



Associations Incorporation Act 1981

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Associations Incorporation and Other Legislation Amendment Bill 2019. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act.***

The point-in-time date for this indicative reprint is the introduction date for the Associations Incorporation and Other Legislation Amendment Bill 2019—26 November 2019.

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Queensland

Associations Incorporation Act 1981

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Associations Incorporation Act 1981

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 Introduction

1 Short title

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

1A Main purposes

The main purposes of this Act are to provide for—

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

1B Excluded matter for Corporations legislation

- (1) An incorporated association is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the Corporations legislation other than to the extent specified in subsection (2).

[s 1C]

- (2) Subsection (1) does not apply so as to exclude an incorporated association that is a company under the Corporations Act from the provisions of Part 5A.1 of that Act, other than section 601AD(2), (3) and (4).
- (3) Subsection (1) extends to a company within the meaning of the Corporations Act as soon as it becomes an incorporated association under this Act.
- (4) Subsection (1) has effect only for so long as a body is an incorporated association under this Act.

1C Relationship with Fair Trading Inspectors Act 2014

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

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

Note—

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

1D Act prevails if association's rules are inconsistent with Act

To remove any doubt, it is declared that if a rule of an association is inconsistent with this Act, this Act prevails to the extent of the inconsistency.

Division 2 Interpretation

2 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 3 General provisions

3 Special resolutions

- (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, 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.

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

- (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—
 - (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;

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- (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
 - (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

5 Eligibility for incorporation

- (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) an organisation under the *Industrial Relations Act 2016* that is incorporated because of the application of section 611 of that Act; or
 - (iv) a school council or parents and citizens association under the *Education (General Provisions) Act 2006*; or
 - (c) is formed or carried on for the purpose of providing financial gain for its members; 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
Example for subparagraph (iii)—

an association that, as its main purpose, receives and holds gifts within the meaning of the *Local Government Electoral Act 2011*, section 107 for use by a member or person nominated by a member for a purpose relating to an election under that Act
 - (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 and related costs, of an individual who is suffering from a serious medical condition or injury.

6 Association may resolve to incorporate and adopt proposed rules

- (1) An association may, by resolution passed at a meeting of the association by the votes of at least 3/4 of the association's members who are present and entitled to vote on the 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.

7 Appointment of person to apply for incorporation

- (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.

8 Interim officers

- (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.

Note—

For the qualifications required for the secretary of an incorporated association, see section 66.

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

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

Division 2 Incorporation

9 Application for incorporation

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

10 Giving notice of application etc.

- (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 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.

11 Objections to applications for incorporation

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.

12 Chief executive to make decision about application

- (1) 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.
- (2) Without limiting the grounds on which the chief executive may refuse an application for incorporation, the chief executive may refuse the application if the chief executive is satisfied that the proposed rules of the association do not comply with this Act.

13 Chief executive to advise association and objectors of decision

- (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.

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- (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.

14 Registration of association

- (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.

15 Certificate of incorporation

- (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

16 Register of incorporated associations

- (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 association's nominated address;
 - (c) the day the association's particulars are entered in the register;
 - (d) other particulars the chief executive considers appropriate.
- (3) The register must also include a copy of each document required to be lodged under section 59BA(1) with the chief executive.

16A Use of information on register

- (1) A person must not—
- (a) use information obtained from the register of an incorporated association to contact, or send material to, the association or a member of the association for the purpose of advertising for political, religious, charitable or commercial purposes; or
 - (b) disclose information obtained from the register of an incorporated association to someone else, knowing that the information is likely to be used to contact, or send material to, the association or a member of the association for the purpose of advertising for political, religious, charitable or commercial purposes.

Example for subsection (1)—

putting a person's name and address on a mailing list for advertising material

Maximum penalty—10 penalty units.

- (2) Subsection (1) does not apply if the use or disclosure of the information is approved by the incorporated association.

17 Nominated address for service

- (1) The members of the management committee of an incorporated association—

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- (a) must ensure that the association has an address nominated for the service of documents on the association (a *nominated address*) complying with subsection (2); and
- (b) must give the chief executive written notice of the nominated address in the approved form.

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

- (2) The nominated address 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 nominated address.

- (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) The members of the management committee may change the incorporated association's nominated address by giving the chief executive notice in the approved form.

18 Inspecting register

- (1) On payment of the fee prescribed by regulation, a person may inspect the register or get a copy of details in the register—
 - (a) at the department's Brisbane office when the office is open to the public; or
 - (b) by using a computer.
- (2) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (3) However, the chief executive may, on the application of an incorporated association or a member of an incorporated association, withhold information about the association or a member of the association from the register available for inspection by another person if the chief executive has

reasonable grounds for believing the disclosure of the information would put the association or member at risk of harm.

Examples of information chief executive may withhold—

- address of a women’s refuge
- address of a member of an incorporated association who is a party to a domestic violence order

(4) In this section—

computer means a mechanical, electronic or other device for the processing of data.

Part 3 Effects of incorporation

Division 1 General

21 Incorporated associations are bodies corporate

An incorporated association—

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

Division 2 Transition from unincorporated to incorporated association

22 Property for an association

(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

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- (b) the provisions of a trust that applied to the property immediately before incorporation continue to apply.
- (2) The operation of subsection (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.

23 Transfer of other assets, rights and liabilities

- (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.

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

- (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.
- (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

25 General powers

- (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.

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

26 Ultra vires transactions

- (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; or
 - (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.

27 Liability of members

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.

28 Contracts and execution of documents

- (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 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;
 - (b) 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) An incorporated association may execute a document without using a common seal if the document is signed by a member

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of the management committee of the association and countersigned by—

- (a) the secretary of the association; or
 - (b) another member of the management committee of the association; or
 - (c) another person authorised by the management committee of the association.
- (4) An incorporated association with a common seal may execute a document if the seal is attached to the document and the document is signed by a member of the management committee of the association and countersigned by—
- (a) the secretary of the association; or
 - (b) another member of the management committee of the association; or
 - (c) another person authorised by the management committee of the association.
- (5) Subsections (3) and (4) are subject to any greater restriction provided for in the rules of the incorporated association.
- (6) 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

29 Incorporated association's name to include 'incorporated' and be in English characters

- (1) An incorporated association must have the word 'incorporated' or 'inc' as part of and at the end of its name.

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- (2) The association may use the words ‘incorporated’ or ‘inc’ interchangeably.
 - (3) The association’s name must be in English characters.

30 Use of ‘incorporated’ as part of name etc.

- (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).

31 Registered name on common seal

- (1) This section applies if an incorporated association has a common seal.
- (2) The association’s registered name must appear on its seal in legible characters.
- (3) If the association’s registered name does not appear on its seal in legible characters, the use of the seal is not effective.

32 Registered name of incorporated association to appear on documents

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

Maximum penalty—5 penalty units.

Division 2 Exemption from use of ‘incorporated’

33 Incorporated association may be exempted from using word ‘incorporated’

- (1) An association may, by resolution of its members, decide to apply to the chief executive for exemption from section 29—
 - (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.

Division 3 Change of name

34 Definitions for division

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.

35 Incorporated association may apply to change its registered name

- (1) An incorporated association may, by special resolution, decide to change its registered 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 3 months 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.

36 Giving notice of application to change registered name

- (1) On receiving the incorporated association's application to change its registered name, the chief executive may require the association to—

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- (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 registered 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.

37 Objections to application for change of registered name

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

38 Chief executive to advise association and objectors of decision

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

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

39 Notice of decision

- (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.

40 Registration of new name

- (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.

41 New certificate of incorporation

- (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.

42 Change of name does not affect legal personality

- (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

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- (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 Unsuitable names

43 Association not to have unsuitable name

The chief executive must not grant an association's application—

- (a) for incorporation—if the association's name contains anything a regulation declares is an unsuitable name; or
- (b) to register a change of name—if the proposed new name contains anything a regulation declares is an unsuitable name.

44 Notice to associations having or proposing to have unsuitable name

- (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 unsuitable name; or
 - (b) the proposed new name for the incorporated association is, or includes, an unsuitable 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 unsuitable name; and

- (b) give reasons why the name is unsuitable.
- (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 unsuitable 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.

45 Associations may be allowed to have unsuitable names

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

Part 5 Rules

Division 1 Rules of incorporated associations

46 Rules of incorporated association on registration

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

47 Additional provisions in model rules

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

47A Grievance procedure

- (1) The rules of an incorporated association may set out a grievance procedure for dealing with any dispute under the rules between—
 - (a) a member and another member; or
 - (b) a member and the management committee; or
 - (c) a member and the association.
- (2) The grievance procedure must include mediation and may provide for a person to decide the outcome of the dispute.
- (3) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (4) In applying the grievance procedure, the association must ensure that—
 - (a) each party to the dispute has been given an opportunity to be heard on the matter the subject of the dispute; and
 - (b) the mediator, and any person engaged under the rules to decide the outcome of the dispute, is unbiased.
- (5) If a member has initiated a grievance procedure in relation to a dispute between the member and the association, the association must not take disciplinary action against any of the following persons in relation to the matter the subject of

the grievance procedure until the grievance procedure has been completed—

- (a) the member who initiated the grievance procedure (the *complainant member*);
 - (b) a member of the association appointed by the complainant member under subsection (3) to act on behalf of the complainant member in the grievance procedure.
- (6) If the rules of an incorporated association do not set out a grievance procedure that is consistent with subsections (2), (3), (4) and (5), the rules of the association are taken to include the provisions of the model rules providing for the grievance procedure.
- (7) To remove any doubt, it is declared that subsection (6) applies even if the rules of an incorporated association provide, as permitted under section 47(3), that section 47(1) does not apply.

Division 2 Amending rules

48 Application to register amendment of rules

- (1) An incorporated association may, by special resolution, decide to amend its rules.
- (2) An amendment under subsection (1) may include the replacement of the association's rules with the model rules.
- (3) An incorporated association may apply to the chief executive to have the amendment registered.
- (4) Within 3 months 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.

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- (5) The application must be in the approved form and be accompanied by the information, documents and fees required under the regulations.
 - (6) 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.
 - (7) Subsection (6) does not apply to an amendment mentioned in subsection (2).
 - (8) After considering the association's application, the chief executive must grant or refuse the application.
 - (9) Within 14 days after granting or refusing the association's application, the chief executive must give written notice of the decision to the association.
 - (10) If the application is refused, the notice to the association must include the chief executive's reasons for the decision.
 - (11) The amendment does not take effect if it is not registered by the chief executive under section 49.

49 Registration of amendment

- (1) If the chief executive grants the application for registration of the amendment of the incorporated association's rules, the chief executive must register the amendment.
- (2) On registration of the amendment, the incorporated association's rules are—
 - (a) for an amendment to replace the association's rules with the model rules—the model rules; or
 - (b) otherwise—the association's rules as amended.

50 Effect of amended rules

- (1) In this section—

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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.

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52 Chief executive may ask for copy of complete rules

- (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

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

- (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.

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

- (1) The secretary of an incorporated association must ensure that the association's rules, as lodged with the chief executive, or a copy of the rules that is given to someone, are set out in printed legible form.

Maximum penalty—5 penalty units.

- (2) If an incorporated association's rules are not written in the English language, the secretary of the association must ensure that a translation of the rules into English, certified by a person to be a correct translation, accompanies any copy of the rules that is given to someone.

Maximum penalty—5 penalty units.

- (3) However, the secretary of an incorporated association does not commit an offence against subsection (2) if the person to whom the copy of the rules is given indicates he or she does not require a translation of the rules.

Part 6 General operation of incorporated association

Division 1 Meetings

55 Annual general meetings

An incorporated association must hold an annual general meeting within 6 months after the end date of the association's reportable financial year.

56 Meetings using communication technology

- (1) An incorporated association may hold meetings, or permit members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—
teleconferencing

- (2) A member who participates in a meeting under subsection (1) is taken to be present at the meeting.

57 Management committee to ensure association complies with its rules for meetings

- (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.

57A Minimum quorum for general meetings

- (1) The quorum for a general meeting of an incorporated association is at least the number of members elected or appointed to the association's management committee at the close of the association's last general meeting plus 1.
- (2) However, if all members of the association are members of the association's management committee, the quorum is the total number of members less 1.
- (3) If an incorporated association makes a decision at a meeting of the association for which there is no quorum, the decision has no effect.

57B Inspection of minutes

- (1) If asked by a member of an incorporated association, the association's secretary must, within 28 days after the request is made—
 - (a) make the minute book for a particular general meeting available for inspection by the member at a mutually agreed time and place; and
 - (b) give the member copies of the minutes of the meeting.
- (2) The incorporated association may require the member to pay the reasonable costs of providing copies of the minutes.

Division 2 Financial reporting for incorporated associations

58 Definitions for division

In this division—

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

another law means—

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

approved person means a person approved for an incorporated association by the chief executive under section 59E.

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

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

current assets, of an incorporated association, means the assets held by the association as at the end date of the association's last financial year, other than real property or assets capable of depreciation, and includes amounts held in financial institutions, stocks and debentures.

Examples of assets capable of depreciation—

- vehicles
- office equipment

end date, in relation to an incorporated association's financial year, means the date stated in the association's rules to be the end date or closing date of the association's financial year.

financial record includes—

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

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

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

large incorporated association means an incorporated association that has—

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

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

small incorporated association means an incorporated association that has—

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

total revenue, of an incorporated association, means the association's total income during the last financial year from all the association's activities before any expenses, including the cost to the association of goods sold by the association, are deducted.

verification statement see section 59AB(3).

58A Meaning of *reportable financial year*

- (1) An incorporated association's ***reportable financial year*** is the same as the association's financial year.
- (2) However, subsection (1) is subject to subsections (3) to (6).
- (3) If an association is incorporated within 3 months before the end date of the association's financial year, the association's first ***reportable financial year*** is the period starting on the day of incorporation and ending on the second end date after incorporation.

Example for subsection (3)—

The end date of an association's financial year is 30 June 2007. The association was incorporated on 1 April 2007. The period from 1 April 2007 until 30 June 2008 is a reportable financial year.

- (4) If an association is incorporated more than 3 months before the end date of the association's financial year, the association's first **reportable financial year** is the period starting on the day of incorporation and ending on the first end date after incorporation.

Example for subsection (4)—

The end date of an association's financial year is 30 June 2007. The association was incorporated on 1 March 2007. The period from 1 March 2007 until 30 June 2007 is a reportable financial year.

- (5) If an association changes its financial year and the end date of the changed financial year is 15 months or less after the end date of the association's last financial year, the association has a **reportable financial year** for the period starting on the day after the end date of the association's last financial year and ending on the end date of the association's changed financial year.

Example for subsection (5)—

The end date of an association's financial year is 30 June 2007. At a general meeting, the association's financial year is changed to have an end date of 31 July. The period from 1 July 2007 until 31 July 2008 is a reportable financial year.

- (6) If an association changes its financial year and the end date of the changed financial year is more than 15 months after the end date of the association's last financial year, the association has a **reportable financial year** for the period starting on the day after the end date of the association's last financial year and ending on the day that is 12 months before the end date of the association's changed financial year.

Example for subsection (6)—

The end date of an association's financial year is 30 June 2007. At a general meeting, the association's financial year is changed to have an end date of 31 October. The period from 1 July 2007 until 31 October 2007 is a reportable financial year in addition to the period from 1 November 2007 until 31 October 2008.

Note—

An incorporated association's reportable financial year will never be less than 3 months or more than 15 months.

59 Keeping financial records

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

Maximum penalty—

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

59A Preparing annual financial statement

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

Maximum penalty—

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

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

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

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

59AA Preparing audit report

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

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- (b) has the person who audits the financial statement under paragraph (a) prepare and sign an audit report for the audit.

Maximum penalty—

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

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

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

59AB Preparing verification statement

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

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

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

- (4) In this section—

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

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

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

- (1) A person must not audit a financial statement for an incorporated association under section 59AA, or prepare a verification statement for an incorporated association under section 59AB(3)(a), if the person is—
- (a) the secretary, or a member of the management committee, of the association; or
 - (b) an employee of the association; or
 - (c) a partner, employer or employee of the secretary, or a partner, employer or employee of a member of the management committee, of the association; or

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- (d) a spouse of a person mentioned in paragraph (a), (b) or (c); or
- (e) wholly or partly dependent on a person mentioned in paragraph (a), (b) or (c).

Maximum penalty—10 penalty units.

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

Maximum penalty—10 penalty units.

Example for subsection (2)—

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

59B Presenting documents to annual general meeting

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

Maximum penalty—

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

59BA Lodging documents with chief executive

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

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the verification statement prepared and signed under section 59AB(3);

- (d) a return in the approved form.
- (2) The documents lodged under subsection (1) must be accompanied by the prescribed fee.
- (3) If the incorporated association does not comply with subsection (1), each of the following persons commits an offence—
 - (a) the secretary of the association;
 - (b) the president of the association;
 - (c) the treasurer of the association.

Maximum penalty—4 penalty units.

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

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

- (5) This section applies despite section 58, definitions *large incorporated association*, *medium incorporated association* and *small incorporated association*.

59C Inspection of financial documents by member

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

Maximum penalty—4 penalty units.

- (3) The incorporated association may require the member to pay the reasonable costs of giving a copy of the financial document.
- (4) In this section—

financial document, of an association, means—

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

59D Defence

It is a defence to a prosecution of a member of a management committee of an incorporated association for an offence against a provision of this division to prove the member took

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all reasonable steps to ensure the association complied with the provision.

59E Approved persons

The chief executive may approve a person as an approved person for an incorporated association if the chief executive is satisfied the person has the necessary experience or qualifications to—

- (a) conduct an audit of an incorporated association under section 59AA; or
- (b) prepare a verification statement under section 59AB(3)(a); or
- (c) audit, verify or examine financial information under section 59F.

59F Chief executive may require lodgement of financial information

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

Maximum penalty—20 penalty units.

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

Part 7 Management

Division 1 Management committee

60 Management committee

- (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.

61 Membership of management committee

- (1) An incorporated association must have a management committee.
- (2) All members of the management committee must be adults.
- (3) The management committee must have at least 3 members of whom—
- (a) 1 holds the office of president; and
 - (b) another holds the office of treasurer.

61A Eligibility for election to a management committee

- (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 of an offence—
 - (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) Also, a person is not eligible to be elected as a member of an incorporated association's management committee if—
 - (a) under the *Bankruptcy Act 1966* (Cwlth) or the law of an external territory or another country, the person is an undischarged bankrupt; or
 - (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X or a corresponding law of an external territory or another country and the terms of the deed have not been fully complied with; or
 - (c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X or a corresponding law of an external territory or another country and a final payment has not been made under the composition.

62 Election of management committee

- (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.
- (3) In this section—

casual vacancy, on a management committee, means a vacancy that happens when an elected member of the management committee resigns, dies or otherwise stops holding office.

63 Meetings of management committee

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.

63A Meetings by using communication technology

- (1) The management committee may hold meetings, or permit members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

- (2) A member of a management committee who participates in a meeting under subsection (1) is taken to be present at the meeting.

64 Tenure of members of management committee

- (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

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- (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) 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
- (d) has been convicted of an offence 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.

65 When secretary must be elected or appointed

- (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.

66 Management committee to ensure association has appropriate person as secretary

- (1) The management committee of an incorporated association must ensure the secretary is an adult residing in Queensland, or in another State but not more than 65km 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 adult 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.
- (3) It is declared that—
- (a) a secretary mentioned in subsection (1)(a) or (b) is a member of the management committee; and
 - (b) a secretary mentioned in subsection (1)(c) is not a member of the management committee.

67 Management committee may appoint or remove secretary at any time

- (1) The management committee of an incorporated association may at any time—
- (a) appoint the association's secretary; or
 - (b) remove a person appointed by the committee as the association's secretary.

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- (2) If the management committee removes a secretary who was appointed as mentioned in section 66(1)(b), the removal does not otherwise affect the person's membership of the management committee.

68 Notification of certain office holders

- (1) If an incorporated association appoints or elects a secretary for the association under section 65, 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.

69 Office of secretary

- (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.
- (2) The office of secretary shall become vacant 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) 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
 - (d) resigns office by writing under the person's hand addressed to the management committee of the incorporated association; or
 - (e) ceases to be resident in Queensland, or in another State but not more than 65km from the Queensland border.

69A Functions of secretary

- (1) The secretary's functions include—
 - (a) calling meetings of the incorporated association, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the president of the association; and
 - (b) keeping minutes of each meeting; and
 - (c) keeping copies of all correspondence and other documents relating to the association; and
 - (d) maintaining the association's register of members.
- (2) Subsection (1)—
 - (a) does not limit any other function the secretary has under any other provision of this Act; and
 - (b) does not prevent an association's rules from stating other functions for the secretary.

70 Public liability insurance generally

- (1) The management committee of an incorporated association must, at least annually, consider whether there is a need for the incorporated association to take out public liability insurance.
- (2) The management committee must report its decision about the need for public liability insurance for the association to the association's members at the association's next annual general meeting.
- (3) If the management committee decides there is no need to take out public liability insurance, the committee must, at the annual general meeting—
 - (a) give the association's members reasons for the committee's decision; and
 - (b) advise the members that the failure to take out public liability insurance means that the association's assets would be at risk if there were a successful claim against the association.
- (4) The management committee must ensure that—
 - (a) as soon as practicable after a person applies to become, but before the person becomes, a member of the association, the person is advised—
 - (i) whether or not the association has public liability insurance; and
 - (ii) if the association has public liability insurance—the amount of the insurance; and
 - (b) before a person is elected or appointed as a member of the association's management committee, the person is advised—
 - (i) whether or not the association has public liability insurance; and
 - (ii) if the association has public liability insurance—the amount of the insurance.

- (5) The management committee must ensure that any person or entity with whom the association may have dealings, and which could be expected to have an interest in knowing whether or not the association has public liability insurance, is advised if the association does not have public liability insurance.
- (6) This section is subject to section 70A.

Note—

This section imposes obligations on a management committee but does not impose any criminal penalties in relation to breaches of those obligations.

70A Particular incorporated associations must have public liability insurance

- (1) This section applies if an incorporated association is—
 - (a) an owner of land; or
 - (b) a lessee of land; or
 - (c) a trustee of trust land under the *Land Act 1994*.
- (2) The members of the management committee of the incorporated association must ensure—
 - (a) the association takes out public liability insurance in relation to the land in an amount decided by the management committee; and
 - (b) the insurance cover is kept current at all times.

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

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

Division 2 Matters of material personal interest and remuneration

70B Disclosure of material personal interest

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

Maximum penalty—60 penalty units.

- (2) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must disclose the nature and extent of the interest at the next general meeting of the association.

Maximum penalty—60 penalty units.

- (3) Subsections (1) and (2) do not apply in relation to a material personal interest—

- (a) that exists only because the member—
- (i) is an employee of the association; or
 - (ii) is a member of a class of persons for whose benefit the association is established; or
- (b) that the member has in common with all, or a substantial proportion of, the members of the association.

- (4) If a member of the management committee of an incorporated association discloses a material personal interest in a contract or proposed contract under this section, and the member has complied with section 70C(1) or the member's interest is not required to be disclosed because of subsection (3)—

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

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- (b) the member is not liable to account for profits derived from the contract.
 - (5) A disclosure of a material personal interest required under subsection (1) or (2) must give details of—
 - (a) the nature and extent of the interest; and
 - (b) how the interest is related to the activities of the association.
 - (6) The members of the management committee of an incorporated association must ensure the details mentioned in subsection (5) are—
 - (a) recorded in the minutes of the meeting of the management committee at which the disclosure is made; and
 - (b) if a member of the association asks for the details—
given to the member.

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

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

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

Maximum penalty—60 penalty units.

- (2) Subsection (1) does not apply in relation to a material personal interest—
 - (a) that exists only because the member belongs to a class of person for whose benefit the association is established; or

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- (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (3) Subsection (1) does not apply if the management committee, other than the members who have a material personal interest in the matter, decide the member who has a material personal interest in the matter may—
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter.
- (4) If the management committee decides under subsection (3) that a member of the committee who has a material personal interest in a matter may be present at a meeting while the matter is being considered, or may vote on the matter, the committee must ensure that—
 - (a) the committee's decision is recorded in the minutes of the meeting and disclosed at the next general meeting of the association; and
 - (b) details of the committee's decision are given to a member of the association, if requested by the member.

Maximum penalty for each member of the management committee—4 penalty units.
- (5) If there are not enough management committee members to form a quorum to consider a matter because of subsection (1)—
 - (a) 1 or more committee members, including the members who have a material personal interest in the matter, may call a general meeting; and
 - (b) the general meeting may pass a resolution to deal with the matter.

70D Disclosure of remuneration and other benefits

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

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

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

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

(2) In this section—

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

remuneration—

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

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

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

Division 3 Duties of officers

70E Duty of care and diligence

- (1) An officer of an incorporated association must exercise the officer's powers and discharge the officer's duties with the degree of care and diligence that a reasonable person would exercise if that person—

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

Maximum penalty—60 penalty units.

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

- (3) In this section—

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

70F Duty of good faith

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

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

Maximum penalty—60 penalty units.

70G Use of position

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

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

Maximum penalty—60 penalty units.

70H Use of information

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

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

Maximum penalty—60 penalty units.

70I Duty to prevent insolvent trading

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

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

Maximum penalty—60 penalty units.

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

70J Reliance on information or advice

- (1) This section applies if the reasonableness of the reliance of an officer of an incorporated association on information or advice given to the officer arises in a proceeding brought to decide whether the officer has performed a duty under this Act or an equivalent duty at common law or in equity.
- (2) Unless the contrary is proved, the officer's reliance on the information or advice is taken to be reasonable if—
- (a) the information or advice was given or prepared by—
 - (i) an employee of the association whom the officer reasonably believed to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional advisor or expert in relation to the matters that the officer reasonably believed to be within that person's professional or expert competence; or
 - (iii) another officer of the association in relation to matters within the other officer's authority; or
 - (iv) a sub-committee of the association of which the officer was not a member in relation to matters within the sub-committee's authority; and

- (b) the reliance was made—
 - (i) in good faith; and
 - (ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the association and the complexity of the structure of the association.

Part 8 **Rights and obligations of members**

71 **Rights of members**

- (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.

72 **Enforcement of rights and obligations**

- (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; or
 - (b) declaring and enforcing the rights and obligations of members of such incorporated association between

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themselves, and the rights and obligations between such incorporated association and any member or members thereof.

- (2) However, an incorporated association, or a member of an incorporated association, can not make an application under subsection (1) in relation to a dispute under the rules unless the association or member has made reasonable attempts to resolve the dispute under the grievance procedure in the association's rules.
- (3) 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.

73 Powers of Supreme Court

- (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; or
 - (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; or
 - (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

74 Members of branch may resolve to incorporate

- (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.

75 Powers of appointed person

- (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.

76 Modified application of Act

The provisions of this Act providing for the incorporation of an association 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 by regulation.

Note—

For provisions dealing with the incorporation of associations, see part 2.

77 Obligations of branch

- (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—
 - (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.

78 Branch must have word 'branch' in its registered name etc.

A branch, or group of branches, incorporated under this division must have as part of its registered 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

79 Definitions for division

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.

80 Members may resolve to amalgamate

- (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 3 months 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.

81 Applicant incorporated associations must have agreed rules

- (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 the model rules.

82 Appointment of appointed person to make application

- (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.

83 Chief executive may require notices to be sent to creditors

- (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.

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- (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.

84 Modified application of Act

The provisions of this Act providing for the incorporation of an association apply to the incorporation of a new association with all necessary changes, all changes made under this division and any changes prescribed by regulation.

Note—

For provisions dealing with the incorporation of associations, see part 2.

85 Certificate of incorporation

- (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.

86 Effect of incorporation

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.

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

(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) 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).

88 Amalgamation does not affect certain rights and obligations

(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.

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- (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 Administration and winding up

Division 1 Voluntary administration and winding up

89 Voluntary administration under Corporations Act

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

90 Voluntary winding up under Corporations Act

- (1) This section applies to an incorporated association that has surplus property to be distributed on winding up.
- (2) The incorporated association may be wound up voluntarily if the association so resolves by special resolution.
- (3) A copy of the special resolution must be lodged with the chief executive within 1 month after the passing of the resolution.
- (4) Subsection (5) is made for the purposes of the *Corporations (Ancillary Provisions) Act 2001*, part 3.
- (5) The voluntary winding up of the incorporated association is declared to be an applied Corporations legislation matter in relation to the prescribed provisions, subject to the following changes—
 - (a) the changes to the provisions of the Corporations Act mentioned in schedule 1;
 - (b) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3, prescribed by regulation.
- (6) In this section—

prescribed provisions means—

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

Division 2 Winding up by Supreme Court

91 Grounds on which winding up may be ordered

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

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

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

91A By whom application may be made

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

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

91B Application of Corporations Act

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

prescribed provisions means—

 - (a) the Corporations Act, parts 5.7 and 5.7B, divisions 1 and 2; and
 - (b) the Corporations Act, schedule 2 to the extent it relates to the Corporations Act, parts 5.7 and 5.7B, divisions 1 and 2.

Division 3 Miscellaneous

91C Further application of miscellaneous provisions under Corporations Act

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

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

92 Distribution of surplus assets

- (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 chief executive may by gazette notice vest all or any of the surplus assets of the incorporated association in the public trustee; and
 - (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; and
 - (c) the chief executive may by gazette notice vary the trusts or purposes mentioned in paragraph (b) and may by the same or another gazette notice vest those surplus assets or any part of them in stated entities for stated purposes; and
 - (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.
- (2A) This section applies despite any provision of the Corporations Act applied under this part.

- (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.

Part 11 Cancellation

92A Application for cancellation of incorporation

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

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

92B Consideration of application

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

92C Cancellation of incorporation on application

- (1) The chief executive must cancel the incorporation of an incorporated association on an application made under section 92A if the chief executive is satisfied of the matters mentioned in section 92A(1).

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- (2) However, if the application is made under section 92A(2)(a), the chief executive must not cancel the incorporation of the association unless the association has given the chief executive evidence of the distribution of the surplus assets of the association under the special resolution.

93 Cancellation of incorporation by chief executive

- (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 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;
 - (f) an incorporated association has not lodged with the chief executive the documents required to be lodged under part 6, division 2;

it is desirable that the incorporation of an incorporated association be cancelled, the chief executive may serve, on a person appearing to the chief executive from records kept under this Act to be a relevant officer of the incorporated association, a notice—

- (g) setting out the ground or grounds for the proposed cancellation of the incorporation of the incorporated association; and
- (h) requiring the relevant 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

- (i) stating that unless the chief executive is so satisfied by the relevant 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, on the person served with a notice under subsection (1), a notice that the incorporation of the incorporated association is cancelled.
- (3) In this section—
relevant officer, of an incorporated association, means—
 - (a) the secretary or another officer of the incorporated association; or
 - (b) if the incorporated association has ceased to exist—a person appearing to the chief executive to have been the last known secretary or other officer of the incorporated association.

93A Chief executive may require information from financial institutions before cancelling incorporation

- (1) This section applies if—
 - (a) the chief executive has served a notice on a relevant officer of an incorporated association under section 93(1); and
 - (b) the chief executive considers a financial institution may hold, or have held, an account in the name of the incorporated association.
- (2) The chief executive may, by written notice, require a person who is the manager or other principal officer of the financial institution to give the chief executive, within a stated reasonable time, stated information about—

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- (a) any accounts held by the incorporated association with the financial institution; and
 - (b) the balance of each account held.
- (3) The person must comply with the notice.
Maximum penalty—10 penalty units.

94 Vesting of property on cancellation

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

- (a) the chief executive may by gazette notice vest all or any property of such association in the public trustee; and
- (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; and
- (c) the chief executive may by gazette notice vary the trusts or purposes referred to in paragraph (b) and may by the same or any subsequent gazette notice vest that property or any part thereof in such persons or incorporated associations and for such purposes as the chief executive shall specify; and
- (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 12 Reinstatement

94A Definitions for part

In this part—

deregistered association means an association that—

- (a) has been deregistered under the provisions of the Corporations Act applied under part 10; or
- (b) has been dissolved under the repealed part 5.6, division 8 of the Corporations Law; or
- (c) has had its incorporation cancelled under section 92C or 93.

deregistration means—

- (a) deregistration under the provisions of the Corporations Act applied under part 10; or
- (b) dissolution under the repealed part 5.6, division 8 of the Corporations Law; or
- (c) cancellation of incorporation under section 92C or 93.

reinstate, the registration of an association, includes reinstate the registration of an association dissolved under the repealed part 5.6, division 8 of the Corporations Law.

94B Reinstatement

- (1) The chief executive may, on the application of a person or on the chief executive's own initiative, reinstate the registration of a deregistered association if the chief executive is satisfied the association should not have been deregistered.
- (2) A person aggrieved by the deregistration, or a former liquidator of a deregistered association, may apply to the Supreme Court for an order that the chief executive reinstate the association's registration.
- (3) The court may make the order if it is satisfied it is just to do so.
- (4) If the court makes the order, it may—
 - (a) validate anything done between the deregistration and reinstatement; and
 - (b) make any other order it considers appropriate.

Example of an order under paragraph (b)—

An order that property vested in the public trustee under section 94 be transferred to another person.

94C Chief executive to give notice of reinstatement

- (1) If an association's registration is reinstated, the chief executive must give notice of the reinstatement to the association's secretary.
- (2) If an association's registration is reinstated under section 94B(1) on the application of a person, the chief executive must also give notice of the reinstatement to the person.

94D Effect of reinstatement

- (1) On the reinstatement of an association's registration—
 - (a) the association is taken to have continued in existence as if it had not been deregistered; and
 - (b) a member of the management committee of the association immediately before the deregistration again becomes a member of the management committee of the association; and
 - (c) any property of the association that is still vested in the public trustee reverts in the association; and
 - (d) if the association held property subject to a security or other interest or claim, the association takes the property subject to the security or other interest or claim.
- (2) However, reinstatement does not affect anything done, before the reinstatement, by the public trustee under this Act in relation to the association's property on its deregistration.

Part 13 Change in status of incorporated associations and other entities

Division 1 Interpretation

95 Purpose of part

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

96 Definitions

In this part—

former society means a cooperative that becomes an incorporated association under this part.

registrar means the registrar under the Cooperatives Act.

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

Division 2 Incorporation of cooperatives

105A Application of division

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

[s 105B]

- (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 deregistered; 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.

105B Notice of cooperative's proposal to become incorporated association

Within 1 month after a cooperative passes a special resolution under the Cooperatives Act, section 301 to become an incorporated association, the cooperative must give to the chief executive—

- (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.

105C Application for incorporation of cooperative as association

- (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 by 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.

105D Incorporation

- (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;
 - (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.

[s 105E]

105E Chief executive must inform registrar of incorporation

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.

105F Registrar to give records to chief executive

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.

105G Recording of interests in land

- (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.

105H Directors of former cooperative

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

105I Office holders of former cooperative become office holders of incorporated association

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

105J Rules

- (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 3 Registration of incorporated associations as cooperatives

105K Application of division

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

[s 105L]

creditors but the court has not approved or refused to approve the application.

105L Chief executive's consent needed to proposed registration as cooperative

- (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.

105M Consent to proposed registration as cooperative

- (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;
 - (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.

105N Cancellation of registration and incorporation

- (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 4 General

106 Financial year

The financial year for a former society continues as the financial year of the incorporated association.

Part 14 Voluntary transfer of incorporation

Division 1 Incorporated associations

106A Application for authority to transfer incorporation

An incorporated association may apply to the chief executive for authority to transfer the association’s incorporation to—

- (a) a company limited by guarantee under the Corporations Act, part 5B.1 (***CLG corporation***); or
- (b) an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), part 2-3 (***CATSI Act corporation***).

Note—

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

106B Requirements for application

- (1) The application must—
 - (a) be in the approved form; and
 - (b) be signed by 3 members of the association's management committee, 1 of whom must be the president, authorised to make the application (the ***authorised members***); and
 - (c) be accompanied by the following—
 - (i) either—
 - (A) the association's certificate of incorporation under this Act; or
 - (B) if the certificate has been lost, stolen or destroyed—a statutory declaration by a person authorised by the association to make the declaration for the association, stating it has been lost, stolen or destroyed;
 - (ii) a copy of a special resolution of the association stating—
 - (A) that the application under this division is approved; and
 - (B) that the authorised members have authority to sign the application form; and

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- (C) the proposed name under which the association is to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
 - (iii) a statutory declaration by the association's president that—
 - (A) the matters stated in the application form are true; and
 - (B) this Act and the association's rules have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
 - (C) any consent required under the association's rules to be obtained before passing the special resolution has been obtained.
 - (2) If the application is withdrawn or the chief executive refuses to grant the application, the chief executive must return the association's certificate of incorporation to the association.

106C Further information or documents for application

The chief executive may require the applicant to give the chief executive, within a stated reasonable period of at least 28 days, any further information or documents the chief executive reasonably requires to decide the application.

106D Refusal to grant application

The chief executive may refuse to grant the application if the chief executive is not satisfied the applicant has complied with—

- (a) section 106B; or
- (b) a requirement under section 106C.

[s 106E]

106E Chief executive to give notice of authority to transfer incorporation

If the chief executive decides to authorise the transfer of incorporation, the chief executive must give the applicant written notice that the proposed transfer of the association's incorporation is authorised.

106F Effect of a transfer of incorporation authorised under this division

On the transfer of the incorporation of an incorporated association, as authorised under this division—

- (a) the association stops being an incorporated association; and
- (b) the association's name is taken to be removed from the register from the day of the transfer.

Note—

For other effects of the transfer, including whether a new entity is created and the effect on existing property, rights and obligations see the Corporations Act, section 601BM and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 42-3.

106G New body to give chief executive copy of new certificate of registration

- (1) This section applies if an incorporated association becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.
- (2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the chief executive.

Maximum penalty—10 penalty units.

Division 2 RECI Act corporations

106H Application for authority to transfer incorporation

A RECI Act corporation may apply to the Minister for authority to transfer the RECI Act corporation's incorporation to—

- (a) a CLG corporation; or
- (b) a CATSI Act corporation.

Note—

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

106I Requirements for application

- (1) The application must—
 - (a) be in the approved form; and
 - (b) be signed by a member of the governing body of the RECI Act corporation authorised to make the application (the *authorised member*); and
 - (c) be accompanied by the following—
 - (i) either—
 - (A) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861*; or
 - (B) if the letters patent have been lost, stolen or destroyed—a statutory declaration by a person authorised by the RECI Act corporation to make the declaration for the RECI Act corporation, stating they have been lost, stolen or destroyed;

- (ii) a copy of a special resolution of the RECI Act corporation, in relation to which the required notice has been given, stating—
 - (A) that the application under this division is approved; and
 - (B) that the authorised member has authority to sign the application form; and
 - (C) the proposed name under which the RECI Act corporation is to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
- (iii) a statutory declaration by the authorised member that—
 - (A) the matters stated in the application form are true; and
 - (B) this Act and the RECI Act corporation's constitution have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
 - (C) any consent required under the RECI Act corporation's constitution to be obtained before passing the special resolution has been obtained.

(2) If the application is withdrawn or the Minister refuses to grant the application, the Minister must return the letters patent to the RECI Act corporation.

(3) In this section—

required notice means written notice of the proposed special resolution, and of the time and place of the general meeting at which it is proposed to move the resolution, given before the general meeting to each member of the RECI Act corporation who has a right to vote on the resolution.

special resolution, of the RECI Act corporation, means a resolution passed at a general meeting of the RECI Act corporation by the votes of $\frac{3}{4}$ of its members who are present and entitled to vote on the resolution.

106J Further information or documents for application

The Minister may require the applicant to give the Minister, within a stated reasonable period of at least 28 days, any further information or documents the Minister reasonably requires to decide the application.

106K Refusal to grant application

- (1) The Minister may refuse to grant the application if the Minister is not satisfied the applicant has complied with—
 - (a) section 106I; or
 - (b) a requirement under section 106J.
- (2) If the Minister decides to refuse to grant the application—
 - (a) the Minister must give the RECI Act corporation a QCAT information notice for the decision; and
 - (b) the RECI Act corporation may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (3) In this section—

QCAT information notice means a written notice complying with the QCAT Act, section 157(2).

106L Minister to give notice of authority to transfer incorporation

If the Minister decides to authorise the transfer of incorporation, the Minister must give the applicant written notice that the proposed transfer of the RECI Act corporation's incorporation is authorised.

106M Effect of a transfer of incorporation authorised under this division

On the transfer of the incorporation of a RECI Act corporation, as authorised under this division—

- (a) the RECI Act corporation stops being incorporated as a RECI Act corporation; and
- (b) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be cancelled from the day of the transfer.

Note—

For other effects of the transfer, including whether a new entity is created and the effect on existing property, rights and obligations see the Corporations Act, section 601BM and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 42-3.

106N New body to give Minister copy of new certificate of registration

- (1) This section applies if a RECI Act corporation becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.
- (2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the Minister.

Maximum penalty—10 penalty units.

- (3) On receipt of the copy of the new certificate of registration, the Minister must give notice by gazette notice—
 - (a) that the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be cancelled, under section 106M(b), from the day of the transfer; and
 - (b) of the day of the transfer.

Part 15 Reviews

Division 1 Internal review of decisions

109 Affected person may apply for review

- (1) If a person's interests are affected by a decision under this Act, other than under section 106K, 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.

110 Applying for review

- (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.

111 Stay of operation of disputed decision

- (1) If an application is made under this division for review of a decision (the *disputed decision*), the applicant may

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immediately apply, as provided under the QCAT Act, to QCAT for a stay of the disputed decision.

- (2) QCAT may stay the disputed decision to secure the effectiveness of the review and any later review by QCAT.
- (3) A stay—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be revoked or amended by QCAT.
- (4) The period of a stay under this section must not extend past the time when the chief executive reviews the disputed decision and any later period QCAT allows the applicant to enable the applicant to apply for a review of the chief executive's decision (the *reviewable decision*).
- (5) The making of an application for review of a reviewable decision affects the reviewable decision, or the carrying out of the reviewable decision, only if the reviewable decision is stayed.

112 Decision on reconsideration

- (1) This section applies to an application under this division for review of a 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 (the *reviewable decision*) is not the decision sought by the applicant, the chief executive must give the applicant a QCAT information notice for the decision.
- (5) In this section—

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

Division 2 External review of decisions

113 Who may seek external review

A person whose interests are affected by a reviewable decision under section 112 may apply, as provided under the QCAT Act, to QCAT for a review of the reviewable decision.

Part 16 Miscellaneous

119

119A

119B Disclosure of information to Commissioner of the ACNC

- (1) For the purpose of enabling or assisting the commissioner to perform or exercise any of the functions or powers of the commissioner, the chief executive may—
 - (a) enter into an arrangement with the commissioner; and
 - (b) under the arrangement, disclose information obtained under this Act about an ACNC registered entity to the commissioner.
- (2) In this section—

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

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

120 Protection from liability

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

121 Extension of time

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.

121A False or misleading information or documents

- (1) This section applies to a statement made or document given to the chief executive.
- (2) A person must not state anything to the chief executive the person knows is false or misleading in a material particular.
Maximum penalty—10 penalty units.
- (3) A person must not give the chief executive a document the person knows is false or misleading in a material particular.
Maximum penalty—10 penalty units.
- (4) Subsection (3) 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 or misleading; and

- (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.
- (5) It is enough for a complaint against a person for an offence against subsection (2) or (3) to state the information or document was false or misleading to the person's knowledge, without specifying which.

122 Punishment of fraud or misappropriation

- (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.

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- (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.

123 Officers deemed servants

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.

124 Penalty for falsification

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.

125 Proof of compliance with formal requirements

- (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.

126 Evidence

- (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 accountant or approved person or auditor or valuer under this Act shall be received in evidence without proof of the signature.

127 Evidentiary provisions

- (1) The chief executive may, by writing under the chief executive's hand, certify—
 - (a) that, on a date stated in the certificate, an association so stated was, or was not, an incorporated association; or
 - (b) that, on a date stated in the certificate, a person so stated was, or was not, the secretary of an incorporated association so stated; or
 - (c) that, on a date stated 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 stated in the certificate, a document required to be lodged under section 59BA(1) with the chief executive, or given under section 59F to the chief executive has, or has not, been received by the chief executive;

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.

128 Dispositions of property

- (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.

129 Delegation

The chief executive may delegate the chief executive's powers under this Act.

130 Approval of forms

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

130A Documents not in English language

- (1) If there is a requirement under this Act to lodge a document and the document is in a language other than English, the requirement is taken to include a requirement that a translation of the document into English, certified by a person to be a correct translation, be lodged at the same time.
- (2) For the purpose of the administration of this Act, the English version of a document required for this Act prevails over a version of the document that is not in English.

131 Recall of letters patent

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.

132 Exemption from certain provisions of Act

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.

133 Irregularities in proceedings

- (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.

134 Regulation-making power

The Governor in Council may make regulations under this Act.

135 Regulations about fees and charges

- (1) A regulation may be made about the fees and charges payable under this Act.
- (2) A charge may be a tax.

136 Penalties under regulations to be limited

The maximum penalty that may be prescribed by regulation for an offence against a regulation is 20 penalty units.

137 Other matters for regulations

- (1) 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

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- (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.
- (2) If a provision of this Act empowers a regulation to prescribe, for a particular purpose, a class of incorporated association, the regulation may prescribe a class by reference to—
- (a) the revenue, assets, or other financial characteristics of an incorporated association; or
 - (b) whether an incorporated association is registered under an Act of the Commonwealth or a State; or
 - (c) whether an incorporated association is required to prepare and submit financial statements under an Act of the Commonwealth or a State; or
 - (d) the objects for an incorporated association; or
 - (e) any other matter relevant to the purpose.

138 Service

- (1) A document may be served on an incorporated association by leaving it at, or sending it by post, telex, facsimile or similar facility to, the association's nominated address, or to the address of the secretary, president or treasurer of the association shown in the records kept under this Act by the chief executive.

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- (2) Subsection (1) does not limit any way of serving an incorporated association provided under any other law, but does not apply to the service of a notice under section 93.

Part 17 Savings

144 Saving of letters patent

Subject to the provisions of this Act, letters patent issued pursuant to the *Religious Educational and Charitable Institutions Act 1861* continue to be of full force and effect and to be subject to that Act as if this Act had not been passed.

Part 18 Transitional provisions

Division 1 Transitional provision for Audit Legislation Amendment Act 2006

145 Audits

- (1) This section applies if—
- (a) before the commencement, an incorporated association appointed a person mentioned in pre-amended section 59(1)(b)(ii) or (iii) to audit the association's financial affairs for the 2004-2005 financial year; and
 - (b) the person has not performed the audit before the commencement.
- (2) For the purpose of the person performing the audit, pre-amended section 59(1)(b)(ii) or (iii) continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.

- (3) In this section—

commencement means commencement of this section.

pre-amended, in relation to section 59(1)(b)(ii) or (iii), means the provision as in force before the commencement.

Division 2 Transitional provisions for Associations Incorporation and Other Legislation Amendment Act 2007

146 Nominated address

- (1) This section applies if, immediately before the commencement of this section, an incorporated association had a registered office complying with section 17(2) as in force immediately before the commencement.
- (2) On the commencement, the incorporated association's registered office is taken to be the association's nominated address.

147 Association's name

- (1) This section applies if, on the commencement of this section, an incorporated association's name does not comply with section 29(3).
- (2) The incorporated association is not required to comply with section 29(3) until 3 months after the next annual general meeting of the association after the commencement.

148 Insurance

- (1) This section applies if an incorporated association has an annual general meeting within 3 months after the commencement of this section.
- (2) The management committee of the incorporated association is not required to comply with section 70(2) and (3) until its second annual general meeting after the commencement.

149 Financial reporting

The provisions of part 6, division 2, as amended by the *Associations Incorporation and Other Legislation Amendment Act 2007*, only apply to an incorporated association if the end date of the association's reportable financial year happens after the commencement of this section.

150 Approved persons

- (1) This section applies if, immediately before the commencement of this section, a person was approved by the chief executive under section 59(1)(b)(v), as in force immediately before the commencement, as having appropriate qualifications to audit the financial affairs of an incorporated association.
- (2) On the commencement, the person is taken to be an approved person for the incorporated association.

**Division 3 Transitional provisions for
Associations Incorporation and
Other Legislation Amendment Act
2019**

**151 Application for incorporation made before
commencement**

- (1) This section applies if, before the commencement, an application for incorporation of an association was made under section 9 and immediately before the commencement, the application had not been finally dealt with.
- (2) The chief executive must decide the application under the Act as in force immediately before the commencement.

152 Requirement for rules to include grievance procedure

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

153 Financial reporting obligations

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

154 Disclosure of information to Commissioner of the ACNC

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

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

sections 89, 90, 91B and 91C

- 1 A reference to a company or body is to be read as a reference to an incorporated association.
- 2 A reference in part 5.7 to a part 5.7 body is to be read as a reference to an incorporated association.
- 3 A reference to the board of a body corporate is to be read as a reference to the management committee of an incorporated association.
- 4 A reference to the directors of a company is to be read as a reference to the members of the management committee of an incorporated association.
- 5 A reference to the secretary of a company is to be read as a reference to the secretary of an incorporated association or the person carrying out the functions ordinarily carried out by the secretary of an incorporated association.
- 6 A reference to an officer of a company is to be read as a reference to an officer of an incorporated association.
- 7 A reference to a former officer or past officer of a company is to be read as a reference to a former officer or past officer of an incorporated association.
- 8 A reference to the principal place of business of a company is to be read as a reference to the nominated address for an incorporated association.
- 9 A reference to a company carrying on business is to be read as a reference to an incorporated association pursuing its objects or purposes.
- 10 A reference to ASIC is to be read as a reference to the chief executive.
- 11 A reference to the Court is to be read as a reference to the Supreme Court.

Schedule 1

- 12 A reference to the deregistration of a company is to be read as a reference to the cancellation of the incorporation of an association.
- 13 A reference to the constitution of a company is to be read as a reference to the rules of an incorporated association.
- 14 A reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act.
- 15 A reference to a registered company auditor or an auditor is to be read as a reference to a person, firm or company authorised to audit the financial statements of an incorporated association under this Act.
- 16 A reference to a contributory of a company is to be read as a reference to a member of an incorporated association, to the extent the member is personally liable under section 27 of this Act.

Schedule 2 Dictionary

section 2

accountant see section 58.

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

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).

approved form see section 130.

approved person see section 58.

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

auditor see section 58.

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

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.

CATSI Act corporation see section 106A.

CLG corporation see section 106A.

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*.

current assets, for part 6, division 2, see section 58.

end date see section 58.

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

financial statement, for a reportable financial year of an incorporated association, for part 6, division 2, see section 58.

financial year, for an incorporated association, means the 12 month period adopted by the association as its financial year in its rules.

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.

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

management committee of an incorporated association means the association's management committee formed under this Act.

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

model rules, for an association, means the model rules prescribed by regulation.

nominated address, for an incorporated association, see section 17(1).

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).

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.

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*.

RECI Act corporation means a corporation incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861*.

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

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

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

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*.

reportable financial year see section 58A.

rules of an incorporated association include its constitution.

secretary of an incorporated association means the person elected or appointed as the association's secretary under this Act.

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

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.

total revenue, for part 6, division 2, see section 58.

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.

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