**

84. The provisions of this Act providing for the incorporation of an association apply<sup>12</sup> to the incorporation of a new association with all necessary changes, all changes made under this division and any changes prescribed under the regulations.

### **Certificate of incorporation**

85.(1) On registration of a new association, the chief executive must issue the association with a certificate of incorporation.

(2) However, the chief executive may act under subsection (1) only if each of the existing certificates of incorporation of the old associations applying for amalgamation into the new association has been returned to the chief executive or the chief executive is satisfied that the certificate has been lost or destroyed.

### **Effect of incorporation**

86. On the incorporation of a new association—

- (a) the assets and liabilities of the old associations become the assets and liabilities of the new association; and
- (b) the incorporation of the old associations is cancelled.

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<sup>12</sup> For provisions dealing with the incorporation of associations see part 2.

**Duty to notify registrar of titles of land or interest in land etc.**

**87.(1)** The secretary of a new association must ask the registrar of titles, or anyone else who is required to keep a register about dealings in property, (the “**registering authority**”) to record in the appropriate register land or an interest in land gained by the new association because of its incorporation under this division.

**(2)** The secretary must make the request under subsection (1) within 30 days after the new association gains the land or interest in land.

Maximum penalty—10 penalty units.

**(3)** If asked by the secretary of a new association, the registering authority must make in the appropriate register all entries necessary to record the land or interest in land gained by the new association because of its incorporation under this division.

**(4)** The request must be made in a way that satisfies the usual requirements of the registering authority.

**(5)** However, the *Stamp Act 1894* does not apply to an action done or a thing created because of this section.

**(6)** The registering authority must comply with the request of the secretary under subsection (1) even if the request is made after the day mentioned in subsection (2).

**Amalgamation does not affect certain rights and obligations**

**88.(1)** The amalgamation of old associations into a new association does not—

(a) affect a right or obligation of the old associations or anyone else;  
or

(b) make legal proceedings by or against an old association defective.

**(2)** Without limiting subsection (1), the amalgamation of the old associations into a new association does not affect a right, obligation or benefit the new association would have had or enjoyed apart from the amalgamation of the old associations.

**(3)** Also, but without limiting subsection (1), if a legal proceeding might

have been continued or started by or against an old association, it may be continued or started by or against the new association.

## **PART 10—WINDING-UP**

### **Voluntary winding-up**

**89.(1)** An incorporated association may be wound-up by special resolution of the members passed at a general meeting called for that purpose.

**(2)** A copy of the special resolution shall be lodged with the chief executive within 1 month from the passing of that special resolution.

**(3)** An incorporated association may be wound-up in the way and under circumstances a company may be wound-up under the Corporations Law.

**(4)** For subsection (3), the Corporations Law applies with all necessary changes and any changes prescribed under the regulations.

### **Winding-up by the Supreme Court**

**90.(1)** An incorporated association may be wound-up by the Supreme Court under the following circumstances, that is to say—

- (a) if the incorporated association suspends its operations for the space of a whole year;
- (b) if the members of the incorporated association are reduced in number to not constitute a quorum at a general meeting;
- (c) if the incorporated association is unable to pay its debts;
- (d) if the incorporated association carries on any operation whereby any member thereof makes any financial gain contrary to the provisions of this Act;
- (e) if the Supreme Court is of the opinion that it is just and equitable that the incorporated association should be wound-up.

**(2)** An application to the Supreme Court for the winding-up of an

incorporated association shall be by petition presented either by the incorporated association, or by a member thereof, or by a creditor thereof, or by the chief executive.

(3) An incorporated association may be wound-up in the way and under circumstances a company may be wound-up under the Corporations Law.

(4) For subsection (3), the Corporations Law applies with all necessary changes and any changes prescribed under the regulations.

### **Application of Corporations Law to winding-up**

**91.(1)** The provisions of the Corporations Law dealing with winding-up apply, with all necessary changes and any changes prescribed under the regulations, to the winding-up or dissolution of an incorporated association.

(2) In the application of provisions of the Corporations Law to the winding-up of the association, a reference to—

- (a) the commission—is taken to be a reference to the chief executive; and
- (b) a company—is taken to be a reference to the an incorporated association; and
- (c) a director—is taken to be a reference to a member of the management committee of an incorporated association, other than its secretary; and
- (d) a registered office of a company—is taken to be a reference to a registered office of an incorporated association; and
- (e) a secretary of a company—is taken to be a reference to a secretary of an incorporated association; and
- (f) a special resolution—is taken to be a reference to a special resolution within the meaning of this Act.

### **Distribution of surplus assets**

**92.(1)** Where, upon the winding-up of an incorporated association, a special resolution relating to the distribution of the surplus assets of the incorporated association has been passed by its members in accordance with its rules, all surplus assets shall, subject to any trust affecting the same,

be disposed of in the manner so resolved.

(2) Where no such special resolution has been passed—

- (a) the Governor in Council may by regulation vest all or any of the surplus assets of the incorporated association in the public trustee;
- (b) subject to paragraph (c) the surplus assets vested in the public trustee under this subsection shall be held upon the trusts and for the purposes upon or for which they were held prior to being vested in the public trustee;
- (c) the Governor in Council may by regulation vary the trusts or purposes referred to in paragraph (b) and may by the same or any subsequent regulation vest those surplus assets or any part of them in such persons or incorporated associations and for such purposes as the Governor in Council shall specify;
- (d) the receipt of the public trustee shall be a sufficient discharge to any persons paying or transferring any surplus assets under this subsection as to the surplus assets paid or transferred, and the said persons shall not thereafter be liable or accountable therefor or be bound to see to the application, distribution, or appropriation thereof.

(3) In this section—

**“surplus assets”** means, in relation to the incorporated association, the assets after payment of the debts and liabilities remaining on a winding-up of the incorporated association and the costs, charges and expenses of the winding-up.

### **Cancellation of incorporation**

**93.(1)** In any case where the chief executive has reasonable cause to believe that on any 1 or more of the following grounds—

- (a) an incorporated association is carrying on or proposes to carry on any operation which is beyond the scope of the objects of the incorporated association;
- (b) an incorporated association has ceased to exist;
- (c) an incorporated association is, by the nature of its operations or

*Associations Incorporation Act 1981*

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transactions, doing anything which would have excluded it from incorporation under this Act;

- (d) an incorporated association has less than 7 members;
- (e) in the opinion of the chief executive, circumstances exist which, in the public interest, justify the cancellation of the incorporation of an incorporated association;

it is desirable that the incorporation of an incorporated association be cancelled, the chief executive may serve, by prepaid registered post, on a person appearing to the chief executive from records kept under this Act to be the secretary or other officer of the incorporated association, a notice—

- (f) setting out the ground or grounds for the proposed cancellation of the incorporation of the incorporated association; and
- (g) requiring the secretary, or other officer within 1 month from the date of the notice, to satisfy the chief executive why the incorporation of the incorporated association should not be cancelled; and
- (h) stating that unless the chief executive is so satisfied by the secretary or other officer within that period, the chief executive will cancel the incorporation of the incorporated association.

(2) If the chief executive is not satisfied as provided in subsection (1) within the time specified therein, the chief executive shall cancel the incorporation of the incorporated association and serve, by prepaid registered post, on the person appearing pursuant to subsection (1) to be the secretary of the incorporated association, a notice that the incorporation of the incorporated association is cancelled.

**Vesting of property on cancellation**

**94.** Where the incorporation of an incorporated association is cancelled pursuant to section 93—

- (a) the Governor in Council may by regulation vest all or any property of such association in the public trustee;
- (b) subject to paragraph (c) the property vested in the public trustee under this section shall be held upon the trusts and for the purposes upon or for which they were held prior to being vested

in the public trustee;

- (c) the Governor in Council may by regulation vary the trusts or purposes referred to in paragraph (b) and may by the same or any subsequent regulation vest that property or any part thereof in such persons or incorporated associations and for such purposes as the Governor in Council shall specify;
- (d) the receipt of the public trustee shall be sufficient discharge to any persons paying or transferring any property under this section as to the property paid or transferred, and the said persons shall not thereafter be liable or accountable therefor or be bound to see to the application, distribution or appropriation thereof.

## **PART 11—CHANGE IN STATUS OF INCORPORATED ASSOCIATIONS AND OTHER ENTITIES**

### *Division 1—Interpretation*

#### **Purpose of part**

**95.** The purpose of this part is to facilitate changes in the status of incorporated associations and certain other entities.

#### **Definitions**

**96.** In this part—

“**eligible friendly society**” has the meaning given by the *Friendly Societies Act 1991*.

“**former society**” means a cooperative or an eligible friendly society that becomes an incorporated association under this part.

“**registrar**”—

- (a) for a cooperative—means the registrar under the Cooperatives

Act; or

- (b) for a friendly society—means the registrar under the *Friendly Societies Act 1991*.

**“transfer day”**, for a cooperative or friendly society that becomes an incorporated association under this part, means the day when the chief executive issues a certificate of incorporation for the former cooperative or friendly society.

### *Division 2—Incorporation of certain eligible friendly societies*

#### **Notice about special resolutions**

**97.(1)** This section applies to an eligible friendly society that has passed a special resolution under the *Friendly Societies Act 1991*, section 12A.2 to transfer its incorporation to this Act.

**(2)** Within 1 month of passing the resolution, the society must give the chief executive—

- (a) a copy of the resolution approving the proposed transfer of incorporation; and
- (b) if relevant, a copy of the resolution to change the society’s name; and
- (c) if relevant, a copy of the resolution to change the society’s rules.

#### **Society to have president and treasurer before applying for transfer of incorporation**

**97A.** An application can not be made by, and a certificate of incorporation can not be issued to, an eligible friendly society that does not have a president and a treasurer.

#### **Application**

**98.(1)** This section applies to an eligible friendly society that has been given a certificate under the *Friendly Societies Act 1991*, section 12A.4 consenting to the society transferring its incorporation to this Act.

(2) Before the certificate ceases to have effect, the society may apply to the chief executive to transfer its incorporation to this Act.

(3) The application must be in the form approved by the chief executive.

(4) The application must be accompanied by—

- (a) the certificate under the *Friendly Societies Act 1991*, section 12A.4; and
- (b) a copy of the society's certificate of incorporation under the *Friendly Societies Act 1991* certified as a true copy by the society's secretary; and
- (c) a copy of the society's proposed rules and a statutory declaration by the society's secretary stating that the rules comply with this Act; and
- (d) the fee prescribed by regulation.

## **Incorporation**

**99.(1)** If, after considering the application by an eligible friendly society, the chief executive is satisfied about the matters mentioned in subsection (2), the chief executive must promptly issue a certificate of incorporation under this Act for the society.

(2) The matters about which the chief executive must be satisfied are—

- (a) the society has complied with the *Friendly Societies Act 1991*, part 12A; and
- (b) since the certificate under the *Friendly Societies Act 1991*, section 12A.4 was issued by the registrar, none of the events mentioned in section 12A.1(2) of that Act has happened in relation to the society; and
- (c) a copy of the society's proposed rules and a statutory declaration by the society's secretary stating that the rules comply with this Act; and

(3) When the chief executive issues the society with a certificate of incorporation, the society is incorporated as an incorporated association under this Act.

**Chief executive must give registrar copy of certificate of incorporation**

**100.** Within 7 days after the transfer day for an incorporated association, the chief executive must give the registrar a copy of the certificate of incorporation for the association.

**Matters happening on transfer day**

**101.(1)** On the transfer day for an incorporated association—

- (a) the property of the former society vests in the association without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and
- (b) the debts and liabilities of the former society become debts and liabilities of the association; and
- (c) the personality of the former society merges in that of the association.

**(2)** Subsection (1)—

- (a) does not result in the dissolution of the former friendly society; or
- (b) affect a right or obligation of the society or of a member or other person; or
- (c) make a legal proceeding by or against the society defective.

**(3)** However, the right or obligation becomes that of, and the legal proceeding may be continued by or against, the incorporated association that the former society has become.

**Duty to notify registrar of titles**

**102.(1)** Within 30 days after the transfer day for an incorporated association, the secretary of the association must notify—

- (a) the registrar of titles of the vesting of property in the association under section 101(1); and
- (b) all other persons responsible for keeping registers about dealings with property affected by section 101(1).

**(2)** The registrar of titles and any other person notified must make all

endorsements necessary to record the vesting of the property in the register for which the person is responsible.

(3) A request under subsection (2) is not liable to stamp duty and no fees or charges are payable for the request.

(4) Stamp duty is not otherwise payable because of the operation of this section.

(5) The registrar of titles may approve a form for the purposes of notice under subsection (1)(a).

### **Directors of former society become members of management committee of incorporated association**

**103.** On the transfer day for an incorporated association, the directors of the former society become the members of the management committee of the association.

### **Office holders of former society become office holders of incorporated association**

**104.** On the transfer day for an incorporated association, the president, treasurer and secretary of the former society become the president, treasurer and secretary, respectively, of the incorporated association.

### **Rules**

**105.(1)** On the transfer day for an incorporated association, the rules of the former society become the rules of the association under this Act as if they had been sanctioned by the chief executive.

(2) However if the former society had, by special resolution under the *Friendly Societies Act 1991*, section 12A.2 amended its rules to comply with this Act, and the amendment does not take effect until its incorporation under this Act, subsection (1) applies to the rules as amended.

***Division 3—Incorporation of cooperatives*****Application of division**

**105A.** This division does not apply to a cooperative if, under the Cooperatives Act—

- (a) there is a charge required to be registered over property of the cooperative; or
- (b) the registrar has given the cooperative a direction to transfer its engagements to another cooperative and the direction is still in force; or
- (c) an administrator is conducting the cooperative's affairs; or
- (d) the registrar has directed the cooperative to suspend its operations and the direction is still in force; or
- (e) the cooperative is being wound-up; or
- (f) an application to wind-up the cooperative has been made but the application has not been finally dealt with; or
- (g) the cooperative is being dissolved; or
- (h) a receiver, or receiver and manager, is acting for the cooperative; or
- (i) the administration of a compromise or arrangement between the cooperative and its creditors has not been finalised; or
- (j) an application has been made to a court for approval of a compromise or arrangement between the cooperative and its creditors but the court has not approved or refused to approve the application.

**Notice of cooperative's proposal to become incorporated association**

**105B.** Within 1 month after a cooperative passes a special resolution under the Cooperatives Act, section 301<sup>13</sup> to become an incorporated association, the cooperative must give to the chief executive—

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<sup>13</sup> Section 301 (Requirements before application can be made)

- (a) a copy of the resolution approving the proposal to become an incorporated association; and
- (b) if relevant, a copy of each of the following resolutions—
  - (i) the resolution deciding the proposed association's name;
  - (ii) the resolution to change the cooperative's rules to comply with this Act.

### **Application for incorporation of cooperative as association**

**105C.(1)** A cooperative may apply to the chief executive to become an incorporated association.

**(2)** However, a cooperative may not apply to become an incorporated association unless it has a president and treasurer.

**(3)** The application must be made in the approved form and be accompanied by the fee prescribed under a regulation and each of the following—

- (a) a copy of evidence of registration under the Cooperatives Act of the special resolution approving the proposal to become an incorporated association;
- (b) a copy, certified by the cooperative's secretary as a true copy, of the cooperative's certificate of registration;
- (c) a copy of the proposed rules of the proposed incorporated association, certified by the cooperative's secretary as complying with this Act.

### **Incorporation**

**105D.(1)** If, after considering an application under this part, the chief executive is satisfied of the matters requiring satisfaction, the chief executive must promptly issue a certificate of incorporation under this Act for the proposed incorporated association.

**(2)** The matters requiring satisfaction are as follows—

- (a) the applicant is a cooperative that has complied with the

Cooperatives Act, part 12, division 2;<sup>14</sup>

- (b) the cooperative has complied with the requirements to become an incorporated association.

(3) On issue of the certificate of incorporation, the cooperative is incorporated as an incorporated association under this Act.

### **Chief executive must inform registrar of incorporation**

**105E.** Within 7 days after the transfer day for an incorporated association, the chief executive must give the registrar a copy of the certificate of incorporation for the association.

### **Registrar to give records to chief executive**

**105F.** As soon as practicable after a cooperative becomes an incorporated association, the registrar must give the chief executive all records about the former cooperative in the registrar's possession.

### **Recording of interests in land**

**105G.(1)** Within 30 days after a cooperative becomes an incorporated association, the secretary of the association must give to the registrar of titles, and anyone else required or permitted to record particulars necessary to identify interests in land, notice of the vesting of land of the former cooperative in the association.

(2) The registrar of titles must record the particulars necessary to give effect to the vesting of the land in the incorporated association.

(3) If a written request is made under subsection (1), production of the instrument of title to the land is not required when the request is made, and the registrar of titles or other person is authorised to make necessary entries on the instrument title when it is next produced to the registrar or other person.

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<sup>14</sup> Part 12, division 2 (Transfer of incorporation)

**Directors of former cooperative**

**105H.** On the transfer day, the directors of the former cooperative become the members of the association's management committee.

**Office holders of former cooperative become office holders of incorporated association**

**105I.** On the transfer day, the president, treasurer and secretary of the former cooperative become the president, treasurer and secretary, respectively, of the incorporated association.

**Rules**

**105J.(1)** On the transfer day, the rules of the former cooperative become the rules of the association as if they had been sanctioned by the chief executive under this Act.

**(2)** However, if the former cooperative had, by special resolution, amended its rules to comply with this Act and the amendment does not take effect until its incorporation under this Act, subsection (1) applies to the rules as amended.

*Division 4—Registration of incorporated associations as cooperatives***Application of division**

**105K.** This division does not apply to an incorporated association if—

- (a) the association is being wound-up; or
- (b) an application to wind-up the association has been made but not dealt with; or
- (c) the association's incorporation is being cancelled; or
- (d) a receiver, or receiver and manager, has been appointed and is acting for the association; or
- (e) the association has entered into a compromise or arrangement with its creditors but the administration of the compromise or arrangement has not been concluded; or

- (f) an application has been made to a court for approval of a compromise or arrangement by the association with its creditors but the court has not approved or refused to approve the application.

### **Chief executive's consent needed to proposed registration as cooperative**

**105L.(1)** An incorporated association that has decided by special resolution to register as a cooperative may, within 14 days after passing the resolution, apply to the chief executive for the chief executive's consent to the association's proposed registration as a cooperative.

(2) The application must be in the approved form and accompanied by a copy of the special resolution.

(3) The chief executive may require the association to give to the chief executive the information the chief executive reasonably requires to consider the application.

### **Consent to proposed registration as cooperative**

**105M.(1)** If, after considering an application by an incorporated association, the chief executive is satisfied of the matters requiring satisfaction, the chief executive must promptly give to the association a certificate stating the chief executive is satisfied of the matters and consents to the association's proposed registration as a cooperative.

(2) The matters requiring satisfaction are as follows—

- (a) the association is an incorporated association;
- (b) the association has decided by special resolution to register as a cooperative; and
- (c) there are reasonable grounds for believing the association will, if it registers as a cooperative, be able to comply with the Cooperatives Act.

(3) The certificate expires 30 days after it is given to the association.

**Cancellation of registration and incorporation**

**105N.(1)** An incorporated association that becomes registered as a cooperative under the Cooperatives Act must surrender its certificate of incorporation under this Act or, if the certificate has been lost, stolen or destroyed, give to the chief executive a statutory declaration stating it has been lost, stolen or destroyed.

**(2)** On receipt of the certificate of incorporation or a statutory declaration satisfying the chief executive that the certificate has been lost, stolen or destroyed, the chief executive must—

- (a) cancel the incorporated association's registration; and
- (b) cancel the incorporated association's certificate of incorporation; and
- (c) give the registrar all records about the former incorporated association in the chief executive's possession.

***Division 5—General*****Financial year**

**106.** The financial year for a former society continues as the financial year of the incorporated association and section 59 applies to the financial year.

**False or misleading information**

**107.(1)** A person must not, for this part—

- (a) state anything to the chief executive the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the chief executive anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—10 penalty units.

**(2)** A complaint against a person for an offence against subsection (1)(a)

or (b) is sufficient if it states the statement made was false or misleading to the person's knowledge.

### **False, misleading or incomplete documents**

**108.(1)** A person must not, for this part, give the chief executive a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—10 penalty units.

**(2)** Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

**(3)** A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

## **PART 12—REVIEWS AND APPEALS**

### *Division 1—Review of decisions*

#### **Affected person may apply for review**

**109.(1)** If a person's interests are affected by a decision under this Act, the person may apply to the chief executive for a review of the decision.

**(2)** A person who may seek a review of a decision is entitled to receive a statement of reasons for the decision.

**Applying for review**

**110.(1)** An application by a person for review of a decision must be made within 28 days after notice of the decision is given to the person.

**(2)** However, if—

- (a) the notice did not state reasons for the decision; and
- (b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (1);

the person may make the application within 28 days after the person is given the statement of reasons.

**(3)** Also, the chief executive may extend the period for making an application for review, even though the time for making the application has expired.

**(4)** An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

**Stay of operation of decision**

**111.(1)** If an application is made under this part for review of a decision, the applicant may immediately apply to a District Court for a stay of the decision.

**(2)** The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

**(3)** A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

**(4)** The period of a stay under this section must not extend past the time when the chief executive reviews the decision and any later period the court allows the applicant to enable the applicant to appeal against the decision of the chief executive.

**(5)** The making of an application under this part for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

**Decision on reconsideration**

**112.(1)** This section applies to an application under this part for review of a decision (the “**disputed decision**”).

(2) The chief executive may confirm the disputed decision, amend the disputed decision or substitute a new decision after considering the applicant’s representations.

(3) The chief executive must immediately give the applicant written notice of the chief executive’s decision on the application.

(4) If the decision is not the decision sought by the applicant, the notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to a District Court within 28 days.

***Division 2—Appeals against reconsidered decisions*****Who may make an appeal?**

**113.** A person whose interests are affected by a decision of the chief executive under this Act may appeal against the decision to a District Court.

**Making appeals**

**114.(1)** An appeal under section 113 against a decision of the chief executive must be made within 28 days after the notice of the decision is given to the person.

(2) However, if—

- (a) the notice did not state reasons for the decision; and
- (b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (1);

the person may make the application within 28 days after the person is given the statement of reasons.

(3) Also, the District Court may extend the period for making an appeal, even though the time for making the appeal has expired.

### **Starting appeals**

**115.(1)** An appeal is started by filing a written notice of appeal with the District Court.

(2) A copy of the notice must be served on the chief executive.

(3) An appeal to a District Court may be made to the District Court nearest the place where the applicant resides or carries on business.

### **Stay of operation of decision**

**116.(1)** A District Court to which an appeal against a decision lies under this part may grant a stay of the decision to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the conditions the District Court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay under this section must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

### **Powers of District Court on appeal**

**117.(1)** In deciding an appeal, a District Court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

(2) An appeal is by way of rehearing, unaffected by the decision appealed against.

(3) The District Court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the decision maker with the directions the court considers appropriate.

### **Effect of court’s decision on appeal**

**118.** If the District Court substitutes another decision, the substituted decision is, for this Act, taken to be the decision maker’s decision.

## **PART 13—MISCELLANEOUS**

### **Special investigations**

**119.(1)** Part 10<sup>14</sup> of the Financial Institutions Code (the “Code”) applies, with all necessary changes, and any changes prescribed under the regulations, to an investigation of an incorporated association.

(2) In the application of part 10 of the Code to an investigation, a reference to—

- (a) a society—is taken to be a reference to an incorporated association; and
- (b) the SSA—is taken to be a reference to the chief executive.

### **Protection from liability**

**120.(1)** An officer or employee of the department does not incur civil liability for an act done, or omission made, honestly and without negligence

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<sup>14</sup> Part 10 (Special Investigations)

under this Act.

(2) If subsection (1) prevents a civil liability attaching to an officer or employee of the department, the liability attaches instead to the State.

### **Extension of time**

**121.** Where under this Act an act or thing is required to be performed or done within a specified time the chief executive may, if the chief executive thinks fit, if in the chief executive's opinion there are special circumstances, extend the time for the performance or doing of that act or thing.

### **Punishment of fraud or misappropriation**

**122.(1)** A person who—

- (a) obtains possession by false representation or imposition of any property of an incorporated association; or
- (b) having any property of an incorporated association in possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules and authorised by this Act;

is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units, and to be ordered to deliver up all such property or to repay all such moneys applied improperly, and, in default of such delivery or repayment or of the payment of such penalty, to be imprisoned for any period not exceeding 3 months.

(2) However, where, on a complaint against a person of withholding or misapplying property or applying it for unauthorised purposes, it is not proved that the person acted with any fraudulent intent the person may be ordered to deliver up such property or to repay any money applied improperly, but is not liable to conviction, and a copy of any such order certified under the hand of the clerk of the court may be filed in the Magistrates Court nearest to the place where such order was made and thereupon such order shall be and be deemed to be a judgment of the said Magistrates Court within the meaning of the *Magistrates Courts Act 1921* and shall be enforceable accordingly.

(3) Nothing contained in this section shall prevent any such person from

being prosecuted under any other law in force, if a conviction has not been previously obtained against that person for the same offence under the provisions of this Act.

### **Officers deemed servants**

**123.** Every person elected or appointed to be the treasurer, secretary, member of the management committee or other officer having the receipt or charge of money of an incorporated association, or who acts in the capacity of or is employed as such treasurer, secretary, member of the management committee or officer, shall be deemed to be a clerk or servant of such incorporated association within the meaning of the Criminal Code.

### **Penalty for falsification**

**124.** A person who wilfully makes, or orders or allows to be made, any entry, erasure in, or omission from any account book, balance sheet or any return or document required to be made, kept, sent, produced or delivered for the purposes of this Act, with intent to falsify the same or to evade this Act is guilty of an offence and is liable to a penalty not exceeding 20 penalty units.

### **Proof of compliance with formal requirements**

**125.(1)** In any proceeding under this Act against an incorporated association or any officer thereof or other person, the onus of proving that any return, report, notice or document required to be sent or given to the chief executive has been so sent or given, or that any return, report, notice or document has been compiled or made as required by this Act, shall lie with such incorporated association, officer or other person.

**(2)** In any such proceeding any return, report, notice or other document, purporting to be duly signed and forwarded to the chief executive by the secretary of any incorporated association, and otherwise in conformity with this Act, may be received as evidence of any matters stated therein respectively.

**Evidence**

**126.(1)** In the case of evidence required on behalf of the chief executive, and not hereinbefore provided for, the chief executive may depose to the same by affidavit, and the evidence contained in any such affidavit shall be received as evidence in all courts.

(2) Every instrument or document, copy or extract of an instrument or document, certified by the chief executive shall be received in evidence without further proof.

(3) Every document purporting to be signed by the chief executive or any inspector or actuary or auditor or valuer under this Act shall be received in evidence without proof of the signature.

**Evidentiary provisions**

**127.(1)** The chief executive may, by writing under the chief executive's hand, certify—

- (a) that, on a date specified in the certificate, an association so specified was, or was not, an incorporated association; or
- (b) that, on a date specified in the certificate, a person so specified was, or was not, the secretary of an incorporated association so specified; or
- (c) that, on a date specified in the certificate—
  - (i) no natural person has been appointed secretary of an incorporated association; or
  - (ii) no natural person has been appointed to fill a vacancy in the office of secretary of an incorporated association;  
in compliance with the provisions of section 69; or
- (d) that, on a date specified in the certificate—
  - (i) the financial affairs of an incorporated association have not been audited; or
  - (ii) a statement of particulars of income and expenditure, assets and liabilities and mortgages, charges and securities has not been prepared;

in compliance with the provisions of section 59;

and such a certificate shall, in all courts and for all purposes, be evidence and, in the absence of evidence to the contrary conclusive evidence, of the matters stated in that certificate.

(2) In any legal proceedings, a copy of any rules of an incorporated association or other document lodged with the chief executive certified by the chief executive to be a true copy thereof, shall be evidence that such rules were rules of the incorporated association in force on the date mentioned in the certificate or of the contents of such document.

(3) Judicial notice shall be taken of the signature of the chief executive appearing on a certificate under this section and of the fact that the person by whom the certificate purports to have been signed is the chief executive.

### **Dispositions of property**

**128.(1)** A disposition in favour of an association shall, unless the context otherwise requires, take effect in favour of that association where that association is incorporated under this Act, where such incorporation is effected after the document evidencing the disposition was made or executed but before the disposition was perfected.

(2) In this section—

“**disposition**” means any disposition by will, written instrument or otherwise, which takes effect after the commencement of this Act.

### **Delegation**

**129.(1)** The chief executive may delegate the chief executive’s powers under this Act.

(2) However, the chief executive may not delegate the chief executive’s powers under section 33(3)<sup>15</sup> and 45(4).<sup>16</sup>

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<sup>15</sup> Section 33 (Incorporated association may be exempted from using word ‘incorporated’)

<sup>16</sup> Section 45 (Associations may be allowed to have undesirable names)

**Approval of forms**

**130.** The chief executive may approve forms for use under this Act.

**Recall of letters patent**

**131.** Notwithstanding the provisions of section 144, the Minister may at the Minister's discretion recall and cancel any letters patent issued under the repealed Acts and may require the association to apply for incorporation under this Act in lieu thereof.

**Exemption from certain provisions of Act**

**132.** Where—

- (a) under section 131, the Minister recalls letters patent and requires an association to apply for incorporation under this Act; or
- (b) an association applies for incorporation under this Act and that association could, but for the repeal of the repealed Acts, have been incorporated by the issue of letters patent under the repealed Acts;

a regulation may exempt the association from specified provisions of this Act.

**Irregularities in proceedings**

**133.(1)** No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by an order of the court.

**(2)** The court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

**(3)** Without affecting the generality of subsections (1) and (2) or of any other provision of this Act, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of the incorporated association or of the management committee) has occurred in the management or administration of an incorporated association incorporated

under this Act (whether or not such omission, defect, error or irregularity occurred before or after the passing of this Act and whether it occurred before or after the incorporated association became incorporated under this Act) whereby any breach of any of the provisions of this Act has occurred or whereby there has been default in the observance of the rules or constitution of the incorporated association or whereby any proceedings at or in connection with any meeting of the incorporated association or of the management committee thereof or any assemblage purporting to be such a meeting have been rendered ineffective, the court—

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity; and
- (b) shall before making any such order satisfy itself that such an order would not do injustice to the incorporated association or to any member or creditor thereof; and
- (c) where any such order is made, may give such ancillary or consequential direction as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The court may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any rules or regulations made thereunder upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

### **Regulation making power**

**134.** The Governor in Council may make regulations under this Act.

**Regulations about fees and charges**

**135.(1)** A regulation may be made about the fees and charges payable under this Act.

**(2)** A charge may be a tax.

**Penalties under regulations to be limited**

**136.** The maximum penalty that may be prescribed by a regulation for an offence against a regulation is 4 penalty units.

**Other matters for regulations**

**137.** A regulation may make provision about—

- (a) the form in which the rules are to be kept by incorporated association; and
- (b) the model rules; and
- (c) matters that must be provided for in incorporated associations' rules; and
- (d) keeping and inspecting the register; and
- (e) issuing certificates of incorporation and copies of the certificates; and
- (f) keeping books of accounts by incorporated associations; and
- (g) audits, returns, statements and information about books of accounts; and
- (h) inspecting, and producing for inspection, books of account.

**PART 15—SAVINGS****Saving of letters patent**

**144.** Subject to the provisions of this Act, letters patent issued pursuant to the *Religious Educational and Charitable Institutions Act 1861* continue

*Associations Incorporation Act 1981*

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to be of full force and effect and to be subject to that Act as if this Act had not been passed.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 September 1997. Future amendments of the Associations Incorporation Act 1981 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 42 of 1991	26 October 1993
2	to Act No. 58 of 1995	5 January 1996
2A	to Act No. 56 of 1996	8 January 1997
2B	to Act No. 9 of 1997	13 June 1997

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	2
Corrected minor errors	2
Renumbered provisions	1

## **6 List of legislation**

### **Associations Incorporation Act 1981 No. 74**

date of assent 7 October 1981

commenced 1 July 1982 (proc pubd gaz 19 June 1982 p 1600)

as amended by—

### **Companies (Consequential Amendments) Act 1981 No. 111 pt 6**

date of assent 16 December 1981

commenced 1 July 1982 (see s 2(4) of Act and proc pubd gaz 29 June 1982 p 2102)

### **Companies (Administration) Act 1981 No. 112 s 27**

date of assent 16 December 1981

commenced 1 July 1982 (proc pubd gaz 29 June 1982 p 2102)

### **Patriotic Funds Act Repeal Act and Other Acts Amendment Act 1988 No. 19 pt 4**

date of assent 7 April 1988

commenced 1 February 1989 (proc pubd gaz 21 January 1989 p 299)

### **Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1**

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) of Act and o in c pubd gaz 10 December 1988 p 1675)

### **Associations Incorporation Act Amendment Act 1989 No. 4**

date of assent 30 March 1989

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and om 1991 No. 42 s 4

### **Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

### **Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 6**

date of assent 14 November 1990

commenced 7 December 1989 (see s 2(4)(b))

### **Public Accountants Registration (Repeal and Consequential Amendments) Act 1990 No. 85 s 5 sch 2**

date of assent 29 November 1990

commenced 1 January 1991 (see s 2(3))

### **Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42 s 3 sch**

date of assent 5 August 1991

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 2**

date of assent 14 December 1993

commenced on date of assent

**Treasury and Other Legislation Amendment Act 1994 No. 48 pts 1, 6**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1994 (see s 2(3))

**Associations Incorporation Amendment Act 1995 No. 7 (as amd by 1995 No. 57 ss 1–2, 4 sch 2)(as from 5 April 1995 (see s 2(1) sch 2))**

date of assent 5 April 1995

ss 1–2 commenced on date of assent

s 7, so far as it inserts new section 32A(3)–(4) commenced 31 March 1997 (1996 SL No. 59 s 3)

remaining provisions commenced 8 September 1995 (1995 SL No. 257)

**Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 3–4 sch**

date of assent 22 November 1995

commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996 No. 56 pts 1, 2**

date of assent 20 November 1996

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1–2(1) pt 2**

date of assent 15 May 1997

commenced on date of assent

**Cooperatives Act 1997 No. 39 ss 1–2, 472 sch 7**

date of assent 25 August 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1997 (1997 SL No. 286)

## **7 List of annotations**

**Division 1—Introductory provisions****div hdg** ins 1995 No. 7 s 3 sch**Definitions****prov hdg** sub 1995 No. 7 s 4(1)**s 2** prev s 2 om R2 (see RA s 37)

pres s 2 amd 1995 No. 7 s 4(2)

def “**application notice**” ins 1995 No. 7 s 4(2)def “**appointed person**” ins 1995 No. 7 s 4(2)

- def **“approved form”** ins 1995 No. 7 s 4(2)
  - sub 1995 No. 57 s 4 sch 1
- def **“association”** amd 1990 No. 80 s 3 sch 6; 1991 No. 42 s 3 sch; 1994 No. 48 s 49
  - sub 1995 No. 7 s 4(2)
- def **“branch”** amd 1996 No. 56 s 4(2)
- def **“Commissioner”** sub 1981 No. 112 s 27
  - om 1995 No. 7 s 4(2)
- def **“cooperative”** ins 1997 No. 39 s 472 sch 7
- def **“Cooperatives Act”** ins 1997 No. 39 s 472 sch 7
- def **“Court”** om 1995 No. 7 s 4(2)
- def **“Director-General”** ins 1990 No. 80 s 3 sch 6
  - om 1995 No. 7 s 4(2)
- def **“incorporation resolutions”** ins 1995 No. 7 s 4(2)
- def **“interim officers”** ins 1995 No. 7 s 4(2)
- def **“management committee”** sub 1995 No. 7 s 4(2)
- def **“Minister”** sub 1990 No. 80 s 3 sch 6
  - om 1993 No. 76 s 3 sch 2; 1995 No. 7 s 4(2)
- def **“model rules”** ins 1995 No. 7 s 4(2)
- def **“objection notice”** ins 1995 No. 7 s 4(2)
- def **“objector”** ins 1995 No. 7 s 4(2)
- def **“officer”** sub 1995 No. 7 s 4(2)
- def **“own rules”** ins 1995 No. 7 s 4(2)
- def **“parent association”** ins 1995 No. 7 s 4(2)
  - sub 1996 No. 56 s 4(1)
- def **“president”** ins 1995 No. 7 s 4(2)
- def **“property”** om 1995 No. 7 s 4(2)
- def **“proposed rules”** ins 1995 No. 7 s 4(2)
- def **“register”** ins 1995 No. 7 s 4(2)
- def **“repealed Acts”** ins 1993 No. 76 s 3 sch 2
- def **“rules”** ins 1995 No. 7 s 4(2)
- def **“secretary”** sub 1995 No. 7 s 4(2)
- def **“special resolution”** sub 1995 No. 7 s 4(2)
- def **“treasurer”** ins 1995 No. 7 s 4(2)
- def **“Under Secretary”** om 1990 No. 80 s 3 sch 6
- def **“undesirable name”** amd 1990 No. 80 s 3 sch 6
  - om 1995 No. 7 s 4(2)

**Division 2—Interpretation****div hdg** ins 1995 No. 7 s 3 sch**Special resolutions**

- s 3**
  - prev s 3 amd 1989 No. 103 s 3 sch
  - om R1 (see RA s 36)
  - pres s 3 ins 1995 No. 7 s 5

**Whether association is formed or carried on for the purpose of financial gain for its members**

- s 4**
  - prev s 4 amd 1989 No. 103 s 3 sch; 1993 No. 76 s 3 sch 2
  - renum as s 76 1995 No. 7 s 3 sch 2

pres s 4 ins 1995 No. 7 s 5  
amd 1996 No. 56 s 5

**Division 3—General provisions**

**div hdg** ins 1995 No. 7 s 5

**PART 2—INCORPORATION OF ASSOCIATION**

**pt hdg** sub 1995 No. 7 s 6

**Division 1—Preliminary**

**div hdg** sub 1995 No. 7 s 6

**Association may resolve to incorporate and adopt proposed rules**

**s 6** amd 1990 No. 80 s 3 sch 6  
sub 1995 No. 7 s 6

**Eligibility for incorporation**

**s 5** sub 1995 No. 7 s 6  
amd 1996 No. 56 s 6

**Appointment of person to apply for incorporation**

**s 7** amd 1989 No. 4 s 4 (never proclaimed into force and om 1991 No. 42  
s 4); 1990 No. 80 s 3 sch 6  
sub 1995 No. 7 s 6

**Interim officers**

**s 8** sub 1995 No. 7 s 6

**Division 2—Incorporation**

**div hdg** ins 1995 No. 7 s 6

**Form of application etc.**

**s 9** amd 1990 No. 80 s 3 sch 6  
sub 1995 No. 7 s 6

**Giving notice of application etc.**

**s 10** amd 1989 No. 4 s 5 (never proclaimed into force and om 1991 No. 42  
s 4); 1990 No. 80 s 3 sch 6  
sub 1995 No. 7 s 6

**Objections to applications for incorporation**

**s 11** sub 1995 No. 7 s 6

**Chief executive to make decision about application**

**s 12** sub 1995 No. 7 s 6; 1995 No. 51 s 4 sch

**Chief executive to advise association and objectors of decision**

**s 13** amd 1990 No. 80 s 3 sch 6  
sub 1995 No. 7 s 6

**Registration of association**

**s 14** sub 1995 No. 7 s 6

**Certificate of incorporation**

**s 15** amd 1990 No. 80 s 3 sch 6

sub 1995 No. 7 s 6  
amd 1996 No. 56 s 7

**Division 3—Miscellaneous**

**div hdg** ins 1995 No. 7 s 6

**Register of incorporated associations**

**s 16** sub 1995 No. 7 s 6

**Registered office**

**s 17** ins 1995 No. 7 s 6  
amd 1996 No. 56 s 8

**Person may inspect register etc.**

**s 18** ins 1995 No. 7 s 6

**False or misleading information**

**s 19** ins 1995 No. 7 s 6

**False, misleading or incomplete documents**

**s 20** ins 1995 No. 7 s 6

**PART 3—EFFECTS OF INCORPORATION**

**pt hdg** ins 1995 No. 7 s 6

**Division 1—General**

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