

# Model Rules for associations incorporated under the Associations Incorporation Act, 1984

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## Part 1 Preliminary

### 1 Definitions

- (1) In these rules:

**Commissioner** means the Commissioner of the Office of Fair Trading.

**ordinary member** means a member of the committee who is not an office-bearer of the association, as referred to in rule 14(2).

**secretary** means:

- (a) the person holding office under these rules as secretary of the association, or
- (b) if no such person holds that office – the public officer of the association.

**Special general meeting** means a general meeting of the association other than an annual general meeting.

**the Act** means the *Associations Incorporation Act 1984*.

**the regulation** means the *Associations Incorporation Regulation 1999*.

- (2) In these rules:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

- (3) The provisions of the *Interpretation Act 1987* apply to and in respect of these rules in the same manner as those provisions would so apply if these rules were an instrument made under the Act.

## Part 2 Membership

### 2 Membership qualifications

A person is qualified to be a member of the association if, but only if:

- (a) the person is a person referred to in section 15(1) (a), (b) or (c) of the Act and has not ceased to be a member of the association at any time after incorporation of the association under the Act,

or

- (b) the person is a natural person:
  - (i) who has been nominated for membership of the association as provided by rule 3, and
  - (ii) who has been approved for membership of the association by the committee of the association.

### **3 Nomination for membership**

- (1) A nomination of a person for membership of the association:
  - (a) must be made by a member of the association in writing in the form set out in Appendix 1 to these rules, and
  - (b) must be lodged with the secretary of the association.
- (2) As soon as practicable after receiving a nomination for membership, the secretary must refer the nomination to the committee which is to determine whether to approve or to reject the nomination.
- (3) As soon as practicable after the committee makes that determination, the secretary must:
  - (a) notify the nominee, in writing, that the committee approved or rejected the nomination (whichever is applicable), and
  - (b) if the committee approved the nomination, request the nominee to pay (within the period of 28 days after receipt by the nominee of the notification) the sum payable under these rules by a member as entrance fee and annual subscription.
- (4) the secretary must, on payment by the nominee of the amounts referred to in clause (3) (b) within the period referred to in that provision, enter the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the association.

### **4 Cessation of membership**

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the association.

### **5 Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

## **6                   Resignation of membership**

- (1) A member of the association is not entitled to resign that membership except in accordance with this rule.
- (2) A member of the association who has paid all amounts payable by the member to the association in respect of the member's membership may resign from membership of the association by first giving to the secretary written notice of at least one month (or such other period as the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (3) If a member of the association ceases to be a member under clause (2), and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **7                   Register of members**

- (1) The public officer of the association must establish and maintain a register of members of the association specifying the name and address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept at the principal place of administration of the association and must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (3) A member of the association may obtain a copy of any part of the register on payment of a fee of \$1 for each page copied or, if some other amount is determined by the committee, that other amount.

## **8                   Fees and subscriptions**

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the committee, that other amount.
- (2) In addition to any amount payable by the member under clause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the committee, that other amount:
  - (a) except as provided by paragraph (b), before 1 July in each calendar year, or
  - (b) if the member becomes a member on or after 1 July in any calendar year – on becoming a member and before 1 July in each succeeding calendar year.

## **9 Members' liabilities**

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by rule 8.

## **10 Resolution of internal disputes**

- (1) Disputes between members (in their capacity as members) of the association, and disputes between members and the association, are to be referred to a community justice centre for mediation in accordance with the *Community Justice Centres Act 1983*.
- (2) At least 7 days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## **11 Disciplining of members**

- (1) A complaint may be made to the committee by any person that a member of the association:
  - (a) has persistently refused or neglected to comply with a provision or provisions of these rules, or
  - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the association.
- (2) On receiving such a complaint, the committee:
  - (a) must cause notice of the complaint to be served on the member concerned; and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (3) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.
- (4) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under rule 12.

- (5) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under rule 12(5),whichever is the latter.

## **12 Right of appeal of disciplined member**

- (1) A member may appeal to the association in general meeting against a resolution of the committee under rule 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under clause (1), the secretary must notify the committee which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under clause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
  - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) If at the general meeting the association passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.

## **Part 3 The committee**

### **13 Powers of the committee**

The committee is to be called the committee of management of the association and, subject to the Act, the Regulation and these rules and to any resolution passed by the association in general meeting:

- (a) is to control and manage the affairs of the association, and
- (b) may exercise all such functions as may be exercised by the association, other than those functions that are required by these rules to be exercised by a general meeting of members of the association, and

- (c) has power to perform all such acts and do all such things as appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

## **14 Constitution and membership**

- (1) Subject in the case of the first members of the committee to section 21 of the Act, the committee is to consist of:
  - (a) the office-bearers of the association, and
  - (b) 3 ordinary members,each of whom is to be elected at the annual general meeting of the association under rule 15.
- (2) The office-bearers of the association are to be:
  - (a) the president
  - (b) the vice-president
  - (c) the treasurer, and
  - (d) the secretary
- (3) Each member of the committee is, subject to these rules, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.
- (4) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to these rules, until the conclusion of the annual general meeting next following the date of the appointment.

## **15 Election of members**

- (1) Nominations of candidates for election as office-bearers of the association or as ordinary members of the committee:
  - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.

- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary members of the committee is to be conducted at the annual general meeting in such usual and proper manner as the committee may direct.

## **16 Secretary**

- (1) the secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes of:
  - (a) all appointments of office-bearers and members of the committee,
  - (b) the names of members of the committee present at a committee meeting or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

## **17 Treasurer**

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

## **18 Casual vacancies**

For the purposes of these rules, a casual vacancy in the office of a member of the committee occurs if the member:

- (a) dies, or
- (b) ceases to be a member of the association, or
- (c) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (d) resigns office by notice in writing given to the secretary, or
- (e) is removed from office under rule 19, or



- (f) becomes a mentally incapacitated person, or
- (g) is absent without the consent of the committee from all meetings of the committee held during a period of 6 months.

## **19 Removal of member**

- (1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in clause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representation be notified to the members of the association, the secretary or the president may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **20 Meetings and quorum**

- (1) The committee must meet at least 3 times in each period of 12 months at such place and time as the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or such other period as many be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under clause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:

- (a) the president or, in the president's absence, the vice-president is to preside, or
- (b) if the president and the vice-president are absent or unwilling to act, such one of the remaining members of the committee as may be chosen by the members present at the meeting is to preside.

## **21 Delegation by committee to sub-committee**

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of such member or members of the association as the committee thinks fit) the exercise of such of the functions of the committee as are specified in the instrument, other than:
  - (a) this power of delegation, and
  - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Despite any delegation under this rule, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this rule.
- (7) A sub-committee may meet and adjourn, as it thinks proper.

## **22 Voting and decisions**

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to rule 20(5), the committee may act despite any vacancy on the committee.

- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

## **Part 4 General meeting**

### **23 Annual general meetings – holding of**

- (1) With the exception of the first annual general meeting of the association, the association must, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the association, convene an annual general meeting of its members.
- (2) The association must hold its first annual general meeting:
  - (a) within the period of 18 months after its incorporation under the Act, and
  - (b) within the period of 6 months after the expiration of the first financial year of the association.
- (3) Clauses (1) and (2) have effect subject to any extension or permission granted by the Commissioner under section 26(3) of the Act.

### **24 Annual general meetings – calling of and business at**

- (1) The annual general meeting of the association is, subject to the Act and to rule 23, to be convened on such date and at such place and time as the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the committee reports on the activities of the association during the last preceding financial year,
  - (c) to elect office-bearers of the association and ordinary members of the committee,
  - (d) to receive and consider the statement which is required to be submitted to members under section 26(6) of the Act.
- (3) An annual general meeting must be specified as such in the notice convening it.

### **25 Special general meetings – calling of**

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.

- (2) The committee must, on the requisition in writing of at least 5 per cent of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
  - (a) must state the purpose or purposes of the meeting, and
  - (b) must be signed by the members making the requisition, and
  - (c) must be lodged with the secretary, and
  - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after that date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in clause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee and any member who consequently incurs expenses is entitled to be reimbursed by the association for any expense so incurred.

## **26**

### **Notice**

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under clause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under rule 24(2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

**27**

**Procedure**

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time the meeting is considering that item.
- (2) Five members present in person (being members entitled under these rules to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members, is to be dissolved, and
  - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) is to constitute a quorum.

**28**

**Presiding member**

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.
- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

**29**

**Adjournment**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in clauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

**30**

### **Making of decisions**

- (1) A question arising at a general meeting of the association is to be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (2) At a general meeting of the association, a poll may be demanded by the chairperson or by at least 3 members present in person or by proxy at the meeting.
- (3) If a poll is demanded at a general meeting, the poll must be taken;
  - (a) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment, or
  - (b) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs,and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

**31**

### **Special resolution**

A resolution of the association is a special resolution:

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

**32**

### **Voting**

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) All votes must be given personally or by proxy but no member may hold more than 5 proxies.
- (3) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) A member or proxy is not entitled to vote at any general meeting of the association unless all money due and payable by the member or

proxy to the association has been paid, other than the amount of the annual subscription payable in respect of the then current year.

**33 Appointment of proxies**

- (1) Each member is to be entitled to appoint another member as proxy by notice given to the secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (2) The notice appointing the proxy is to be in the form set out in Appendix 2 to these rules.

**Part 5 Miscellaneous**

**34 Insurance**

The association may effect and maintain insurance.

**35 Funds – source**

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, such other sources as the committee determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

**36 Funds – management**

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used in pursuance of the objects of the association in such manner as the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the committee or employees of the association, being members or employees authorised to do so by the committee.

**37 Alteration of objects and rules**

The statement of objects and these rules may be altered, rescinded or added to only by a special resolution of the association.

**38 Common seal**

- (1) The common seal of the association must be kept in the custody of the public officer.
- (2) The common seal must not be affixed to any instrument except by the authority of the committee and the affixing of the common seal must be attested by the signatures either of 2 members of the committee or of 1 member of the committee and of the public officer or secretary.

**39 Custody of books**

Except as otherwise provided by these rules, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

**40 Inspection of books**

The records, books and other documents of the association must be open to inspection, free of charge, by a member of the association at any reasonable hour.

**41 Service of notices**

- (1) For the purpose of these rules, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) for the purpose of these rules, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent, or if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.



# Appendix 1

(Rule 3 (1))

## APPLICATION FOR MEMBERSHIP OF ASSOCIATION

..... Incorporated (incorporated under the *Associations  
Incorporation Act 1984*).

I,.....  
(*full name of applicant*)

of.....  
(*address*)

.....hereby apply to become a  
(*occupation*)  
member of the above-named incorporated association. In the event of my admission  
as a member, I agree to be bound by the rules of the association for the time being in  
force.

.....  
*Signature of applicant*

Date.....

I,..... a member of the association,  
(*full name*)

nominate the applicant, who is personally known to me, for membership of the  
association.

.....  
*Signature of proposer*

Date.....

I,..... a member of the association,  
(*full name*)

second the nomination of the applicant, who is personally known to me, for  
membership of the association.

.....  
*Signature of seconder*

Date.....

## Appendix 2

(Rule 3 (1))

### FORM OF APPOINTMENT OF PROXY

I, .....of .....  
(full name) (address)

being a member of .....  
(name of incorporated association)

hereby appoint ..... of .....  
(full name of proxy) (address)

being a member of that incorporated association, as my proxy to vote for me on my behalf at the general meeting of the association (annual general meeting or special general meeting, as the case may be) to be held on the

.....day of.....  
(month and year)

and at any adjournment of that meeting.

\* My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution (insert details).

\* to be inserted if desired.

.....  
Signature of member appointing proxy

Date.....

NOTE: A proxy vote may not be given to a person who is not a member of the association.

# Associations Incorporation Act 2009

As at 7 July 2017

## Long Title

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

## Part 1 – Preliminary

### 1 Name of Act

This Act is the *Associations Incorporation Act 2009*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are:

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

### 4 Definitions

(1) In this Act: "**approved**", in relation to a form, means approved by the Secretary. "**ASIC**" means the Australian Securities and Investments Commission. "**assets**" means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents. "**association**" means an association registered under this Act. "**Australian Accounting Standards**" means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations. "**Australian Auditing Standards**" means the standards issued by the Auditing and Assurance Standards Board, as in force for the time being, and including any modifications prescribed by the regulations. "**authorised officer**" means:

- (a) a person who is appointed as an authorised officer under section 102, or
- (b) an investigator within the meaning of the *Fair Trading Act 1987*.

"**authorised signatory**", in relation to an association, means a person who is appointed under section 36 as an authorised signatory for the association, and includes the association's public officer. "**committee**", in relation to an association, means the governing body of the association, however described. "**committee member**", in relation to an association, means a person who is elected or appointed under the association's constitution as a committee member of the association. "**constitution**", in relation to an association, means the constitution that is recorded in the Register of Incorporated

Associations in relation to the association. "**corresponding law**" means:

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

and includes any law of this or another State or Territory, or any law of the Commonwealth, that is declared by the regulations to be a corresponding law for the purposes of this Act. "**court**" includes tribunal. "**Department**" means the Department of Finance, Services and Innovation. "**exercise**" a function includes perform a duty. "**financial year**", in relation to an association, means:

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

"**function**" includes a power, authority or duty. "**liabilities**" means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable). "**model constitution**" means the model constitution prescribed by the regulations. "**objects**", in relation to an association, means the objects that are recorded in the Register of Incorporated Associations in relation to the association. "**official address**", in relation to an association, means the address that is recorded in the Register of Incorporated Associations as the association's official address. "**pecuniary gain**" --see section 5. "**public officer**", in relation to an association, means the person who is appointed as the association's public officer, and, until he or she is replaced by a person so appointed, includes the person who is nominated as the association's public officer in the association's application for registration. "**register of committee members**", in relation to an association, means the register of committee members kept by the association for the purposes of section 29. "**Register of Incorporated Associations**" means the Register of Incorporated Associations kept by the Secretary for the purposes of section 98. "**registrable corporation**" means:

- (a) a co-operative (within the meaning of the *Co-operatives National Law (NSW)*), or

(b) a company registered under the *Corporations Act 2001* of the Commonwealth, and includes any other entity that is constituted as a body corporate pursuant to registration under a corresponding law. "**rights**" means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable). "**Secretary**" means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no such position in the Department, the Secretary of the Department.

"**special resolution**" --see section 39. "**unacceptable name**" --see section 18. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) In this Act, a reference to the *Corporations Act 2001* of the Commonwealth (or to a provision of that Act) as applying under this Act is a reference to that Act (or provision) to the extent to which it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*.

(3) Notes included in this Act do not form part of this Act.

## 5 Definition of "**pecuniary gain**"

(1) An organisation provides "**pecuniary gain**" for its members if:

- (a) it carries on any activity for the purpose of securing pecuniary gain for its

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

## **Part 2 – Registration of associations**

### **Division 1 – Registration**

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

- (1) An application for registration of an association may be made to the Secretary on behalf of:
- (a) 5 or more individuals, or
  - (b) an unincorporated body having 5 or more members, or
  - (c) a registrable corporation having 5 or more members or shareholders, or
  - (d) 2 or more existing associations together having 5 or more members.
- (2) Such an application must be authorised:
- (a) in the case of an application made on behalf of 5 or more individuals, by each of the individuals, and
  - (b) in the case of an application made on behalf of an unincorporated body, by a special resolution passed by the members of the body, and
  - (c) in the case of an application made on behalf of a registrable corporation, by a special resolution passed by the members of the corporation, and
  - (d) in the case of an application made on behalf of 2 or more associations proposing to amalgamate, by special resolutions passed by the members of each association.
- (3) An application:
- (a) must be in the approved form, and
  - (b) must specify the association's proposed name and the address that is to be the association's first official address, and

- (c) must include a statement of the association's objects, and
  - (d) must annex a copy of the association's proposed constitution (or a statement that the association's proposed constitution adopts all the provisions of the model constitution without modification), and
  - (e) must identify the person who is to be the association's first public officer, and
  - (f) must include copies of any special resolution referred to in subsection (2) (b), (c) or (d), and
  - (g) in the case of an application made on behalf of a registrable corporation, must annex a document (issued by the relevant regulatory authority under the law under which it is currently incorporated) declaring that the requirements of that law in relation to the transfer of its registration under that law to registration under some other law have been complied with, and
  - (h) must include any information required by the regulations, and
  - (i) must be accompanied by the fee prescribed by the regulations.
- (4) An association's proposed official address must be an address within New South Wales:
- (a) at which the person who is to be the association's first public officer can generally be found, and
  - (b) at which documents can be served on the association by post.
- (5) An association's proposed constitution must address each of the matters referred to in Schedule 1.
- (6) (Repealed)

## **7 Decision on application**

- (1) The Secretary may determine an application for registration of an association by registering the association or by refusing the application.
- (2) An application for registration may be refused if:
  - (a) the application does not comply with section 6, or
  - (b) the name of the association is unacceptable, or Changing circumstances may mean that a name that was acceptable when it was reserved has since become unacceptable.
  - (c) the Secretary is satisfied that, having regard to the objects of this Act, the association should not be registered:
    - (i) because some provision of the association's constitution is contrary to law, or
    - (ii) because of the association's objects or the Secretary's assessment of the likely nature or extent of the association's proposed activities, or
    - (iii) because of the likely nature or extent of the association's dealings with the public, or
    - (iv) for any other reason that appears sufficient to the Secretary.
- (3) The Secretary registers an association by recording its name, objects, constitution and official address in the Register of Incorporated Associations.
- (4) On registering an association, the Secretary:
  - (a) must cause a certificate of registration for the association to be given to the applicant, and
  - (b) if the applicant is a registrable corporation, must cause notice of its registration to be given to the relevant regulatory authority under the law under which it was formerly registered.
- (5) In the case of 2 or more associations that become a single association, the registration of each of the former associations is to be cancelled when the amalgamated association is registered.

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

- (1) An association that arises otherwise than from the registration of a registrable

corporation becomes a body corporate when it is registered under this Act.

(2) Schedule 2 contains provisions relating to an association that arises from the registration of an unincorporated body or from the amalgamation of 2 or more associations.

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

(1) An association that arises from the registration of a registrable corporation is a continuation of, and the same legal entity as, the registrable corporation.

(2) Without limiting subsection (1):

(a) the assets, rights and liabilities of the registrable corporation become the assets, rights and liabilities of the association, and

(b) proceedings that have been commenced by or against the registrable corporation may be continued by or against the association in its own name or in the name of the registrable corporation.

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

### **10 Application for change of particulars**

(1) An association may apply to the Secretary for registration of a change in the association's name, objects or constitution.

(2) An application may only be made pursuant to a special resolution passed by the association.

(3) An application:

(a) must be in the approved form, and

(b) must include details of the proposed change, and

(c) must include a copy of the special resolution by which the association has approved the change, and

(d) must be accompanied by the fee prescribed by the regulations.

(4) An association's constitution, as proposed to be changed, must address each of the matters referred to in Schedule 1.

A change in an association's name, objects or constitution does not take effect until it is registered: see section 14.

### **11 Change of association's name at direction of, or by, Secretary**

(1) The Secretary may, by order in writing served on an association that has an unacceptable name, direct the association to adopt a new name.

(2) Such a direction may be given whether or not the association's name was acceptable when the association was registered. Changing circumstances may mean that a name that was acceptable when the association was registered has since become unacceptable.

(3) A direction:

(a) must specify the grounds on which the association's current name is unacceptable, and

(b) must specify a date by which an application for registration of a change of name must be made (being a date no less than 2 months after the date on which the direction is given), and

(c) must state that, if the application is not made on or before that date, the association's name may be changed to its registration number, or the association's registration may be cancelled, by the Secretary. See subsection (4) for the Secretary's power to change an association's name to its registration number, and section 76 (1) (i) for the Secretary's power to cancel an association's registration, for failure to comply with a direction under this section.

(4) The Secretary may change an association's name to its registration number if satisfied that the association has failed to comply with a direction under this section for the change of its name.

(5) After changing an association's name to its registration number under this section, the Secretary must cause notice of that fact to be given to the association.

- (6) Any notice to be given to an association under subsection (5) must be sent:
- (a) by post addressed to the association at the association's official address, or
  - (b) if the Secretary suspects that the association's official address is no longer in use:
    - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
    - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

## **12 Decision on application**

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

## **13 Notification of change of official address**

- (1) Within 28 days after an association's official address becomes obsolete or unusable, the association's public officer must notify the Secretary, in the approved form, of the association's new address. Maximum penalty: 5 penalty units.
- (2) Without limiting subsection (1), an association's public officer may at any time notify the Secretary, in the approved form, of a change in the association's official address.
- (3) The new address must be an address within New South Wales:
  - (a) at which the public officer can generally be found, and
  - (b) at which documents can be served on the association by post.
- (4) On receiving a notification under this section, the Secretary must register the new address as the association's official address.

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

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

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

## **Division 3 – Reservation of names**

### **15 Application for reservation of name**

- (1) An application for reservation of a name may be made to the Secretary by an association or by an applicant for registration as an association.
- (2) An application for reservation of a name:
  - (a) must be in the approved form, and
  - (b) must specify the name to be reserved, and
  - (c) must be accompanied by the fee prescribed by the regulations.
- (3) The application may nominate alternative names (not exceeding the maximum number prescribed by the regulations) and indicate the order in which they are to be considered.



## **16 Decision on application**

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

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

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

## **18 Unacceptable names**

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

## **Part 3 – Basic features of associations**

### **Division 1 – Association powers**

#### **19 Legal capacity and powers**

(cf *Corporations Act 2001* of the Commonwealth, section 124)

- (1) An association has the legal capacity and powers of an individual both in and outside New South Wales.
- (2) An association's legal capacity to do something is not affected by the fact that the association's interests are not, or would not be, served by doing it.

#### **20 Constitution may limit powers**

(cf *Corporations Act 2001* of the Commonwealth, section 125)

- (1) An association's constitution may contain an express restriction on, or a prohibition of, the association's exercise of any of its powers, but the exercise of a power by the association is not invalid merely because it is contrary to such a restriction or prohibition.

(2) An act of an association is not invalid merely because it is contrary to or beyond the association's objects.

## **21 Agent exercising association's power to make contracts**

(cf *Corporations Act 2001* of the Commonwealth, section 126)

(1) An association's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the association's express or implied authority and on behalf of the association.

(2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

## **22 Execution of documents (including deeds) by an association**

(cf *Corporations Act 2001* of the Commonwealth, section 127)

(1) An association may execute a document without using a common seal if the document is signed by 2 of its authorised signatories.

(2) An association with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by 2 of its authorised signatories.

(3) An association may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).

(4) This section does not limit the ways in which an association may execute a document (including a deed).

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

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

### **23 Entitlement to make assumptions**

(cf *Corporations Act 2001* of the Commonwealth, section 128)

(1) A person is entitled to make the assumptions in section 24 in relation to dealings with an association, and the association is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

(2) A person is entitled to make the assumptions in section 24 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired property from an association, and the association and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

(3) The assumptions may be made even if anyone purporting to act on behalf of the association acts fraudulently, or forges a document, in connection with the dealings.

(4) A person is not entitled to make an assumption in section 24 if at the time of the dealings they knew or suspected that the assumption was incorrect.

### **24 Assumptions that may be made**

(cf *Corporations Act 2001* of the Commonwealth, section 129)

(1) A person may assume that the association's constitution has been complied with.

(2) A person may assume that anyone who appears, from information provided by the association that is available to the public from the Register of Incorporated Associations, to be the association's public officer:

(a) has been duly appointed, and

(b) has authority to exercise the functions customarily exercised by the public officer of a similar association.

(3) A person may assume that anyone who appears, from information provided by the association, to be a committee member of the association:

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

### **Division 3 – General**

#### **25 Provisions of model constitution apply if adopted or if matter not addressed**

- (1) If an association's constitution adopts all the provisions of the model constitution without modification (either by reference or by reproducing the provisions), the provisions are taken to be the association's constitution.
- (2) If an association's constitution fails to address a matter referred to in Schedule 1, the provisions of the model constitution with respect to the matter are taken to be part of the association's constitution.
- (3) The provisions that are taken to be, or that are taken to be part of, an association's constitution under this section apply as in force for the time being.
- (4) Accordingly, an amendment to those provisions changes the association's constitution without:
  - (a) any special resolution by the association to change its constitution or any application to the Secretary under section 10, or
  - (b) any registration of the change by the Secretary under section 12, or
  - (c) any other action by or on behalf of the association or its members or by or on behalf of the Secretary.
- (5) To avoid doubt, this section does not limit the way in which an association's constitution may address a matter referred to in Schedule 1.
- (6) A provision of an association's constitution is of no effect to the extent to which it is contrary to this or any other Act or law.

#### **26 Nature of association**

- (1) Subject to this Act, an association's constitution binds the association and its members to the same extent as if it were a contract between them under which they each agree to observe its provisions.
- (2) Subject to this Act, a member of an association (including a committee member and the public officer) is not, merely because of being such a member, liable in relation to:
  - (a) any of the association's liabilities, or

- (b) the costs, charges and expenses of the winding up of the association.
- (3) Subject to this Act, membership of an association does not confer on a member any right, title or interest, whether legal or equitable, in the association's assets.

## **27 Pre-registration contracts**

- (1) Contracts entered into before an association is registered under this Act are declared to be an applied Corporations legislation matter, for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*, in relation to Part 2B.3 of the *Corporations Act 2001* of the Commonwealth.
- (2) In subsection (1), the reference to an association does not include a reference to an association arising from the registration of an unincorporated body, the amalgamation of 2 or more associations or the registration of a registrable corporation. Contracts entered into by an association arising from the registration of an unincorporated body or the amalgamation of 2 or more associations are unaffected by registration (see section 8 and Schedule 2) as are those of an association arising from the registration of a registrable corporation (see section 9).

# **Part 4 – Management of associations**

## **Division 1 – Committee members--general**

### **28 Committee to be established**

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

### **29 Register of committee members**

- (1) An association must keep a register of committee members in accordance with this section. Maximum penalty: 1 penalty unit.
- (2) The register must contain the following particulars in relation to each committee member:
  - (a) the committee member's name, date of birth and residential address,
  - (b) the date on which the committee member takes office,
  - (c) the date on which the committee member vacates office,
  - (d) such other particulars as may be prescribed by the regulations.
- (3) The register must be kept in New South Wales:
  - (a) at the main premises of the association, or
  - (b) if the association has no premises, at the association's official address.
- (4) Any change in the committee's membership must be recorded in the register within one month after the change occurs.
- (5) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

### **30 Committee meetings**

- (1) An association's committee meetings may be held as and when the association's constitution requires.
- (2) If the association's constitution so provides, a committee meeting may be held at 2 or more venues using any technology that gives each of the committee members a reasonable

opportunity to participate.

(3) In any legal proceedings, a committee meeting held in accordance with subsection (2), or part of such a meeting, is not to be declared invalid on the ground that one or more committee members did not have a reasonable opportunity to participate unless the court is satisfied that:

- (a) substantial injustice has been, or may be, caused, and
- (b) the injustice cannot be remedied by any other order available to the court.

### **30A Duty of committee members**

It is the duty of each committee member to carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence.

### **30B Personal liability of committee members**

A matter or thing done or omitted to be done by a committee member, or by a person acting under the direction of a committee member, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising the committee member's functions under this Act, subject the committee member or person so acting personally to any action, liability, claim or demand.

### **Division 1A – Committee members--offences**

A committee member may commit offences under this Act apart from the offences in this Division.

If an association incurs a debt while insolvent (or that causes it to become insolvent), a committee member who had reasonable grounds to suspect that the association was insolvent (or would, by incurring the debt, become insolvent) commits an offence under section 68 (1).

If a committee member knowingly authorises or permits an association to contravene a provision of this Act or the regulations, the committee member is also taken to have contravened the provision: see section 91.

### **31 Disclosure of interests**

(1) If:

- (a) a committee member has a direct or indirect interest in a matter being considered or about to be considered at a committee meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the committee member's duties in relation to the consideration of the matter,

the committee member must, as soon as possible after the relevant facts have come to the committee member's knowledge, disclose the nature of the interest at a committee meeting. Maximum penalty: 60 penalty units.

(2) A disclosure by a committee member at a committee meeting that the committee member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the committee in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the committee (but not exceeding the maximum fee prescribed by the regulations).

(4) The book must be kept at the same address as the register of committee members.

- (5) After a committee member has disclosed the nature of an interest in any matter, the committee member must not, unless the committee otherwise determines:
- (a) be present during any deliberation of the committee with respect to the matter, or
  - (b) take part in any decision of the committee with respect to the matter.
- (6) For the purposes of the making of a determination by the committee under subsection (5), a committee member who has a direct or indirect interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the committee for the purpose of making the determination, or
  - (b) take part in the making by the committee of the determination.
- (7) A contravention of this section does not invalidate any decision of the committee.

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

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

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

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

### **33 Dishonest use of position**

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

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

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

## **Division 2 – Public officer and authorised signatories**

### **34 Public officer**

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

Maximum penalty: 1 penalty unit.

- (7) If there is any change in the address of the public officer of an association, the public

officer must notify the Secretary, in the approved form, of the new address within 28 days after the change occurs. Maximum penalty: 1 penalty unit.

### **35 Vacation of office of public officer**

- (1) An association's public officer vacates office in the following circumstances:
  - (a) if he or she dies,
  - (b) if he or she resigns the office in writing addressed to the association's committee,
  - (c) if he or she is removed from office by resolution of a general meeting of the association,
  - (d) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
  - (e) if he or she becomes a mentally incapacitated person,
  - (f) if he or she ceases to ordinarily reside in New South Wales,
  - (g) in such other circumstances as the constitution of the association may provide.
- (2) Within 14 days after vacating office, a former public officer of an association must ensure that all documents in his or her possession that belong to the association are delivered to a committee member of the association. Maximum penalty: 1 penalty unit.
- (3) An association's committee must fill any vacancy in the office of public officer within 28 days after the vacancy arises. Maximum penalty: 1 penalty unit.

### **36 Authorised signatories**

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

## **Division 3 – General**

### **37 General meetings**

- (1) An association's committee must ensure that the association's first annual general meeting is held within 18 months after its registration under this Act. Maximum penalty: 1 penalty unit.
- (2) An association's committee must ensure that annual general meetings are held:
  - (a) within 6 months after the close of the association's financial year, or
  - (b) within such further time as may be allowed by the Secretary or prescribed by the regulations.Maximum penalty: 1 penalty unit.
- (3) If the association's constitution so provides, a general meeting may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate.
- (4) In any legal proceedings, a general meeting held in accordance with subsection (3), or part of such a meeting, is not to be declared invalid on the ground that one or more of the association's members did not have a reasonable opportunity to participate unless the court is satisfied that:
  - (a) substantial injustice has been, or may be, caused, and
  - (b) the injustice cannot be remedied by any other order available to the court.

### **38 Voting generally**

(1) A resolution is passed by an association as an "**ordinary resolution**":

(a) at a general meeting of the association, or

(b) in a postal or electronic ballot conducted by the association,

if it is supported by more than half of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

(2) A postal or electronic ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the regulations.

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

(1) A resolution is passed by an association as a "**special resolution**":

(a) at a meeting of the association of which notice has been given to its members no later than 21 days before the date on which the meeting is held, or

(b) in a postal or electronic ballot conducted by the association, or

(c) in such other manner as the Secretary may direct,

if it is supported by at least three-quarters of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

(2) A notice referred to in subsection (1) (a) must include the terms of the resolution and a statement to the effect that the resolution is intended to be passed as a special resolution.

(3) A postal or electronic ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the regulations.

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

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

(1) An association must not conduct its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members. Maximum penalty: 60 penalty units.

(2) Subsection (1) does not affect the association's civil liability to any person as a result of it having provided pecuniary gain for its members.

### **41 Where name must appear**

(1) An association must not issue any letter, statement, invoice, notice, publication, order for goods or services or receipt in connection with its activities unless the association's name appears in legible characters on the document. Maximum penalty: 1 penalty unit.

(2) (Repealed)

## **Part 5 – Financial reporting**

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

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

(1) This Division applies to any association:

(a) whose gross receipts (as calculated in accordance with the regulations) for the financial year last ended, or

(b) whose current assets (as calculated in accordance with the regulations), exceed such amount as may be prescribed by the regulations ("**a Tier 1 association**").

(2) Despite subsection (1), this Division does not apply to any association that the Secretary declares not to be a Tier 1 association.

(3) Such a declaration may be made in respect of an association whose gross receipts for the financial year last ended were negligible, but whose current assets are such that it



would (but for the declaration) be a Tier 1 association, and not otherwise.

#### **43 Financial statements**

(1) As soon as practicable after the end of each financial year, the committee of a Tier 1 association:

- (a) must cause financial statements for that year to be prepared in relation to the association's financial affairs (including its affairs as trustee of any trust), and
- (b) must cause the financial statements to be audited in time for them to be submitted to the association's next annual general meeting.

Maximum penalty: 5 penalty units.

(2) The financial statements must be prepared in accordance with the Australian Accounting Standards and must deal with such matters as are prescribed by the regulations.

(3) The auditor's report:

- (a) must be prepared in accordance with the Australian Auditing Standards, and
- (b) must state whether the association has kept such financial records as are necessary to enable financial statements to be prepared in accordance with the Australian Accounting Standards.

#### **44 Submission of reports and statements to AGM**

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

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

Maximum penalty: 5 penalty units.

#### **45 Lodgment of documents with Secretary**

(1) A Tier 1 association must lodge the following documents with the Secretary in accordance with this section:

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

Maximum penalty: 5 penalty units.

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

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

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

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

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

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

#### **47 Financial statements**

(1) As soon as practicable after the end of each financial year, the committee of a Tier 2 association must cause financial statements for that year to be prepared, in accordance with this section, in relation to the association's financial affairs (including its affairs as trustee of any trust). Maximum penalty: 5 penalty units.

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

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

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

Maximum penalty: 5 penalty units.

#### **49 Lodgment of summary with Secretary**

(1) A Tier 2 association must lodge with the Secretary, in accordance with this section, a summary, in the approved form, of the association's financial affairs for the previous financial year. Maximum penalty: 5 penalty units.

(2) The summary:

(a) must be lodged within:

(i) one month after the annual general meeting for the current financial year, or

(ii) 7 months after the end of the previous financial year,

whichever is the earlier, or within such further time as the Secretary may allow, and

(b) must be accompanied by the fee prescribed by the regulations.

(3) For the avoidance of doubt, the summary is taken not to have been lodged if the relevant fee has not been paid.

### **Division 3 – General**

#### **50 Keeping of accounts and minutes of proceedings**

(1) An association:

(a) must keep records that correctly record and explain its financial transactions and financial position, and

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

Maximum penalty: 5 penalty units.

(2) In the case of a Tier 1 association within the meaning of Division 1, the records referred to in subsection (1) (a) must be sufficient to enable financial statements to be prepared in accordance with the Australian Accounting Standards.

(3) If any document required to be kept under this section is, either in whole or in part, in a language other than the English language, a copy of the document wholly in the English language must be kept with the document.

(4) The regulations may make provision for or in respect of the keeping and inspection of records and minutes under this section.

#### **51 Audit at the Secretary's direction**

(1) The Secretary may direct an association to cause the whole or any specified part of an association's financial records to be audited, and an auditor's report lodged with the Secretary, within a specified time.

(2) Such a direction may be given regardless of whether the financial records have previously been audited.

(3) An association to which such a direction is given must ensure that the direction is complied with. Maximum penalty: 5 penalty units.

(4) An auditor's report under this section must state whether the association's financial records:

- (a) have been properly kept, and
- (b) give a true and fair view of the association's affairs.

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

(1) Subject to subsection (2), an audit under this Part must be carried out by:

- (a) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a person approved by the Secretary for the purposes of this Part, either generally or in relation to a specified association or class of associations, or a person who belongs to a class of persons so approved.

(2) Except with the written approval of the Secretary, an audit under this Part may not be carried out by any person who is, or who has at any time within the last 2 years been:

- (a) a member of the association, or
- (b) an employee of, or provider of professional services (other than audit services) to, the association or to a committee member or public officer of the association.

## **53 Power of Secretary to grant exemptions**

(1) The Secretary may, by order in writing, exempt an association or any class of associations, from the requirements of this Part in relation to the preparation and auditing of financial statements.

(2) Any such exemption:

- (a) may be given subject to conditions, and
- (b) may be limited as to time, and
- (c) may be varied, suspended or revoked by the Secretary by a further order in writing.

(3) An order under this section takes effect:

- (a) if it applies to a particular association, when the order is served on the association, or
- (b) if it applies to a class of associations, when the order is published in the Gazette.

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

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

#### **54 Appointment of administrator--Corporations legislation**

(cf *Co-operatives Act 1992*, sections 332 and 332A)

(1) An association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.3A and Division 3 of Part 5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) those provisions are to be read as if an association and its committee were, respectively, a company and its board,
- (b) those provisions are to be read as including the provisions of subsections (2) and (3),
- (c) a reference in those provisions to sections 128 and 129 of the *Corporations Act 2001* of the Commonwealth is to be read as a reference to sections 23 and 24 of this Act,
- (d) a reference in those provisions to an administrator appointed under a provision of Part 5.3A is to be read as including a reference to an administrator appointed by the Secretary under this section,
- (e) a reference in those provisions to ASIC is to be read as a reference to the

Secretary,

(f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(2) Without limiting subsection (1), the Secretary may appoint a person as an administrator for the purposes of the provisions of Part 5.3A of the *Corporations Act 2001* of the Commonwealth (as applying under this section) if of the opinion that the association is, or is likely to become, insolvent.

(3) A person appointed under subsection (2) may, but need not, be a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

## **Division 2 – External administration on grounds other than insolvency**

### **55 Appointment of administrator by Secretary**

The Secretary may appoint an administrator to administer an association's affairs if:

(a) the association has persistently failed to comply with the requirements of this Act or the regulations, and

(b) having regard to those circumstances, the Secretary is satisfied that it is in the interests of the association's members or creditors for an administrator to be appointed.

### **56 Effect of appointment of administrator**

(cf *Co-operatives Act 1992*, section 334)

(1) On the appointment of an administrator for an association:

(a) the committee members and the public officer cease to hold office, and

(b) the administrator may terminate any contract of employment with the association or any contract for the provision of secretarial, administrative or other services to the association.

(2) An administrator for an association has the functions of the association's committee and the functions of the association's public officer.

### **57 Revocation of appointment**

(cf *Co-operatives Act 1992*, section 335)

(1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.

(2) When a liquidator of an association is appointed, the appointment of any administrator of the association is automatically revoked.

(3) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Secretary showing how the administration was carried out, and for that purpose an administrator has access to the association's records and documents.

(4) On providing the report and accounting fully in relation to the administration of the association to the satisfaction of the Secretary, the administrator is released from any further duty to account in relation to the administration of the association otherwise than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.

(5) Before revoking the appointment of an administrator of an association, the Secretary:

(a) must appoint another administrator, or

(b) must ensure that committee members and the public officer have been elected in accordance with the association's constitution at a meeting convened by the administrator in accordance with the constitution, or

(c) must appoint committee members and a public officer for the association.

(6) Committee members elected or appointed under subsection (5):

- (a) take office on revocation of the administrator's appointment, and
  - (b) if appointed, hold office until the next annual general meeting of the association after the revocation of that appointment.
- (7) The public officer of an association appointed under subsection (5) (c) takes office on revocation of the administrator's appointment.

### **58 Expenses of administration**

(cf *Co-operatives Act 1992*, section 336)

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

### **59 Liabilities arising from administration**

(cf *Co-operatives Act 1992*, section 337)

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

### **60 Stay of proceedings**

(cf *Co-operatives Act 1992*, section 337B)

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

### **61 Administrator to report to Secretary**

(cf *Co-operatives Act 1992*, section 337C)

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

## **Division 3 – Winding up**

### **61A Winding up on Secretary's certificate**

(cf *Co-operatives National Law (NSW)*, section 443)

- (1) An association may be wound up on a certificate of the Secretary if:

- (a) the association ceases operations, or
  - (b) the association ceases to have 5 or more members, or
  - (c) the association's committee has not been able to form a quorum for 2 months, or
  - (d) the Secretary is satisfied that there is a significant public interest in winding up the association or that not winding up the association may place public funds at risk.
- (2) Before giving a certificate, the Secretary:
- (a) must give notice of the proposed certificate to be given to the association stating the ground or grounds referred to in subsection (1) that the Secretary believes exist, and
  - (b) must give the association and its members at least 28 days within which to make submissions to the Secretary with respect to the proposed certificate, and
  - (c) must give due consideration to any submissions that are made within that period.
- (3) A notice to be given to an association under subsection (2) must be sent:
- (a) by post addressed to the association at the association's official address, or
  - (b) if the Secretary suspects that the association's official address is no longer in use:
    - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
    - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.
- (4) A winding up on a certificate of the Secretary starts when the certificate is given.
- (5) On the giving of a certificate, the Secretary may appoint a person to be the liquidator of the association.
- (6) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the manner prescribed by the regulations (if any).
- (7) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the Secretary.
- (8) The Secretary may fix:
- (a) the security to be given by a liquidator, and
  - (b) the fees payable to a liquidator.

## **62 Voluntary winding up**

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

## **63 Winding up by Supreme Court**

- (1) The Supreme Court may order the winding up of an association if:
- (a) the association has by special resolution resolved that it be wound up by the Court, or
  - (b) the association does not commence its operations within one year after the date of its registration under this Act or suspends its operations for a whole year, or
  - (c) the association is insolvent, or
  - (d) the association has conducted its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members, or
  - (e) the association has engaged in activities inconsistent with its objects, or
  - (f) the committee of the association has acted in affairs of the association in the interests of the committee or the committee members rather than in accordance with its objects, or in any other manner whatever that appears to the Court to be unfair or unjust to the association's members, or
  - (g) the association would, if not registered under this Act, not be eligible to be so

registered, or

(h) the Secretary has, pursuant to section 73, directed the association to apply for cancellation of its registration and the association has failed to do so within the time fixed by the direction, or

(i) the Court is of the opinion that it is just and equitable that the association be wound up.

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

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

(1) The winding up of an association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.5 and 5.6 of the *Corporations Act 2001* of the Commonwealth, subject to:

(a) the modifications referred to in subsection (2), and

(b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(2) The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of subsection (1):

(a) a reference to a company or body is to be read as a reference to an association,

(b) a reference to the directors of a company is to be read as a reference to the committee members of an association,

(c) a reference to ASIC is to be read as a reference to the Secretary,

(d) a reference to a company's principal place of business is to be read as a reference to an association's official address,

(e) the reference to 5 years in section 1316 of that Act is taken to be a reference to 3 years,

(f) for the purposes of the application of the provisions to a winding up on the certificate of the Secretary, the winding up is to be considered to be a voluntary winding up (but section 490 of the *Corporations Act 2001* of the Commonwealth does not apply).

#### **65 Distribution of surplus property**

(1) In this section, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

(2) In a winding up of an association, the surplus property of the association is to be distributed in accordance with a special resolution of the association.

(3) Any such distribution of surplus property:

(a) must be approved by the Secretary, and

(b) is not to be made to or for the benefit of:

(i) any member or former member of the association, or

(ii) any person to be held on trust for any member or former member of the association,

unless the member or former member is an association (whether incorporated or unincorporated) whose constitution, at the time of the distribution, prohibits the distribution of property to its members, and

(c) is subject to any trust affecting that property or any part of it.

(4) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

- (5) A person aggrieved by the operation of this section in relation to an association's surplus property may apply to the Supreme Court for an order as to its disposal.
- (6) The Supreme Court may deal with such an application by making such orders as it thinks fit with respect to the disposal of the association's surplus property.

## **66 Appeal**

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

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

### **67 Definitions**

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

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

- (1) If an association incurs a debt and:
- (a) immediately before the debt is incurred:
    - (i) there are reasonable grounds for believing that the association is or will become insolvent, or
    - (ii) there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent, and
  - (b) the association is or becomes an association to which this Division applies, any person who was a committee member of the association at the time the debt was incurred is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 1 year, or both.
- (2) The association and any person who was a committee member of the association at the time the debt was incurred are jointly and severally liable for the payment of the debt.
- (3) In any proceedings against a person under subsection (1), it is a defence if the defendant proves:
- (a) that the debt was incurred without the defendant's express or implied authority or consent, or
  - (b) that, at the time the debt was incurred, the defendant did not have reasonable grounds:
    - (i) to believe that the association was insolvent, or
    - (ii) to expect that, if the association incurred that debt, it would become insolvent.
- (4) If subsection (2) renders a person or persons liable to pay a debt incurred by an association, the payment by that person or either or any of those persons of the whole or any part of the debt does not render the association liable to the person or persons concerned in respect of the amount so paid.



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

If:

- (a) an association does any act (including the entering into of a contract or transaction) with intent to defraud any person or for any other fraudulent purpose, and
  - (b) the association is or becomes an association to which this Division applies,
- any person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

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

## **70 Powers of Supreme Court**

(1) If a person ("**the offender**") is convicted of an offence under section 68 (1) in respect of the incurring of a debt, the Supreme Court, on the application of:

- (a) the Secretary, or
- (b) the person to whom the debt is payable ("**the creditor**"),

may declare that the offender is personally responsible, without any limitation of liability, for payment to the creditor of the amount of the debt or such part of it as the Court thinks fit.

(2) If a person ("**the offender**") is convicted of an offence under section 69, the Supreme Court, on the application of:

- (a) the Secretary, or
- (b) the appropriate officer, or
- (c) a member or creditor of the association authorised by the Secretary to make such an application,

may declare that the offender is personally responsible, without any limitation of liability, for payment to the association of the amount required to satisfy so much of the debts of the association as the Court thinks fit.

(3) If the Supreme Court makes a declaration under subsection (1), it may make such further orders as it thinks fit for the purpose of giving effect to that declaration.

(4) In particular, the Supreme Court may order that the offender's liability is a charge on:

- (a) a debt or obligation due from the association to the creditor, or
- (b) a right or interest under a charge on any property of the association held by or vested in the offender or a person on behalf of the offender, or a person claiming as assignee from or through the offender or a person acting on behalf of the offender.

(5) The Supreme Court may, from time to time, make such further order as it thinks fit for the purpose of enforcing a charge imposed under subsection (4).

(6) For the purpose of subsection (4) (b), "**assignee**" includes a person to whom or in whose favour, by the direction of the offender:

- (a) the debt, obligation or charge was created, issued or transferred, or
- (b) the interest was created,

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

## **71 Certain rights not affected**

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

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

### **Division 1 – Voluntary cancellation**

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

- (1) An association may apply to the Secretary for cancellation of its registration.
- (2) The application must be in the approved form.
- (3) Without limiting the form that may be approved under subsection (2), the approved form may be an electronic form accessible on a publicly available website.
- (4) A person who provides the Secretary with a statutory declaration setting out particulars required by the approved form is taken to have done so in the approved form.

### **73 Secretary may direct association to apply for cancellation**

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

### **74 Decision on application for voluntary cancellation**

- (1) The Secretary may determine an application for cancellation of an association's registration by cancelling the registration or by refusing the application.
- (2) An application for cancellation of an association's registration must be refused if the Secretary suspects:
  - (a) that the association has outstanding obligations under this Act, or
  - (b) that the association has outstanding liabilities, or
  - (c) that the proposed distribution of assets does not comply with section 75.
- (3) On cancelling an association's registration, the Secretary is to cause notice of that fact to be published in the Gazette and to be given to the association.
- (4) Any notice to be given to an association under subsection (3) must be sent:
  - (a) by post addressed to the association at the association's official address, or
  - (b) if the Secretary suspects that the association's official address is no longer in use:
    - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
    - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

### **75 Distribution of assets**

- (1) On the cancellation of its registration under this Division, an association's assets are to be distributed in accordance with a special resolution of the association.
- (2) Any such distribution of assets:
  - (a) must be approved by the Secretary, and
  - (b) is not to be made to or for the benefit of:
    - (i) any member or former member of the association, or
    - (ii) any person to be held on trust for any member or former member of the association,
 unless the member or former member is an association (whether incorporated or unincorporated) whose constitution, at the time of the distribution, prohibits the distribution of property to its members, and
  - (c) is subject to any trust affecting those assets or any part of them.
- (3) Any asset that has been supplied by a government department or public authority

(including any unexpended portion of a grant) must be returned to the department or authority that supplied it or delivered to such person or body as that department or authority may direct.

(4) A person aggrieved by the operation of this section in relation to an association's assets may apply to the Supreme Court for an order as to their disposal.

(5) The Supreme Court may deal with such an application by making such orders as it thinks fit with respect to the disposal of the association's assets.

## **Division 2 – Involuntary cancellation**

### **76 Registration may be cancelled**

(1) The Secretary may cancel an association's registration if satisfied that:

(a) the association is not in operation, whether or not it has been wound up, or

(b) the association has fewer than 5 members, or

(c) the association has failed to establish and maintain a committee in accordance with section 28, or

(d) the association's committee does not include 3 or more members of whom each is aged 18 years or more and of whom at least 3 are ordinarily resident in Australia, or

(e) the association's committee has not appointed a public officer or has appointed a public officer who is not aged 18 years or more or not ordinarily resident in New South Wales, or

(f) the association is, or has been, conducting its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members, or

(g) during the last 3 financial years, the association has not held an annual general meeting, or

(h) during the last 3 financial years, none of the documents required to have been lodged for the association under section 45 (if the association is a Tier 1 association) or section 49 (if the association is a Tier 2 association) has been lodged, or

(i) the association has failed to comply with a direction under section 11 for the change of its name, or

(j) the association has become registered under this Act because of fraud or mistake, or

(k) it is in the public interest to cancel the association's registration.

(2) An association's registration is not to be cancelled under this section if:

(a) the association is being wound up, or

(b) the Civil and Administrative Tribunal has ordered the Secretary not to cancel the association's registration.

(3) Before cancelling an association's registration under this section, the Secretary:

(a) must cause notice of the proposed cancellation to be given to the association stating the ground or grounds referred to in subsection (1) that the Secretary believes exist, and

(b) must give the association and its members at least 28 days within which to make submissions to the Secretary with respect to the proposed cancellation, and

(c) must give due consideration to any submissions that are made within that period.

(4) After cancelling an association's registration under this section, the Secretary must cause notice of that fact to be published in the Gazette and to be given to the association.

(5) Any notice to be given to an association under this section must be sent:

(a) by post addressed to the association at the association's official address, or

(b) if the Secretary suspects that the association's official address is no longer in

use:

- (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
- (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

## **77 Distribution of assets**

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

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

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

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

### **79 Decision on application**

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

to the terms of the declaration to be given to the applicant.

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

- (1) A transfer of registration declaration authorises the association to which it relates to transfer its incorporation to the corresponding law identified in the declaration.
- (2) If the association becomes registered under the corresponding law, the Secretary must cancel its registration under this Act.
- (3) On cancelling an association's registration, the Secretary is to cause notice of that fact to be published in the Gazette and to be given to the association.
- (4) Any notice to be given to an association under subsection (3) must be sent:
  - (a) by post addressed to the association at the association's official address, or
  - (b) if the Secretary suspects that the association's official address is no longer in use:
    - (i) by post addressed to the association at another address that appears to the Secretary to be an address that is used by the association, or
    - (ii) by email addressed to the association at an email address that appears to the Secretary to be an email address that is used by the association.

### **Division 4 – General**

#### **81 Loss of corporate status**

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

#### **82 (Repealed)**

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

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

#### **84 Reinstatement of registration**

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

### **Part 8 – Enforcement provisions**

#### **Division 1 – Power to require information and documents**

##### **85 Power to require information and documents**

- (1) The Secretary may, by notice in writing served on any person, require the person to do either or both of the following within such time as is specified in the notice:
  - (a) to furnish the Secretary with such information as the person possesses in connection with the affairs of an association,
  - (b) to produce to the Secretary such documents as the person possesses in connection with the affairs of an association.
- (2) A person must not fail to comply with a requirement under this section. Maximum penalty: 60 penalty units. The furnishing of false or misleading information and the production of false or misleading

documents are offences under Part 5A of the *Crimes Act 1900*.

(3) A person is not excused from furnishing information or producing a document pursuant to a requirement under this section on the ground that to do so may tend to incriminate the person, but any information so furnished or document so produced is not admissible in evidence against the person in any criminal proceedings other than proceedings for an offence under Part 5A of the *Crimes Act 1900*.

## **86 Power to enter premises**

(1) An authorised officer:

- (a) may enter any premises at which an association carries on any activity, and
- (b) may inspect, and take copies of or extracts from, any document that relates to the carrying on of business at or from the premises,

for the purpose of ascertaining whether the provisions of this Act are being complied with.

(2) The power of entry conferred by subsection (1) may not be exercised:

- (a) in relation to any part of premises that is used for residential purposes, or
- (b) outside the hours during which business is being carried on at or from the premises,

except with the consent of the occupier of the premises.

## **87 Search warrants**

(1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.

(2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a named authorised officer under this Act to enter the premises and to exercise any of the authorised officer's functions under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

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

(1) The powers conferred on an authorised officer by this Division may not be exercised in relation to any premises unless:

- (a) the officer is in possession of a certificate of authority, issued in accordance with the regulations, that evidences his or her authority to exercise those powers, and
- (b) the occupier of the premises has been given at least 24 hours' notice that those powers are to be exercised or the Secretary has given prior authority for the exercise of those powers without the need for such notice.

(2) Authority under subsection (1) (b) may only be given if the Secretary is satisfied, in the circumstances of the case, that the giving of 24 hours' notice would frustrate the purpose for which the powers are to be exercised.

(3) Reasonable force may be used for the purpose of effecting entry under this Division.

## **89 Damage to be minimised**

(1) In exercising the powers conferred by this Division, an authorised officer must do as little damage as possible.

(2) The Secretary must compensate all interested parties for any damage caused by an authorised officer as a consequence of the exercise of the powers conferred by this Division.

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

Division.

## **Division 2 – Offences**

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

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

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

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

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

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

Maximum penalty: 60 penalty units.

### **93 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **94 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 31 (1), 32, 33, 40 (1), 68 (1) or 69 may be commenced not later than 3 years from when the offence was alleged to have been committed. Under section 179 of the *Criminal Procedure Act 1986*, proceedings for any other summary offence under this Act must be commenced not later than 6 months from when the offence was alleged to have been committed.

## **Part 9 – Application of Corporations legislation**

## 95 Excluded matters

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

(2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to an association to the extent to which those provisions would otherwise be applicable to the association:

- (a) provisions relating to the role of an association in the formation of a company,
- (b) provisions relating to the registration of an association as a company under Chapter 5B of the *Corporations Act 2001* of the Commonwealth,
- (c) provisions relating to substantial shareholdings, by or involving an association, in a company,
- (d) provisions conferring or imposing functions on an association as a member, or former member, of a corporation,
- (e) provisions relating to dealings by an association in financial products of a corporation,
- (f) provisions conferring or imposing functions on an association in its dealings with a corporation,
- (g) provisions relating to any of the following activities of an association:
  - (i) the activity of operating, or being concerned in the operation of, a managed investment scheme,
  - (ii) the activity of providing advice about, or dealing in, insurance,
  - (iii) any activity regulated by or under Chapter 2L (Debentures), Part 5.7 (Winding up bodies other than companies), Chapter 6D (Fundraising) or Chapter 7 (Financial services and markets) of the *Corporations Act 2001* of the Commonwealth.

(3) To avoid doubt, it is declared that subsection (1) does not operate to exclude the operation of:

- (a) Chapter 2F, 2L, 5C, 6D or 7 or section 1324 of the *Corporations Act 2001* of the Commonwealth, or
- (b) Part 1, 2 or 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth to the extent necessary to enforce the provisions of the Corporations legislation referred to in subsection (2) (a)-(g) and in paragraph (a) of this subsection.

(4) In this section, "**the Corporations legislation**" means the Corporations legislation, within the meaning of the *Corporations Act 2001* of the Commonwealth, to which Part 1.1A of that Act applies.

## 96 Applying the Corporations legislation to associations

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



2001 of the Commonwealth as laws of New South Wales in respect of any matter declared by a law of New South Wales (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

(2) Without limiting subsection (1), any such regulations:

- (a) may specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
- (b) may specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and
- (c) may identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
- (d) may specify a New South Wales court (other than the Supreme Court) to exercise any function conferred on a court or the Supreme Court by any excluded Corporations legislation provision to which the declaration relates.

(3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

(4) In this section, "**excluded Corporations legislation provision**" means any provision of the Corporations legislation that does not apply to associations as a law of the Commonwealth.

## **97 Modifications to applied provisions**

(1) If a provision of this Act declares a matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* ("**the declaratory provision**") in relation to any provisions of the Corporations legislation ("**the applied provisions**"), the declaratory provision is taken to specify the following modifications:

- (a) a reference in the applied provisions to the constitution of a company is to be read as a reference to the constitution of an association,
- (b) a cross-reference in the applied provisions to another provision of the Corporations legislation is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act,
- (c) a reference in the applied provisions to the Commonwealth is to be read as a reference to New South Wales,
- (d) any of the applied provisions that are not relevant to associations or which are incapable of application to associations are to be ignored,
- (e) modifications directed by the Secretary under subsection (2).

(2) The Secretary may, by order published in the Gazette, give directions as to the modifications that are necessary or desirable for the effectual operation of applied provisions.

## **Part 10 – Miscellaneous**

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

(1) The Secretary is to keep a Register of Incorporated Associations in such form, and containing such particulars, as the Secretary thinks fit.

(2) On payment of the fee prescribed by the regulations, a person is entitled:

- (a) to inspect any document that has been lodged with the Secretary under this Act, not being a document that has been destroyed or otherwise disposed of, and
- (b) to be given a copy (including a copy certified by the Secretary) of, or an extract (including an extract certified by the Secretary) from, any such document.

## **99 Power of Secretary to refuse to register or reject documents**

(1) The Secretary may refuse to register or may reject a document submitted to the Secretary if the Secretary considers the document:

- (a) contains matter contrary to law, or
- (b) contains matter that is false or misleading in a material particular in the form or context in which it is included, or
- (c) because of an omission or misdescription, has not been properly completed, or
- (d) does not comply with the requirements of this Act, or
- (e) contains an error, alteration or erasure, or
- (f) has been submitted by electronic transmission in a form that is not readily or satisfactorily accessible by the Secretary.

(2) If the Secretary refuses to register or rejects a document under subsection (1), the Secretary may ask that:

- (a) the document be appropriately altered, or
- (b) a fresh document be submitted in its place, or
- (c) if the document has not been properly completed--a supplementary document in the approved form be submitted.

## **100 Evidentiary certificates**

A certificate issued by the Secretary to the effect that:

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

is evidence of the matter or matters so certified.

## **101 Service of documents**

(1) A document addressed to an association may be served on the association:

- (a) by leaving it at, or by sending it by post to, the association's official address, or
- (b) by delivering copies of it personally to the association's public officer or to each of 2 committee members of the association, or
- (c) in such other manner as the Secretary may in the special circumstances of the case direct.

(2) As soon as practicable after a document addressed to an association is received by a person who is, or has at any time within the past 12 months been, the association's public officer or a committee member of the association, the person must bring the document to the attention of the committee of the association. Maximum penalty: 1 penalty unit.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

## **102 Authorised officers**

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

## **103 Exclusion of personal liability**

Anything done or omitted to be done:

- (a) by the Secretary, or a person acting under the direction of the Secretary, or
- (b) by an authorised officer,

does not subject the Secretary, person so acting or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

#### **104 Review of decisions of Secretary**

- (1) An association may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of:
  - (a) any decision by the Secretary under section 7, 12, 16, 74 or 79 to refuse an association's application, or
  - (b) any direction given to the association by the Secretary under section 11 or 73, or
  - (c) any cancellation of the association's registration by the Secretary under section 76, or
  - (d) any decision of the Secretary to give a certificate under section 61A.
- (2) Section 53 of the *Administrative Decisions Review Act 1997* does not apply to the cancellation of an association's registration or the giving of a certificate under section 61A.
- (3) A person aggrieved by a decision made by the Secretary to appoint an administrator under section 54 or 55 may apply to the Supreme Court for a review of the decision.

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

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

#### **106 Delegation of Secretary's functions**

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

#### **107 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following matters:
  - (a) the form and content of a model constitution,
  - (b) the manner and form in which an application to the Secretary for an extension of time under section 37 (2) (b) is to be made,
  - (c) any fees to be paid in connection with the administration of this Act (including fees for lodgment of documents under this Act and additional fees for late lodgment of documents or late payment of fees),
  - (d) the exemption by the Secretary of any association, or class of associations, from the requirements of this Act in relation to the preparation and auditing of financial statements,
  - (e) the books, documents and other records that must be kept by associations.
- (2) A model constitution must address each of the matters referred to in Schedule 1, and may deal with any other matters.
- (3) A provision of a regulation may impose a penalty not exceeding 2 penalty units for any offence against the provision.

#### **108 (Repealed)**

## **109 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

(Sections 6, 10 and 107)

### **1 Membership qualifications**

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

### **2 Register of members**

The register of the association's members.

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

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

### **4 Members' liabilities**

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

### **5 Disciplining of members**

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

### **6 Internal disputes**

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

### **7 Committee**

The composition and functions of the committee, including:

- (a) the election or appointment of the committee members, and
- (b) the terms of office of the committee members, and
- (b1) the maximum number of consecutive terms of office of any office-bearers on the committee, and
- (c) the grounds on which, or reasons for which, the office of a committee member is to become vacant, and
- (d) the filling of casual vacancies occurring on the committee, and
- (e) the quorum and procedure at meetings of the committee.

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

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

general meetings.

### **9 Notice of general meetings**

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

### **10 Procedure at general meetings**

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

### **11 Postal and electronic ballots**

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

### **12 Sources of funds**

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

### **13 Management of funds**

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

### **14 Custody of books etc**

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

### **15 Inspection of books etc**

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

### **16 Financial year**

The association's financial year.

### **17 Winding up**

The winding up of the association.

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

(Section 8)

### **1 Definitions**

In this Schedule:

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

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

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

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

- (1) On an association's incorporation under this Act, the following provisions have effect:
  - (a) the assets of the former body vest in the association by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the former body become by virtue of this clause the rights and liabilities of the association,
  - (c) all proceedings relating to the assets, rights and liabilities of the former body that were commenced by or against the former body and still pending are taken to be proceedings by or against the association,
  - (d) any act, matter or thing in relation to the assets, rights and liabilities of the former body that was done or omitted to be done by, to or in respect of the former body is taken to have been done or omitted by, to or in respect of the association,
  - (e) subject to the regulations, any reference in any instrument, or in any document of any kind, to the former body or a predecessor of the former body is, to the extent to which it relates to the assets, rights or liabilities of the former body, to be read as, or as including, a reference to the association.
- (2) Assets that vest in an association by operation of this clause are not to be dealt with contrary to the provisions of any trust affecting them immediately before the association's incorporation under this Act, being provisions as to the purposes for which the assets may or must be applied.
- (3) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.

### **3 Certificate evidence**

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

### **4 Attornment not necessary**

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

### **5 Stamp duty etc**

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

- (a) for a purpose ancillary to, or consequential on, the operation of this Schedule, or
  - (b) for the purpose of giving effect to this Schedule,
- is not liable to duty under the *Duties Act 1997*.

## **Schedule 3 (Repealed)**

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

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

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

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

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

#### **2 Definitions**

In this Part:

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

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

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

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

#### **4 Rules of existing associations**

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

#### **5 Association members**

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

## **6 Reservation of names**

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

## **7 Continuation of register**

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

## **8 Continuation of certain certificates**

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

## **9 Continuation of certain appeals**

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

## **10 Construction of other references**

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

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

## **11 General saving**

Subject to this Schedule and the regulations:

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

## **Part 3 – Provision consequent on enactment of Associations Incorporation Amendment (Review) Act 2016**

### **12 Associations' constitutions**

Section 25, as substituted by the *Associations Incorporation Amendment (Review) Act 2016*, extends to the constitution of an association registered before the commencement of that substitution.

### **Historical notes**

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section



Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Associations Incorporation Act 2009 No 7*. Assented to 7.4.2009. Date of commencement, 1.7.2010, sec 2 and 2010 (237) LW 11.6.2010. This Act has been amended as follows:

2009	No 106	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2009</i> . Assented to 14.12.2009. Date of commencement of Schs 1.1 and 4, 8.1.2010, sec 2 (2).
2010	No 59	<i>Statute Law (Miscellaneous Provisions) Act 2010</i> . Assented to 28.6.2010. Date of commencement of Sch 1.6, 9.7.2010, sec 2 (2).
2011	No 27	<i>Statute Law (Miscellaneous Provisions) Act 2011</i> . Assented to 27.6.2011. Date of commencement of Sch 1.2, 8.7.2011, sec 2 (2).
	No 44	<i>Business Names (Commonwealth Powers) Act 2011</i> . Assented to 20.9.2011. Date of commencement of Sch 3, 28.5.2012, sec 2 and 2012 (209) LW 25.5.2012.
2013	No 95	<i>Civil and Administrative Legislation (Repeal and Amendment) Act 2013</i> . Assented to 20.11.2013. Date of commencement of Sch 2.11, 1.1.2014, sec 2 (1).
	No 111	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2013</i> . Assented to 3.12.2013. Date of commencement of Schs 1 and 3.1, 3.1.2014, sec 2 (1).
2014	No 33	<i>Statute Law (Miscellaneous Provisions) Act 2014</i> . Assented to 24.6.2014. Date of commencement of Sch 1.3, 4.7.2014, sec 2 (1).
2015	No 15	<i>Statute Law (Miscellaneous Provisions) Act 2015</i> . Assented to 29.6.2015. Date of commencement of Sch 2, 8.7.2015, sec 2 (1).
2016	No 1	<i>Associations Incorporation Amendment (Review) Act 2016</i> . Assented to 2.3.2016. Date of commencement of Sch 1 [1] [6] [7] [10] [11] [13] [16] [17] [20]-[23] [25]-[28] [32] and [34], 15.4.2016, sec 2 and 2016 (183) LW 15.4.2016; date of commencement of Sch 1 [2]-[5] [8] [9] [12] [14] [15] [18] [19] [24] [29]-[31] and [33]: 1.9.2016, sec 2 and 2016 (183) LW 15.4.2016.
2017	No 22	<i>Statute Law (Miscellaneous Provisions) Act 2017</i> . Assented to 1.6.2017. Date of commencement of Sch 3, 7.7.2017, sec 2 (3).
	No 25	<i>Electronic Transactions Legislation Amendment (Government Transactions) Act 2017</i> . Assented to 27.6.2017. Date of commencement, assent, sec 2.

This Act has been amended by sec 30C of the *Interpretation Act 1987 No 15*.

Table of amendments

Sec 4	Am 2013 No 111, Sch 3.1; 2014 No 33, Sch 1.3 [1] [2]; 2016 No 1, Sch 1 [1].
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Sec 6	Am 2016 No 1, Sch 1 [2]-[4].
Sec 7	Am 2016 No 1, Sch 1 [5].
Sec 11	Am 2016 No 1, Sch 1 [6] [7].
Sec 12	Am 2016 No 1, Sch 1 [5].
Sec 13	Am 2016 No 1, Sch 1 [8].
Sec 18	Am 2010 No 59, Sch 1.6 [1].
Sec 25	Subst 2016 No 1, Sch 1 [9].
Sec 26	Am 2016 No 1, Sch 1 [10].
Part 4, Div 1, heading	Subst 2016 No 1, Sch 1 [11].
Secs 30A, 30B	Ins 2016 No 1, Sch 1 [12].
Part 4, Div 1A, heading	Ins 2016 No 1, Sch 1 [13].
Part 4, Div 1A, note	Ins 2016 No 1, Sch 1 [13].
Sec 34	Am 2009 No 106, Sch 1.1; 2016 No 1, Sch 1 [14].
Secs 38, 39	Am 2016 No 1, Sch 1 [15].
Sec 41	Am 2011 No 44, Sch 3.1.
Sec 45	Am 2011 No 27, Sch 1.2 [1].
Sec 49	Am 2011 No 27, Sch 1.2 [2].
Sec 61A	Ins 2016 No 1, Sch 1 [16].
Sec 64	Am 2016 No 1, Sch 1 [17].
Sec 72	Am 2016 No 1, Sch 1 [18]; 2017 No 25, Sch 2.1.
Sec 74	Am 2013 No 111, Sch 1.1 [1]; 2016 No 1, Sch 1 [19].
Sec 76	Am 2010 No 59, Sch 1.6 [2]; 2013 No 95, Sch 2.11 [1]; 2013 No 111, Sch 1.1 [2]-[4]; 2014 No 33, Sch 1.3 [3] [4]; 2016 No 1, Sch 1 [20]-[23].
Sec 80	Am 2013 No 111, Sch 1.1 [5]; 2016 No 1, Sch 1 [24].
Sec 82	Rep 2013 No 111, Sch 1.1 [6].
Sec 85	Am 2015 No 15, Sch 2.2.
Sec 93	Subst 2017 No 22, Sch 3.2.
Sec 94	Am 2009 No 106, Sch 4.2.
Sec 104	Am 2013 No 95, Sch 2.11 [2] [3]; 2016 No 1, Sch 1 [25] [26].
Sec 107	Am 2016 No 1, Sch 1 [27].
Sec 108	Rep 1987 No 15, sec 30C.
Sch 1	Am 2016 No 1, Sch 1 [28]-[31].
Sch 3	Rep 1987 No 15, sec 30C.
Sch 4	Am 2016 No 1, Sch 1 [32] [33].
The whole Act	Am 2016 No 1, Sch 1 [34] ("Director-General" and "Director-General's" omitted wherever occurring, "Secretary" and "Secretary's" inserted instead, respectively).



New South Wales

# Associations Incorporation Regulation 2016

under the

Associations Incorporation Act 2009

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Associations Incorporation Act 2009*.

VICTOR DOMINELLO, MP  
Minister for Innovation and Better Regulation

## Explanatory note

The object of this Regulation is to remake, with changes, the provisions of the *Associations Incorporation Regulation 2010*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation:

- (a) makes a declaration for the purposes of enabling an association to transfer its incorporation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, and
- (b) prescribes a model constitution for associations under the *Associations Incorporation Act 2009* (***the Act***), and
- (c) provides for the names that are unacceptable for associations, and
- (d) prescribes the particulars to be contained in an association's register of committee members, and
- (e) provides for various financial reporting matters in respect of associations, and
- (f) prescribes the information to be included with an application for registration of an association and the transfer of registration declaration, and
- (g) provides for the conduct of postal and electronic ballots for resolutions to be passed by associations, and
- (h) prescribes the form of certificates of authority issued in respect of authorised officers under the Act, and
- (i) specifies the offences that may be dealt with by way of penalty notice and the amount of penalty for the offences, and
- (j) provides for the application of certain provisions of the *Corporations Act 2001* of the Commonwealth to associations, and
- (k) prescribes fees for the purposes of the Act, and
- (l) provides for other matters of a minor, consequential or ancillary nature in respect of associations (including a transitional provision to address the financial year of certain associations, incorporated under the former *Associations Incorporation Act 1984*, in the model constitution).

The changes made by this Regulation include allowing records required to be kept under the Act to be kept in electronic format, simplifying certain of the requirements for applications for registration of an association, adding to the list of unacceptable names for associations, increasing some of the fees payable under the Act, decreasing one of those fees (for lodgment of a summary of a Tier 2 association's financial affairs) and prescribing 2 fees in relation to applications for registration of, or approval of change of name of, an association (one to apply if its name has been reserved and the other, if it has not).

The changes also include inserting new provisions into the model constitution to indicate the non-profit nature of an association, to address the maximum number of terms for which office-bearers on the committee may hold office, to enable committee members to appoint association members to make up a quorum of the committee in certain circumstances, to provide for applications (rather than nominations) for membership of an association and to allow meetings to be conducted using technology.

This Regulation is made under the *Associations Incorporation Act 2009*, including sections 4 (1) (definitions of **corresponding law** and **model constitution**), 6 (3) (h) and (i), 10 (3) (d), 15 (2) (c) and (3), 18 (1) (g), 29 (2) (d), 31 (3), 38 (2), 39 (3), 42 (1), 43 (2), 45 (2) (b), 47 (2), 49 (2) (b), 50 (4), 78 (3) (d) and (e), 88 (1) (a), 93, 96, 98 (2) and 107 (the general regulation-making power) and clause 1 of Schedule 4 (the savings and transitional regulation-making power).

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## Associations Incorporation Regulation 2016

under the

Associations Incorporation Act 2009

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Associations Incorporation Regulation 2016*.

#### 2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Associations Incorporation Regulation 2010*, which is to be repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

- (1) In this Regulation:

**Secretary** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no such position in the Department, the Secretary of the Department.

**the Act** means the *Associations Incorporation Act 2009*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation (except in Schedule 1) do not form part of this Regulation.

#### 4 Corresponding law

For the purposes of the definition of **corresponding law** in section 4 (1) of the Act, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth is declared to be a corresponding law.

## **Part 2 Registration of associations**

### **5 Additional information to be included with application for registration**

- (1) An application for registration of an association made on behalf of a registrable corporation must include the following:
  - (a) an estimate of the corporation's income and expenditure for the financial year in which the application is made,
  - (b) a copy of the corporation's financial statement for the financial year before the application is made.
- (2) An application for registration of an association made on behalf of 2 or more associations proposing to amalgamate must include the following:
  - (a) an estimate of the income and expenditure of the amalgamated association for the first financial year of the proposed amalgamated incorporated association,
  - (b) an estimate of the combined assets and liabilities of the proposed amalgamated association,
  - (c) the original certificate of incorporation of each association (or evidence of the certificates if they have been lost),
  - (d) any documents required to be lodged under section 45 or 49 of the Act (as the case may be) by each of the amalgamating associations for the 3 financial years before the application is made that have not been lodged in accordance with those sections.

### **6 Reservation of name—maximum number of alternative names**

The maximum number of alternative names that may be nominated in an application for reservation of a name under section 15 of the Act is 3.

### **7 Unacceptable names**

For the purposes of section 18 (1) (g) of the Act, the names set out in Schedule 2 are declared to be unacceptable names.

## **Part 3 Financial reporting**

### **8 Gross receipts and current assets for Tier 1 associations**

- (1) For the purposes of section 42 (1) (a) of the Act, a Tier 1 association's gross receipts for a financial year are equal to the total revenue recorded in the association's income and expenditure statement for that financial year.
- (2) For the purposes of section 42 (1) (b) of the Act, the current assets of a Tier 1 association are equal to the assets (other than real property or assets capable of depreciation) held by the association as at the end of the association's last financial year, including amounts held in financial institutions, stocks and debentures.
- (3) For the purposes of section 42 (1) of the Act, the prescribed amount is:
  - (a) in relation to gross receipts—\$250,000, and
  - (b) in relation to current assets—\$500,000.

### **9 Financial statements for Tier 1 associations**

- (1) For the purposes of section 43 (2) of the Act, the financial statements prepared by a Tier 1 association must include the following:
  - (a) details of any mortgages, charges and other securities affecting any property owned by the association,
  - (b) a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.
- (2) The Secretary may exempt an association, or a class of associations, from the requirement to prepare financial statements in accordance with the Australian Accounting Standards.
- (3) An exemption may be given either generally or as otherwise specified in the exemption.

### **10 Financial statements for Tier 2 associations**

For the purposes of section 47 (2) of the Act, the financial statements prepared by a Tier 2 association must include the following:

- (a) an income and expenditure statement and a balance sheet that sets out the appropriately classified individual sources of income and individual expenses incurred in the operation of the association and the assets and liabilities of the association,
- (b) details of any mortgages, charges and other securities affecting any property owned by the association,
- (c) a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.



## **Part 4 Miscellaneous**

### **11 Model constitution**

The model constitution set out in Schedule 1 is prescribed as the model constitution for the purposes of the Act.

### **12 Register of committee members—prescribed particulars**

For the purposes of section 29 (2) (d) of the Act, the following particulars are prescribed:

- (a) the name of each member of the committee of the incorporated association who holds the position (if any) of president, vice-president, secretary or treasurer of the incorporated association,
- (b) the date on which the member was elected or appointed to the position,
- (c) the date on which the member ceased to hold the position.

### **13 Conduct of postal or electronic ballots**

A postal or electronic ballot for the passing by an association of an ordinary resolution or a special resolution under section 38 or 39, respectively, of the Act is to be conducted in accordance with Schedule 3.

### **14 Keeping of accounts and minutes of proceedings**

- (1) An association must:
  - (a) keep each record and minute required to be kept under section 50 of the Act, in written or electronic form, and
  - (b) keep each record for a period of not less than 5 years after it was made.
- (2) If records and minutes are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

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

For the purposes of section 78 (3) (d) of the Act, an application by an association for a transfer of registration declaration must include the following:

- (a) a statement in writing as to whether the entity to which the association intends to transfer is subject to rules that prohibit a distribution of profits to that entity's members,
- (b) a statement in writing declaring that the association's creditors are not likely to be materially prejudiced by the transfer,
- (c) a statement in writing declaring that the law of the Commonwealth or a State or Territory will adequately provide for the continuation of the association's legal personality after the transfer,
- (d) any documents required to be lodged under section 45 or 49 of the Act (as the case may be) by the association for the 3 financial years before the application is made that have not been lodged in accordance with those sections.

### **16 Certificates of authority**

A certificate of authority issued under section 88 (1) (a) of the Act:

- (a) must be in a form approved by the Secretary, and
- (b) must state that it is issued under the Act, and
- (c) must give the name of the person to whom it is issued, and

- (d) must describe the nature of the powers conferred on its holder and state that those powers are conferred by the Act, and
- (e) must state the date (if any) on which it expires, and
- (f) must state that the powers conferred on its holder do not extend to any part of premises used for residential purposes (except with the consent of the occupier of the premises), and
- (g) must be signed by the Secretary or by any other officer of the Department authorised by the Secretary to sign certificates of authority.

#### **17 Penalty notice offences and penalties**

For the purposes of section 93 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4 is prescribed as a penalty notice offence, and
- (b) the penalty prescribed for each offence is the amount specified in Column 2 of Schedule 4 opposite the relevant provision.

#### **18 Application of Corporations legislation to associations**

For the purposes of section 96 (1) of the Act, any matter relating to associations is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 1322 (1)–(3A) and (4)–(6) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) references to “this Act” are to be read as including references to the *Associations Incorporation Act 2009*,
- (b) a reference to a “corporation” is to be read as a reference to an association,
- (c) a reference to a meeting in section 1322 (3) is to be read as including a reference to a vote conducted by a postal or electronic ballot,
- (d) the reference in section 1322 (3) to “a person entitled to attend the meeting” is to be read as including a reference to a person entitled to vote in a postal or electronic ballot,
- (e) the reference in section 1322 (4) (b) to a register kept by ASIC under the *Corporations Act 2001* of the Commonwealth is to be read as a reference to a register kept under the *Associations Incorporation Act 2009*.

#### **19 Transitional provision relating to financial year clause in model constitution**

- (1) This clause applies to an association:
  - (a) to which clause 4 of Schedule 4 to the Act applied immediately before 1 September 2016, and
  - (b) whose constitution does not address the association’s financial year.

**Note.** Clause 4 of Schedule 4 to the Act (the **current Act**) applies to associations that were incorporated under the former *Associations Incorporation Act 1984* and whose administration is governed by rules that comply with the former Act. Clause 4 deems the rules of the association to be its constitution, and to comply with the current Act, until the association changes them under the current Act.
- (2) Clause 47 of the model constitution in its application to an association to which this clause applies is taken to have been replaced by the following clause:

##### **47 Financial year**

The financial year of the association is each period of 12 months, or any other period (whether longer or shorter than 12 months) not exceeding

18 months that the association resolves, commencing at the expiration of the previous financial year of the association.

- (3) Clause 47 of the model constitution, as substituted by subclause (2), applies until the association's constitution otherwise addresses the financial year of the association in accordance with the Act.

## **20 Fees**

For each matter specified in Schedule 5 a fee is payable as specified beside the matter in that Schedule.

## Schedule 1 Model constitution

(Clause 11)

### Part 1 Preliminary

#### 1 Definitions

- (1) In this constitution:
  - ordinary committee member** means a member of the committee who is not an office-bearer of the association.
  - secretary** means:
    - (a) the person holding office under this constitution as secretary of the association, or
    - (b) if no person holds that office—the public officer of the association.
  - special general meeting** means a general meeting of the association other than an annual general meeting.
  - the Act** means the *Associations Incorporation Act 2009*.
  - the Regulation** means the *Associations Incorporation Regulation 2016*.
- (2) In this constitution:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
- (3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

### Part 2 Membership

#### 2 Membership generally

- (1) A person is eligible to be a member of the association if:
  - (a) the person is a natural person, and
  - (b) the person has applied and been approved for membership of the association in accordance with clause 3.
- (2) A person is taken to be a member of the association if:
  - (a) the person is a natural person, and
  - (b) the person was:
    - (i) in the case of an unincorporated body that is registered as the association—a member of that unincorporated body immediately before the registration of the association, or
    - (ii) in the case of an association that is amalgamated to form the relevant association—a member of that other association immediately before the amalgamation, or
    - (iii) in the case of a registrable corporation that is registered as an association—a member of the registrable corporation immediately before that entity was registered as an association.

- (3) A person is taken to be a member of the association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1) (a) of the Act was made.

### **3 Application for membership**

- (1) An application by a person for membership of the association:
- (a) must be made in writing (including by email or other electronic means, if the committee so determines) in the form determined by the committee, and
  - (b) must be lodged (including by electronic means, if the committee so determines) with the secretary of the association.
- (2) As soon as practicable after receiving an application for membership, the secretary must refer the application to the committee, which is to determine whether to approve or to reject the application.
- (3) As soon as practicable after the committee makes that determination, the secretary must:
- (a) notify the applicant in writing (including by email or other electronic means, if the committee so determines) that the committee approved or rejected the application (whichever is applicable), and
  - (b) if the committee approved the application, request the applicant to pay (within the period of 28 days after receipt by the applicant of the notification) the sum payable under this constitution by a member as entrance fee and annual subscription.
- (4) The secretary must, on payment by the applicant of the amounts referred to in subclause (3) (b) within the period referred to in that provision, enter or cause to be entered the applicant's name in the register of members and, on the name being so entered, the applicant becomes a member of the association.

### **4 Cessation of membership**

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the association, or
- (d) fails to pay the annual membership fee under clause 8 (2) within 3 months after the fee is due.

### **5 Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

### **6 Resignation of membership**

- (1) A member of the association may resign from membership of the association by first giving to the secretary written notice of at least 1 month (or any other period that the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the secretary must

make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **7 Register of members**

- (1) The secretary must establish and maintain a register of members of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
  - (a) at the main premises of the association, or
  - (b) if the association has no premises, at the association's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
  - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the register of members is kept in electronic form:
  - (a) it must be convertible into hard copy, and
  - (b) the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

## **8 Fees and subscriptions**

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the committee, that other amount.
- (2) In addition to any amount payable by the member under subclause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the committee, that other amount:
  - (a) except as provided by paragraph (b), before the first day of the financial year of the association in each calendar year, or
  - (b) if the member becomes a member on or after the first day of the financial year of the association in any calendar year—on becoming a member and before the first day of the financial year of the association in each succeeding calendar year.

## **9 Members' liabilities**

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the

winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 8.

#### **10 Resolution of disputes**

- (1) A dispute between a member and another member (in their capacity as members) of the association, or a dispute between a member or members and the association, are to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

#### **11 Disciplining of members**

- (1) A complaint may be made to the committee by any person that a member of the association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
  - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:
  - (a) must cause notice of the complaint to be served on the member concerned, and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause 12,whichever is the later.

#### **12 Right of appeal of disciplined member**

- (1) A member may appeal to the association in general meeting against a resolution of the committee under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.

- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the secretary must notify the committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
  - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

## Part 3 The committee

### 13 Powers of the committee

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:

- (a) is to control and manage the affairs of the association, and
- (b) may exercise all the functions that may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association, and
- (c) has power to perform all acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

### 14 Composition and membership of committee

- (1) The committee is to consist of:
  - (a) the office-bearers of the association, and
  - (b) at least 3 ordinary committee members,each of whom is to be elected at the annual general meeting of the association under clause 15.

**Note.** Section 28 of the Act contains further requirements concerning eligibility for membership and composition of the committee.

- (2) The total number of committee members is to be 7.
- (3) The office-bearers of the association are as follows:
  - (a) the president,
  - (b) the vice-president,
  - (c) the treasurer,
  - (d) the secretary.
- (4) A committee member may hold up to 2 offices (other than both the offices of president and vice-president).
- (5) There is no maximum number of consecutive terms for which a committee member may hold office.

**Note.** Schedule 1 to the Act provides that an association's constitution is to address the maximum number of consecutive terms of office of any office-bearers on the committee.



- (6) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election, and is eligible for re-election.

#### **15 Election of committee members**

- (1) Nominations of candidates for election as office-bearers of the association or as ordinary committee members:
  - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the association must be a member of the association.

#### **16 Secretary**

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
  - (a) all appointments of office-bearers and members of the committee, and
  - (b) the names of members of the committee present at a committee meeting or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).

#### **17 Treasurer**

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and

- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

#### **18 Casual vacancies**

- (1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the committee occurs if the member:
  - (a) dies, or
  - (b) ceases to be a member of the association, or
  - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) resigns office by notice in writing given to the secretary, or
  - (e) is removed from office under clause 19, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is absent without the consent of the committee from 3 consecutive meetings of the committee, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
  - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.

#### **19 Removal of committee members**

- (1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the secretary or the president may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

#### **20 Committee meetings and quorum**

- (1) The committee must meet at least 3 times in each period of 12 months at the place and time that the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to

be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.

- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:
  - (a) the president or, in the president's absence, the vice-president is to preside, or
  - (b) if the president and the vice-president are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

## **21 Appointment of association members as committee members to constitute quorum**

- (1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of members of the association as committee members to enable the quorum to be constituted.
- (2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (3) This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

## **22 Use of technology at committee meetings**

- (1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.
- (2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **23 Delegation by committee to sub-committee**

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of the member or members of the association that the committee thinks fit) the exercise of any of the functions of the committee that are specified in the instrument, other than:
  - (a) this power of delegation, and
  - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.

- (4) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A sub-committee may meet and adjourn as it thinks proper.

#### **24 Voting and decisions**

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 20 (5), the committee may act despite any vacancy on the committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

### **Part 4 General meetings**

#### **25 Annual general meetings—holding of**

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its annual general meetings:
  - (a) within 6 months after the close of the association's financial year, or
  - (b) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

#### **26 Annual general meetings—calling of and business at**

- (1) The annual general meeting of the association is, subject to the Act and to clause 25, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the committee reports on the activities of the association during the last preceding financial year,
  - (c) to elect office-bearers of the association and ordinary committee members,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.

- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

## **27 Special general meetings—calling of**

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The committee must, on the requisition of at least 5% of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
  - (a) must be in writing, and
  - (b) must state the purpose or purposes of the meeting, and
  - (c) must be signed by the members making the requisition, and
  - (d) must be lodged with the secretary, and
  - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.
- (6) For the purposes of subclause (3):
  - (a) a requisition may be in electronic form, and
  - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

## **28 Notice**

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.  
**Note.** A special resolution must be passed in accordance with section 39 of the Act.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 26 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

## **29 Quorum for general meetings**

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members—is to be dissolved, and
  - (b) in any other case—is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

## **30 Presiding member**

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.
- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

## **31 Adjournment**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## **32 Making of decisions**

- (1) A question arising at a general meeting of the association is to be determined by:
  - (a) a show of hands or, if the meeting is one to which clause 37 applies, any appropriate corresponding method that the committee may determine, or
  - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in

the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

- (3) Subclause (2) applies to a method determined by the committee under subclause (1) (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

### **33 Special resolutions**

A special resolution may only be passed by the association in accordance with section 39 of the Act.

### **34 Voting**

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.
- (4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.

### **35 Proxy votes not permitted**

Proxy voting must not be undertaken at or in respect of a general meeting.

**Note.** Schedule 1 to the Act provides that an association's constitution is to address whether members of the association are entitled to vote by proxy at general meetings.

### **36 Postal or electronic ballots**

- (1) The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### **37 Use of technology at general meetings**

- (1) A general meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.
- (2) A member of an association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 5 Miscellaneous**

### **38 Insurance**

The association may effect and maintain insurance.

### **39 Funds—source**

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, any other sources that the committee determines.

- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

#### **40 Funds—management**

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used solely in pursuance of the objects of the association in the manner that the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

#### **41 Association is non-profit**

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the objects of the association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

**Note.** Section 5 of the Act defines *pecuniary gain* for the purpose of this clause.

#### **42 Distribution of property on winding up of association**

- (1) Subject to the Act and the Regulations, in a winding up of the association, any surplus property of the association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (2) In this clause, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

**Note.** Section 65 of the Act provides for distribution of surplus property on the winding up of an association.

#### **43 Change of name, objects and constitution**

An application for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.

#### **44 Custody of books etc**

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales:

- (a) at the main premises of the association, in the custody of the public officer or a member of the association (as the committee determines), or
- (b) if the association has no premises, at the association's official address, in the custody of the public officer.

#### **45 Inspection of books etc**

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
  - (a) records, books and other financial documents of the association,
  - (b) this constitution,
  - (c) minutes of all committee meetings and general meetings of the association.



- (2) A member of the association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.
- (3) Despite subclauses (1) and (2), the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

#### **46 Service of notices**

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

#### **47 Financial year**

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 July and ending on the following 30 June.

##### **Notes.**

- 1. Schedule 1 to the Act provides that an association's constitution is to address the association's financial year.
- 2. Clause 19 of the Regulation contains a substitute clause 47 for certain associations incorporated under the *Associations Incorporation Act 1984*.

## Schedule 2 Unacceptable names

(Clause 7)

- 1** A name that is identical to, or closely resembles, a business name registered under the *Business Names Registration Act 2011* of the Commonwealth unless:

  - (a) the public is not likely to be misled if the association operates under that name, or
  - (b) the applicant for registration of the relevant association has registered that name under that Act.
- 2** A name that is identical to, or closely resembles, the name of a building society, co-operative, co-operative society, co-operative company, co-operative building society, co-operative housing society or credit union.
- 3** A name that is identical to, or closely resembles, a name reserved or registered under the *Corporations Act 2001* of the Commonwealth (unless the applicant for registration of the relevant association has reserved or registered that name under that Act).
- 4** A name that is identical to, or closely resembles, the name of a criminal organisation or declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.
- 5** A name that suggests a connection with the government of the Commonwealth, New South Wales, another State or Territory or another country.
- 6** A name that includes the word “Commonwealth” or “Federal”, unless its use is in respect of a geographical location.
- 7** A name that suggests a connection with a government agency or public authority of the Commonwealth, New South Wales or another State or Territory.
- 8** A name that suggests a connection with a local council or local authority.
- 9** A name that suggests a connection with a member of the royal family if that connection does not exist.
- 10** A name that suggests a connection with an ex-service person organisation if that connection does not exist.
- 11** A name that suggests a connection with any person (alive or deceased) if that connection does not exist.
- 12** A name that suggests that royal patronage has been received if that is not the case.
- 13** A name that includes any of the following words or phrases (including abbreviations of those words and phrases):

  - aboriginal corporation
  - building society
  - credit union
  - co-operative
  - co-operative society
  - co-operative company
  - co-operative building society

co-operative housing society  
executor  
futures exchange  
GST  
guarantee  
institute of advanced education  
made in Australia  
oxfam  
starr bowkett  
stock exchange  
torres strait islander corporation

- 14** A name (including a name used by a former association) that is likely to mislead the public in relation to the nature, objects or functions of an association or proposed association or in any other respect.

## **Schedule 3 Conduct of postal or electronic ballots**

(Clause 13)

### **1 Ballots**

- (1) The committee must:
  - (a) cause the details of the matter on which the ballot is to be held to be set out in a statement, and
  - (b) fix the dates for:
    - (i) the forwarding of postal ballot papers, or the giving of access to electronic ballot papers, to members, and
    - (ii) the closing of the ballot, and
  - (c) appoint a returning officer for the ballot.
- (2) Every ballot must be conducted by the returning officer appointed by the committee.

### **2 Returning officers**

- (1) A member of the association or a person who is not a member of the association may be appointed as a returning officer.
- (2) Despite subclause (1), a committee member of the association may not be appointed as a returning officer.
- (3) The returning officer may be assisted in the performance of his or her duties by any person (who would be eligible to be a returning officer) appointed by the returning officer.

### **3 Preparation of voting roll**

- (1) The returning officer must prepare a roll of the full names and addresses of the members of the association who are eligible to vote.
- (2) A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.

### **4 Electronic voting**

- (1) This clause applies to a ballot for determination of a matter by the association that is to be conducted by means of electronic voting.
- (2) Electronic voting is to be by means of email or other electronic means determined by the committee.
- (3) Without limiting subclause (2), the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- (4) The returning officer must ensure that the form for the electronic ballot paper contains:
  - (a) instructions for completing the voting paper, and
  - (b) the question to be determined, and
  - (c) the means of indicating the voter's choice on the question to be determined.

- (5) The returning officer must, at least 14 days (or 21 days in the case of a special resolution) before the date fixed for the closing of the ballot, give each person entitled to vote:
  - (a) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause, and
  - (b) access to information about:
    - (i) how the ballot paper must be completed, and
    - (ii) the closing date of the ballot, and
    - (iii) if voting is by email—the address where the ballot paper is to be returned, and
    - (iv) if voting is by other electronic means, the means of accessing the electronic voting system and how the completed electronic ballot paper is to be sent to the returning officer.
- (6) Each person entitled to vote must vote in accordance with the instructions contained in the information.
- (7) If the ballot is a secret ballot, the returning officer must ensure that the identity of the voter cannot be ascertained from the form of the electronic ballot paper.
- (8) An electronic ballot paper must be sent to the returning officer no later than the close of the ballot.
- (9) The returning officer must ensure that all electronic ballot papers are stored securely until the counting of the votes begins.

## **5 Postal voting**

- (1) This clause applies to a ballot for the determination of a matter by the association that is to be conducted by means of postal voting.
- (2) The returning officer must prepare ballot papers that contain:
  - (a) instructions for completing the voting paper, and
  - (b) the question to be determined, and
  - (c) a box opposite and to the left of each question.
- (3) The returning officer must, at least 14 days (or 21 days in the case of a special resolution) before the date fixed for the closing of the ballot, give each person entitled to vote:
  - (a) a ballot paper prepared in accordance with this clause, and
  - (b) a notice describing:
    - (i) how the ballot paper must be completed, and
    - (ii) the closing date of the ballot, and
    - (iii) the address where the ballot paper is to be returned, and
  - (c) a returning envelope addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the member and, if the ballot is a secret ballot, an envelope marked “Voting Paper”.
- (4) Each person entitled to vote must vote by marking the ballot paper in accordance with the instructions contained in the notice.
- (5) If the ballot is a secret ballot, a voter must, after completing the ballot paper:
  - (a) enclose and seal the ballot paper in the envelope marked “Voting Paper”, and

- (b) enclose and seal that envelope in the returning envelope addressed to the returning officer, and
  - (c) give the envelope to the returning officer so that it is received no later than the close of the ballot.
- (6) If the ballot is not a secret ballot, a voter must, after completing the ballot paper:
  - (a) enclose and seal the ballot paper in the returning envelope addressed to the returning officer, and
  - (b) give the envelope to the returning officer so that it is received no later than the close of the ballot.
- (7) On receipt of a returning envelope, the returning officer must:
  - (a) compare the information on each returning envelope with the information on the voting roll to confirm that the vote was cast by a person entitled to vote in the ballot, and
  - (b) ensure that the ballot papers are securely stored until the counting of the votes begins.
- (8) A voter may give a returning envelope to the returning officer by post or personal delivery.

#### **6 Informal votes**

- (1) A ballot paper of a voter who votes by means of electronic voting or postal voting is informal if the voter has failed to record a vote in accordance with the information provided by the returning officer.
- (2) Despite subclause (1), if, in the opinion of the returning officer, a voter's intention is clearly indicated on a ballot paper for a postal vote, the ballot paper is not informal merely because it contains an unnecessary mark.
- (3) If voting is carried out by electronic voting using a voting website or other electronic application (but not if voting is by email), the website or application is to provide a warning message to a person casting an informal vote that the proposed vote is informal.

#### **7 Ascertaining result of ballot**

- (1) As soon as practicable after the close of the ballot for a postal vote, the returning officer must:
  - (a) in the case of a secret ballot, open the envelopes marked "Voting Paper" and remove the ballot papers, and
  - (b) in the case of any ballot, reject as informal any ballot papers that do not comply with the requirements of this Regulation, and
  - (c) ascertain the result of the ballot by counting the votes not rejected.
- (2) As soon as practicable after the close of a ballot conducted by electronic voting, the returning officer must:
  - (a) review all information and reports about the electronic ballot, and
  - (b) reject as informal any votes that do not comply with the requirements of this Regulation, and
  - (c) ascertain the results of the electronic ballot.

#### **8 Statement by returning officer**

- (1) The returning officer must make out and sign a statement of the result of the ballot.

- (2) On the declaration of the returning officer of the result of the ballot, the committee must cause an entry to be made in the minute book showing the result of the ballot.
- (3) The returning officer must forward a copy of the statement to the chairperson of the committee who must announce the result of the ballot at the next general meeting.

**9 Notification of result of ballot for special resolutions**

In the case of a special resolution, the association must cause the result of the ballot to be notified in writing to its members as soon as practicable after the ballot.

**10 Retention of ballot papers**

- (1) The returning officer must retain:
  - (a) all ballot papers, and
  - (b) all rejected returning envelopes relating to postal voting, and
  - (c) all records relating to electronic voting (whether formal or otherwise), and
  - (d) all rolls,used in connection with the conduct of the ballot, in accordance with this clause.
- (2) The returning officer must retain those items in secure storage for a period of not less than 8 weeks after the date fixed for the closing of the ballot unless directed in writing by the committee to retain those items for a longer period.

## Schedule 4 Penalty notice offences

(Clause 17)

Column 1	Column 2
Offence	Penalty
<b>Offences under the Act</b>	
Section 13 (1)	\$200
Section 28 (5)	\$50
Section 29 (1)	\$50
Section 34 (1) and (6)	\$50
Section 35 (2) and (3)	\$50
Section 37 (1) and (2)	\$50
Section 41 (1)	\$50
Section 43 (1)	\$200
Section 44	\$200
Section 45 (1)	\$200
Section 47 (1)	\$200
Section 48	\$200
Section 49 (1)	\$200
Section 50 (1)	\$200
Section 51 (3)	\$200
Section 90 (1)	\$50
Section 101 (2)	\$50



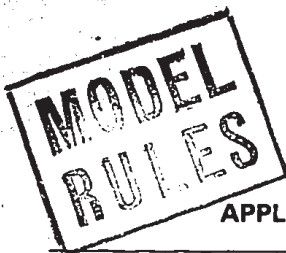
## Schedule 5 Fees

(Clause 20)

Column 1		Column 2
Item	Matter for which fee payable	Fee
1	Application for registration of an association (section 6 (1) of the Act):	
	(a) if the name of the association has been reserved	\$128
	(b) if the name of the association has not been reserved	\$164
2	Application for approval of change of association's name (section 10 (1) of the Act):	
	(a) if the name of the association has been reserved	\$62
	(b) if the name of the association has not been reserved	\$98
3	Application for approval of change of association's objects or constitution (section 10 (1) of the Act)	\$49
4	Application for reservation of name (section 15 (1) of the Act)	\$49
5	Issue of replacement certificate of registration where Secretary is satisfied that the original was lost or destroyed	\$42
6*	Maximum fee for inspection by any member of an association of the book recording disclosure of interest by a committee member (section 31 (3) of the Act)	\$5
7	Application for further time within which to hold AGM (section 37 (2) (b) of the Act)	\$31
8	Application for specification by Secretary as to the manner in which a special resolution may be passed (section 39 (1) (c) of the Act)	\$83
9	Lodgment of summary of Tier 1 association's financial affairs for the previous financial year, financial statements, auditor's report and a copy of any resolution passed at the association's AGM in connection with those documents (section 45 (1) of the Act)	\$187
10	Application for further time in which a Tier 1 association can lodge documents pursuant to section 45 (1) of the Act (section 45 (2) (a) of the Act)	\$31
11	Additional fee for late payment of prescribed fee for lodgment of documents pursuant to section 45 (1) of the Act:	
	(a) if the documents are lodged after the due date for lodgment, but less than 1 month after the due date	\$90
	(b) if the documents are lodged 1 or more months after the due date	\$115
12	Lodgment of summary of Tier 2 association's financial affairs for the previous financial year (section 49 (1) of the Act)	\$44
13	Application for further time in which a Tier 2 association can lodge a summary of the association's financial affairs pursuant to section 49 (1) of the Act (section 49 (2) (a) of the Act)	\$31

Column 1		Column 2
Item	Matter for which fee payable	Fee
14	Additional fee for late payment of prescribed fee for lodgment of summary of the association's financial affairs pursuant to section 49 (1) of the Act:	
	(a) if the summary is lodged after the due date for lodgment, but less than 1 month after the due date	\$27
	(b) if the summary is lodged 1 or more months after the due date	\$34
15	Approval for person who is otherwise not qualified to carry out audit (section 52 (1) (b) or 52 (2) of the Act)	\$187
16	Grant of an exemption from requirement to prepare or audit financial statements (section 53 of the Act)	\$187
17	Application for transfer of registration declaration in relation to an association's proposed registration under a corresponding law (section 78 (1) of the Act)	\$83
18	Inspection of any document that has been lodged with the Secretary under the Act, not being a document that has been destroyed or otherwise disposed of (section 98 (2) (a) of the Act)	\$20
19	Issue of uncertified copy of, or extract from, document lodged with the Secretary (section 98 (2) (b) of the Act):	
	(a) if a fee has been paid for inspection of the document:	
	(i) for the first page	Nil
	(ii) for each additional page	\$1
	(b) if a fee has not been paid for inspection of the document:	
	(i) for the first page	\$20
	(ii) for each additional page	\$1
20	Issue of certified copy of, or extract from, document lodged with the Secretary (section 98 (2) (b) of the Act):	
	(a) for the first page	\$22
	(b) for each additional page	\$2
21	Issue of extract from computerised record forming part of the register (section 98 (2) (b) of the Act)	\$20
22	Issue of certificate by Secretary stating registration status, registered name, official address or terms of constitution (section 100 (a), (b), (d) and (e) of the Act)	\$42, plus \$1 for each page provided
23	Issue of certificate by Secretary specifying compliance with certain provisions of the Act (section 100 (c) of the Act)	\$83
24	Application for approval to serve documents on association in any other manner that the Secretary may direct (section 101 of the Act)	\$83
25	Issue of certificate by Secretary to the effect that an association or other body is a former association of an incorporated association (clause 3 (2) of Schedule 2 to the Act)	\$83
26	Additional fees payable for late payment of any prescribed fee not otherwise specified	\$27

\* Fee payable to the association.



NEW SOUTH WALES

030158

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P.M.

6 FEB 1989

ASSOCIATIONS INCORPORATION ACT, 1984

FORM 1

APPLICATION FOR INCORPORATION OF ASSOCIATION

Reg No: ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

To the Corporate Affairs Commission

1. I, JAMES KENNETH WALL  
(Full name in block letters)  
of 35 SIMPSON STREET AUBURN N.S.W.  
(Usual residential address)

make application for the incorporation of:

(i) the currently unincorporated association known as -

POST-CLASSIC RACING ASSOCIATION OF N.S.W.  
(Name of association)

OR

☒ ~~the proposed association~~

under the provisions of the Associations Incorporation Act, 1984.

2. The following information is submitted in support of the application:-

(a) The proposed name of the proposed incorporated association is (1) POST-CLASSIC RACING ASSOCIATION OF NEW SOUTH WALES Incorporated

The proposed name is currently reserved:

Reservation Number P102144-02 Expiry Date 5th APRIL 1989

(b) The principal place of administration of the proposed incorporated association will be:

(2) 35 SIMPSON STREET AUBURN 2144  
(address)

(c) The full names, usual residential addresses of and positions to be held by the first members of the committee are:

Full name	Usual residential address (2)	Position to be held e.g. President, Treasurer etc
MR JOHN SIMMS	21 KNOX ST. LINDFIELD 2070	PRESIDENT
MR HUNTER JONES	222 EMPIRE BAY RD. EMPIRE BAY	VICE-PRESIDENT
MR CHRIS ANDERSON	5 FINCH PLACE INGLESBURN	TREASURER
MR JAMES WALL	35 SIMPSON STREET AUBURN	SECRETARY
MR PETER LANZETTI	32 DELORAIN DRIVE LEONAY	ASSISTANT SECRETARY

\*Delete where inapplicable.

Lodged by

Address

Phone No.

Lodged with the Commission on

20 MAR 1989

ON

AT  
SYDNEY

A. BARNES  
AUTHORISED OFFICIAL

- (d) The rules of the proposed incorporated association will be ~~will not be~~ the model rules. (3)
3. The principal activities of the association are ~~are likely to be~~ THE PROMOTION AND FOSTERING OF POSTCLASSIC MOTORCYCLES AND MOTOR CYCLE RACING.
4. Particulars of property held by a person, in trust or otherwise, for or on behalf of or for the objects of the currently unincorporated association are as follows:- (4)

Description of property	Approximate value	Name and address of trustee (if any)

5. Particulars of mortgages, charges and other securities of any description affecting any of the property of the unincorporated association referred to in paragraph (1) (i), at the date of the application, are as follows:- (5)

Description of mortgage, or other security	Description of property affected	Amount of indebtedness at date of application	Name and address of holder of mortgage, etc.

6. The income of the association ~~is~~ is likely to be \$ 2,000 per annum which is ~~derived~~ is likely to be derived from the following sources:
- MEMBERSHIP SUBSCRIPTIONS AND THE SALE OF CLUB TEE-SHIRTS AND STICKERS ETC.

- The expenditure of the association ~~is~~ is likely to be \$ 1,500 per annum.

\*Delete where inapplicable.

7. The persons with whom the association deals ~~\*is likely to deal\*~~ are, principally:

MEMBERS OF THE ASSOCIATION AND SIMILAR ASSOCIATIONS.

(members of the association, members of similar associations, members of the public, etc.)

8. The number of persons employed ~~\*to be employed\*~~ by the association is ~~\*is likely to be\*~~

NIL

9. The association is ~~\*has made application to become\*~~ a charity registered under, or exempted from registration by or under, the Charitable Collections Act, 1934.

Dated this SECOND day of FEBRUARY 1989

Signature of applicant

MR. J. WALL

Name of signatory in block letters

#### STATEMENT OF OBJECTS

The objects of the proposed incorporated association are:-

THE ADMINISTRATION OF POST-CLASSIC MOTORCYCLE RACING WITHIN THE ASSOCIATION AND THE PROMOTION OF THE SPORT IN GENERAL.

#### PARTICULARS OF TRUSTS

- A The proposed incorporated association ~~\*will be\*~~ will not be the trustee of any trusts. (6)

#### STATUTORY DECLARATION

I solemnly and sincerely declare that:

1. I am duly authorised to apply for the incorporation of POST-CLASSIC RACING ASSOCIATION OF NEW SOUTH WALES Incorporated. (insert name of proposed incorporated association) in accordance with section 8 of the Associations Incorporation Act, 1984.

2. The particulars contained above are true.

3. ~~\*A copy of the rules, constitution, and documents signed by me for the purpose of identification and accompanying this application are true copies of the documents of which they purport to be copies.~~

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

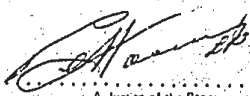
Subscribed and declared by me

at REGENTS PARK

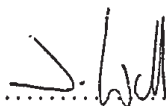
this 2ND day

of FEBRUARY

1989 before me



A Justice of the Peace



Signature

\* Delete where inapplicable.

# Certificate of Incorporation as an Association

This is to certify

## POST-CLASSIC RACING ASSOCIATION OF NEW SOUTH WALES INCORPORATED

is registered as an incorporated association in New South Wales  
under the *Associations Incorporation Act 2009*

---

Registration Number **Y0708233**

Date of Incorporation **20 March 1989**

---

Issued by NSW Fair Trading on 5 March 2018.

Rec'd on:

Rec'd at:

Processed by:

Receipt No:

20/8/04  
1580920401

# OFFICE OF FAIR TRADING

NSW Consumer Protection Agency  
ABN 54 625 095 406

## Notice of Alteration of Objects or Rules

Associations Incorporation Act, 1984  
Section 20 (2)

### FORM 6

PLEASE COMPLETE IN BLACK INK AND USE BLOCK LETTERS



N2843834

FEE: \$35  
(GST FREE)

Incorporation Number:	Y0708233
Name of Association:	Post Classic Racing Association of N.S.W. Incorporated
The Association has:	<input checked="" type="checkbox"/> Model Rules <input checked="" type="checkbox"/> Model Rules with Changes <input type="checkbox"/> Own Rules
At a General Meeting of the members of the incorporated association duly convened and held on the 18th day of July 2004 the resolution set out below in the annexure marked was duly passed as a Special Resolution.	
RESOLUTION	
To change Rule 14 (1) (b) from "3 ordinary members" to "a minimum of 3 ordinary members".	

I, Alison Mitchell	of 343 Bingi Rd Bingi	P/code 2537
Full Name of *Public Officer/*Committee Member		Residential address
Verify that:		
(a) I am the duly appointed *Public Officer/*Committee Member of Post Classic Racing Association of New South Wales Incorporated		
Name of Incorporated association		
(b) The particulars contained in this notice are true;		
(c) The rules of the association accompanying this notice comply with the requirements of the Associations Incorporation Act, 1984 by providing for those matters specified in Schedule 1 and are amended in accordance with section 11.		
Statement under the Privacy and Personal Information Protection Act:		
"I acknowledge that		
• the Office of Fair Trading is collecting and holding personal information supplied to it for the purposes of the Associations Incorporations Act, 1984 and in particular, inclusion in a register maintained under that Act which is open to public inspection;		
• the Department may disclose personal information to other persons or bodies and receive information from them in respect of the purpose(s) for which I have lodged this form;		
• the supply of the personal information is required under the Act and failure to supply and of it may result in this form being rejected;		
• I have a right of access to, and correction of, the personal information supplied/collected from me."		
18 / 8 / 04	Signature of *Public Officer/*Committee Member	
Dated		

\*Delete where applicable

Lodging Party: Provide name and address of person/corporation lodging this application:
Alison Mitchell
343 Bingi Road
Bingi P/Code 2537 Telephone 4474 0340



FORM BM7A

## PCRA Constitution: Proposed adoptions noting present 1989 (as amended) model and currently recommended 2016 Models Consti

<b>2016 Clause title</b>		<b>Current 1989 PCRA Constitution 2016 Model</b>		<b>Proposed adoptions or changes to 2016 Model and rationale.</b>
<b>PART 1</b>	<b>PRELIMINARY</b>	<b>Objects and terms defined.</b>		
Objects	Objects of PCRA	Not described in constitution but are in application as <i>"The administration of Post Classic motorcycle racing within the Association and the promotion of the sport in general"</i>	Not stated	Quote original purpose on cover as Object of Association.
<b>PART 2</b>	1 Definitions	Basic terms defined	Same as 1989	No change to 2016 Model advised
	<b>MEMBERSHIP</b>	<b>How members join and membership is managed</b>		
	2 Membership	Eligibility	Same as 1989 plus details of membership	Cl 2b i and ii not relevant to a continuing Association, suggest delete. Schedule 1 requires confirmation of any membership qualifications. Suggested that if members of another association or club apply to race with PCRA as a group and on a regular basis they are required to become PCRA members notwithstanding their other membership, as is current practice.
	3 M'ship application	Nomination procedure specs for paper based form (Appendix 1)	Applications can be electronic; require committee approval. Procedure detailed and formal. Possibly able to be streamlined. Duties of Secretary, no Membership officer.	As 2016 but 1) insert role & responsibility of Membership Secretary re provisional approval and 2) Provisional approval is to be granted unless the committee objects for decision e.g. Add Cl. 2 i The Membership Secretary may accept applicants as members by delegated authority. Note no joining or entrance fee
	4 Expiry of membership	3 Reasons: die, resign, expel	4 Reasons: ads failure to pay within 3 months of due date.	No change to 2016 Model advised
	5 M'ship rights not transferable	Not	Same as 1989	No change to 2016 Model advised



6 M'ship resignation	Procedure. Must pay out any debt	Same less payout	No change to 2016 advised. NB any provision for withholding resignation unless all monies owing are paid up is unworkable.
7 Register of members	Assumes on paper	Allows e-record	Primarily keep electronically New privacy measures noted. Schedule 1 requires note of the Registry of members.
8 Fees etc	Joining fee plus annual membership July-June	Same but allows adjustment for fee period to FY	Note PCRA does not set a joining fee additional to a first annual fee which shall be a full year. Also allow one-event membership so we can host racers more easily. Schedule 1 requires confirmation of this.
9 Member liabilities	Limited to fees, so debts are not chargeable to members	Same as 1989	No change to 2016 Model advised. Schedule 1 requires constitution to address this.
10 Disputes	Mediation but not arbitration	Mediation plus recourse to Arbitration	Add provision for committee to seek resolution. While members might wish to restrict access to Arbitration as potentially costly for all parties, this would conflict with Cl 10 of Regs and would be rejected by Registrar. Schedule 1 requires constitution to address this. Add 'The Objects of the Association shall be considered by the Committee in resolving any dispute.' NB we could perhaps instead refer to Judicial Committee of MA or the Court of Arbitration in Sport as Arbitration can be costly and unproductive
11 Disciplining of member	Complaint procedures set out for 'persistent' acts. Must be addressed,	Same less 'persistent'. More details of procedure. Also now allows refusal of trivial or vexatious complaints	As above, add a reference to Objects of Association as a factor in consideration of any disputes. Schedule 1 requires constitution to address this.
12 Appeals from Cl. 11	Resolution by special general meeting	Same but tidies up procedures, voting	As per 1 above, add a reference to Objects of Association as a factor in consideration of any disputes. Schedule 1 requires constitution to address this.

**PART 3 THE COMMITTEE** (ie not committee meetings but not either Annual or Special meetings of members

13 Powers of Committee	3 core powers set out: manage affairs of Assn.; exercise mandated functions; all desired for proper management.	Same	Add to Cl 13 (c) core function... ' and the pursuit of its Objects.' Schedule 1 requires constitution to address election, terms of office maximum consecutive terms of office bearers. Add set up by laws to ratify this power. Schedule 1 requires constitution to address election, terms of office maximum consecutive terms of office
14 Committee number and office bearers	NB Amendment 2004 to allow a minimum of 3, not just 3, committee members.	7 allowed: officer bearers + 3; Removal process set out. NB the Association must determine number of consecutive terms allowed	Act Schedule requires that PCRA Constitution legally must state the number of maximum consecutive terms allowed for office bearers; may differ x pres, vp, treas, sec. Suggest 3 for Pres and VP but longer to promote new blood, but 7 for Treasurer as its a more formal role, open for Sec. NB Committee member holding more than one office may be problematic
15 Election of Committee at AGM	Nomination x 2 members; 7 days before AGM; consent of nominee; 6 provisions to be followed	Same, but added that candidates must be a member.	Nomination can be electronic. Add proviso Office holder not be also office holder of embedded /hosted organisation to reduce potential for conflict of interest
16 Secretary roles and responsibilities	Secretary role esp in keeping minutes	Same but added specs that Chairperson's signature can be electronic	Add delegation of membership to a Membership Secretary as this is what we do
17 Treasurer	Duties and responsibilities in receipts / payments and records.	Same; Note Act and Regs provide measures required of an Association in detail, including provisions of Tier 1 organisations (Gross income greater than \$250k pa.)	Suggest add commitment to an internal manual of financial management to be developed as by-law by Committee
18 Casual Vacancies on Committee	7 provisions outlined	More complex structure but fundamentally same	Schedule 1 requires constitution to address this.
19 Removal of committee member	2 provisions for removal of committee member from committee by vote.	Same	No change to 2016 model advised. Schedule 1 requires constitution to address this.

	20 Committee meetings; numbers to make quorum; procedures	Provisions re quorum numbers, notices, business, chairing.	Same	Number of meetings to be 9 pa. Open meetings voting to still be Committee only. Agenda to be adhered to unless by or Chair discretion. Electronic presence and vote same as in person.
	21 Committee numbers to make quorum	Committee may appoint members if needed to make quorums at meetings	Same	No change form 2016 model.
	22 Use of electronic technology at committee meetings	NO provisions	New provision allows for committee attendance electronically and with full voting rights for members so attending	No change to 2016 model advised
	23 Sub-committees	CI 21 Provisions for creating and powers of a sub-committee	Same	Cessation of sub committee to be clarified so its end point is well documented
	24 Voting at committee meetings	CI 22 Provisions for voting and making decisions	Same	No change to 2016 model
<b>PART 4</b>	<b>GENERAL MEETINGS</b>	<b>Annual or Special General meetings for all members</b>		
	25 AGM	CI 23 Holding an AGM	New wording to update to current Act and to simplify requirements	No change to 2016 model advised. Schedule 1 requires constitution to address this.
	26 How to call and manage business of an AGM	CI 24 Details procedures to call an AGM and business items	Same	Email notice and content ratified. Schedule 1 requires constitution to address this.
	27 Calling Special meetings for general members	CI 25 Special General Meetings: provision for committee to call, or members to call if committee will not.	Same provisions plus allows electronic formats where some members (5%) wish to call a special meeting	Suggest % of members able to call a Special General meeting be 'no less than 10%' to reduce disruptive potential

28 Notice of a special general meeting	CI 26 How to call, period, business matters to be as notified	Same but now with reference to section 9 of the current Act	add that notice shall be by email and include agenda inc 2 a-d plus any other matters. Schedule 1 requires constitution to address this.
29 Quorum for a special general meeting	CI 27 'Procedures' Provides for quorum numbers and when meeting can go ahead. Min is 3.	Same	Minimum number for quorum to be 7 or 5 if re-called. Schedule 1 requires constitution to address this.
30 Presiding member	CI 28 Pres or if needed the VP to chair, or meeting can elect chair.	Same	No change to 2016 model advised
31 Adjournment of meeting	CI 29 Procedure if a general meeting wishes to adjourn to a later date	Same	Lift quorum for general meeting to 11 and delete reduction of quorum to 3 after half an hour. Potential for disruption too open.
32 Making Decisions	CI 30 Provisions for voting by hand or secret ballot	Same basically, but provisions modified eg higher numbers required to demand secret ballot. Language tightened and updated .	Simplification of over-complicated process.
33 Special meeting resolution	CI 31 Provision for decision making under voting rules at a special meeting. Includes ref to Proxy votes.	Now refers to S 39 of the 2009 Act which sets out procedures for calling a Special General meeting and for voting, including electronic or postal votes, and a majority of 75% of the votes cast by members entitled to vote. Act now prohibits proxies.	Suggested fall back provision of simple majority may be in error re Act and needs to be reviewed. NOTE THIS NEEDS TO BE ADDRESSED IN NEXT VERSION.
34 Voting at Special General meetings	CI 32 Sets out procedures; allows proxies.	Provisions updated in accordance with the 2009 Act.	No change to 2016 model advised.
35 Proxy votes	CI 33 Procedures for proxies	No Proxies allowed, but Reference is made to the Act Schedule 1 (10) which requires Constitution to note this.	No change to 2016 model advised. No proxy voting to be explicit as per model constitution.

36 Postal & electronic voting	NIL	Allows postal and e-voting via various means; refers to Schedule 3 of regs; and not for disciplinary appeal CL.12	No change to 2016 model advised. Schedule 1 requires constitution to address this.
37 Use of technology in meetings	NIL	Allows for attendance at multiple locations via elinks.	No change to 2016 model advised

**PART 5 MISCELLANEOUS Various matters**

38 Insurance	CI 34 Empowers organisation to 'effect and maintain' insurance	Same	No change to 2016 model advised
39 Sources of funding	CI 35 Tickets, race entries etc etc as sources of funds	Same	Clarification of Financial reporting at meetings. Schedule 1 requires constitution to address this.
40 Funds management	CI 36 Funds to be spent in accord with Association Objects; 2 signatures needed; may be delegated to employees	Same but removal of employee delegation	2 signatures needed and can be electronic. Schedule 1 requires constitution to address this
41 Non profit status	NIL	Assn must not conduct affairs other than as per Objects and not for pecuniary ain of members.	No change to 2016 model advised
42 Divison of property on winding up	NIL	Refers to S 65 of 2009 Act	No change to 2016 model advised
43 Change of name, objects or constitution	CI 37 requires Special Resolution	Refers to S 10 of 2009 Act which requires special resolution, plus specific reference to matters under Schedule 1 of the 2009 Act plus application to and approval of Registrar.	No change to 2016 model advised

44 Custody of books	Cl 39 to be held by Public Officer	More detailed requirements. Eg must be kept in NSW at premises of organisation or public officer	Changed to allow electronic access and subject to conditions imposed by committee to protect interests of association.
45 Inspection of books	Cl 40 Records, books and othre docs to be made available	Sets out procedures in more detail including type of documents and grounds for committee to refuse a member inspecting or copying.	No change to 2016 model advised
46 Serving of notices	Cl 41 By person, post or electronic. Rules for assuming delivery	Same	No change to 2016 model advised
47 Financial Year	To be July 1 - June 30	Same but more detail, inc requirement to conform.	No change from 2016 model Schedule 1 requires constitution to address this.
Act Ss 61 - Winding up 65	Models do not address winding up but Act sets out provisions and Schedule requires Constitution to address the topic.		No change from 2016 model. Act to be confirmed as setting out provision for winding up.

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