



VIEW SUMMARY

The legislation that is being viewed is valid for **17 Jan 2011**.

## Associations Incorporation Act 1964 (No. 64 of 1964)

**Requested:** 8 May 2014

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### INFORMATION

Notes:

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Table of Amending Instruments: ([click to view Table of Amendments](#))

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## **Associations Incorporation Act 1964**

**An Act to provide for the incorporation of certain associations and for matters incidental thereto**

**[Royal Assent 17 December 1964]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**1. Short title and commencement**

- (1) This Act may be cited as the *Associations Incorporation Act 1964*.
- (2) This Act shall commence on a date to be fixed by proclamation.

**2. Interpretation**

- (1) In this Act, unless the contrary intention appears –

*accounting records* includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers, and other documents of prime entry, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

*applicant for incorporation* means the person who makes an application for the incorporation of an association under section 7;

*association* means –

- (a) any association, society, club, institution, or body that is formed or carried on

–

- (i) for a religious, educational, benevolent, or charitable purpose;
- (ii) for the purpose of providing medical treatment or attention;
- (iii) for the purpose of promoting or encouraging literature, science, or art;
- (iv) for the purpose of recreation or amusement;
- (v) for the purpose of establishing, managing, carrying on, or beautifying a community centre;
- (vi) for the purpose of administering (whether as trustee or otherwise) any scheme or fund for the payment of superannuation or retiring benefits to the members of any organization or undertaking or the employees of any person or body of persons (whether incorporated or unincorporated); or
- (vii) for promoting any of the foregoing purposes or any like purpose; and

- (b) any other association, society, club, institution, or body that is declared by the Minister, by order, to be an association for the purposes of this Act –

but does not include any association, society, club, institution, or body that is formed or carried on for the purpose of trading or securing pecuniary profit for its members;

*Commissioner* means the Commissioner for Corporate Affairs holding office under section 4

of the *Commissioner for Corporate Affairs Act 1980*, and includes any person holding that office in an acting capacity;

**committee**, used in relation to an association, means the committee of the association or, if there is no committee thereof, the persons (however styled) who have the management of the affairs of the association;

**financial year** means –

(a) in relation to an association incorporated under this Act before the commencement of section 4 of the *Associations Incorporation Amendment Act 1983* –

(i) a period of 12 months commencing at the expiration of the period in respect of which the last audit of the financial affairs of the association was prepared pursuant to section 24 before the commencement of section 4 of the *Associations Incorporation Amendment Act 1983* or, if no audit was prepared before the commencement of that section, on –

(A) the date of incorporation of the association; or

(b) where the association makes application to the Commissioner for the fixing of a commencing date for its financial year such date as the Commissioner may approve; and

(ii) each period of 12 months commencing at the expiration of the previous financial year of the association; and

(b) in relation to an association incorporated under this Act on or after the commencement of section 4 of the *Associations Incorporation Amendment Act 1983* –

(i) a period of 12 months commencing on –

(A) the date of incorporation of the association; or

(B) where the association makes application to the Commissioner for the fixing of a commencing date for its financial year such date as the Commissioner may approve; and

(ii) each period of 12 months commencing at the expiration of the previous financial year of the association.

**incorporated association** means an association that is incorporated under this Act;

**model rules** means the model rules prescribed in pursuance of section 16, as in force for the time being;

**prescribed body corporate** means –

(a) a company within the meaning of the Corporations Act that is taken to be registered in Tasmania; or

(b) a cooperative under the *Cooperatives Act 1999*; or

(c) any body corporate that is registered, incorporated or otherwise established under a law applying in Tasmania or in any place outside Tasmania and that is prescribed for the purposes of this definition;

*public officer*, used in relation to an incorporated association, means the public officer of that association;

*special resolution* means a special resolution within the meaning of section 23.

(2) A reference in this Act to the rules of an association includes a reference –

(a) to the constitution, regulations, and by-laws (if any) of the association; and

(b) if the association has adopted the model rules with or without modification, to the model rules as so adopted.

(3) . . . . .

### **3. Commonwealth Corporations legislation excluded from applying to incorporated associations**

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

(2) Subsection (1) does not apply –

(a) to the extent specified in section 24A, section 25B(1), section 31A and section 32; and

(b) to the extent necessary for an association that is a company under the Corporations Act to be deregistered as a company under Chapter 5A of that Act.

(3) Subsection (1) extends to a company within the meaning of the Corporations Act as soon as it becomes an incorporated association under this Act.

(4) Subsection (1) has effect only for so long as a body is an incorporated association under this Act.

### **4. Power to take steps to incorporate an association**

The committee of, and the persons who are members of or interested in, an association that it is proposed to incorporate under this Act may do all such acts and things as may be necessary for securing the incorporation of the association under this Act.

5.

6.

### **7. Application for incorporation of association**

(1) Where the committee of an association authorizes a person to apply for the incorporation of the association under this Act, that person may apply in writing to the Commissioner in a form approved by the Commissioner for the incorporation of the association.

(2) An application under subsection (1) shall –

**(a)** state –

- (i)** the name of the association;
- (ii)** the objects and purposes of the association;
- (iii)** that the applicant is authorized by the committee of the association to make an application for the incorporation of the association; and
- (iv)** the name and address of the public officer of the association if the public officer is a person other than the applicant for incorporation;

**(b)** be accompanied by –

- (i)** a copy of the rules of the association and any trusts relating to the association, and, if the rules or trusts are embodied in a deed, a copy of the deed;
- (ii)** a statement that the model rules have been adopted without modification; or
- (iii)** if the association has adopted the model rules with modification, a copy of the modification subject to which the model rules were adopted; and

**(c)** be accompanied by the relevant fee prescribed in the regulations.

**(3)** A person who, in making an application under subsection (1), makes, or causes to be made, a statement or representation in that application or in any accompanying document that is, to his knowledge, false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 2 penalty units.

**(4)** . . . . .

**(4A)** . . . . .

**(5)** . . . . .

## **8. Incorporation of association**

**(1)** Upon receipt of an application under section 7, the Commissioner may, if he is satisfied that it is proper for him so to do, grant to the association to which the application relates a certificate of incorporation in the prescribed form.

**(1A)** The Commissioner shall not grant a certificate of incorporation to an association unless he has –

- (a)** received the relevant fee prescribed in the regulations for the granting of such a certificate;
- (b)** in a case where he has reduced the relevant fee payable, received the reduced fee; or
- (c)** waived the relevant fee.

**(2)** . . . . .

## **9. Names of associations**

**(1)** The Commissioner shall not grant to an association a certificate of incorporation under –

(a) a name that is identical with a name by which –

- (i) another association is incorporated under this Act;
- (ii) a company is registered under the Corporations Act;
- (iia) . . . . .
- (iii) a business name is registered under the *Business Names Act 1962*;
- (iv) a co-operative housing society is incorporated under the *Co-operative Housing Societies Act 1963* –
- (v) . . . . .
- (vi) . . . . .

or that so nearly resembles any such name as, in the opinion of the Commissioner, to be calculated to deceive; or

(b) except with the consent of the Minister, a name that, in the opinion of the Commissioner, is undesirable or is a name, or a name of a kind, that the Minister has directed the Commissioner not to accept for registration.

(2) A direction under subsection (1) is a statutory rule within the meaning of the *Rules Publication Act 1953*.

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

(4) It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated" in the name of the association as appearing on its seal.

(5) When the name of an incorporated association is included in any document it is sufficient if the abbreviation "Inc." is used in the place of the word "Incorporated".

## 10. Change of name of incorporated association

(1) An incorporated association may, by special resolution and with the approval of the Commissioner, change its name to any other name by which it could be incorporated without contravention of section 9.

(2) An application for the approval of the Commissioner to a change of name pursuant to this section

- (a) shall be in the prescribed form;
- (b) shall be verified as prescribed;
- (c) shall be made, by the public officer of the association, within the prescribed period after the date of the meeting at which the special resolution for the change of name was passed; and
- (d) shall be lodged with the Commissioner, together with such other documents (if any) as may be prescribed.

(3) The Commissioner shall register the change of name, and shall either note the change on the certificate of incorporation or issue a new certificate of incorporation in lieu thereof in the prescribed form.

(4) . . . . .

(5) A change of name does not affect the identity of an association or any right or obligation of an association or of any member or other person, or render defective any legal proceedings by or against an association.

(6) Any legal proceedings that might have been continued or commenced by or against an association by its former name may be continued or commenced by or against it by its new name.

#### **11. Effect of incorporation of an association**

(1) Upon the grant of a certificate of incorporation to an association pursuant to section 8, the association becomes a body corporate with perpetual succession and a common seal, and may acquire, hold, and dispose of real and personal property, and is capable of suing and being sued in its corporate name.

(2) The common seal of an incorporated association is of no effect unless the name of the association is inscribed on the seal in legible characters.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the seal of an incorporated association affixed to a document and shall presume that it was duly affixed.

#### **12. Power of incorporated association to hold property, &c.**

(1) An incorporated association may (if its rules do not direct otherwise) in its corporate name hold, purchase, or take on lease any land, and may sell, exchange, mortgage, lease, or build upon the land (with power to alter and pull down buildings and again rebuild), and otherwise deal with the land as fully and effectually as a natural person could do.

(2) The receipt of an incorporated association is a discharge for any money arising from or in connection with any such sale, exchange, mortgage, or lease as is referred to in subsection (1).

#### **13. Vesting of property in incorporated association**

(1) Upon the incorporation of an association under this Act, any personal property held by a person, in trust or otherwise, for or on behalf of the association becomes vested in the association, subject to any trust, covenant, contract, or liability affecting the property.

(2) The public officer of an incorporated association may, at any time after the incorporation of the association, deliver to the Registrar of Deeds a memorial in writing setting forth, in relation to any land or interest in land (not being land that is subject to the *Land Titles Act 1980*) held by any person in trust for or on behalf of the association, such particulars and other matters as may be prescribed and the Registrar of Deeds shall, subject to subsection (4), register the memorial, whereupon the land or interest in land vests in the association.

(3) The public officer of an incorporated association may, at any time after the incorporation of the association, lodge with the Recorder of Titles notice in writing setting forth, in relation to any land or interest in land (being land that is subject to the *Land Titles Act 1980*) held by any person in trust for or on behalf of the association, such particulars and other matters as may be prescribed and the Recorder shall, subject to subsection (4), enter upon the certificate of title a memorial that the land or interest in land is vested in the association, whereupon the land or interest in land vests in the association



accordingly.

- (4) A memorial or notice under the foregoing provisions of this section shall be accompanied by –
- (a) the certificate of incorporation, or a copy thereof certified by the Commissioner, and by a statutory declaration made by the public officer and by at least one of the persons in whom the land or interest in land is vested declaring that the land or interest in land is held in trust for or on behalf of the association; and
  - (b) the appropriate fee prescribed under the *Registration of Deeds Act 1935* or the *Land Titles Act 1980*, as the case requires.

#### 14. Public officer of incorporated association

(1) Unless the committee has appointed another person as public officer, the first public officer of an incorporated association is to be the person who applied for incorporation of the association.

(1A) The committee of an association may, before an application is made under section 7 for the incorporation of the association, appoint a person to be the public officer of the association on its incorporation.

(1B) If the office of public officer of an association at any time becomes vacant, the committee of the association must, within 14 days after it becomes vacant, appoint a person to fill the vacancy.

(1C) A person is not eligible to be appointed as a public officer of an incorporated association unless the person has attained the age of 18 years and is resident in the State.

(2) If the committee of an association fails to comply with subsection (1B), each member of the committee is guilty of an offence.

Penalty:

Fine not exceeding 1 penalty unit.

(3) The public officer of an incorporated association may, unless the rules of the association otherwise provide, hold any other office in the association except the office of auditor.

(4) Notwithstanding that the rules of an incorporated association do not make provision for the appointment of a public officer, the association has power from time to time to appoint a public officer and to remove any person so appointed from his office as public officer.

(5) The office of public officer of an incorporated association becomes vacant if the person holding that office –

- (a) dies;
- (b) becomes bankrupt, or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors, or makes any assignment of his estate for their benefit;
- (c) is unable to perform the duties of the office competently;
- (d) resigns his office by writing under his hand addressed to the committee of the association;  
or
- (e) ceases to be resident in the State.

## 15. Notification of appointment or change of public officer

(1) . . . . .

(2) If a public officer changes his address, he shall, within 14 days after the change, give notice in writing to the Commissioner of the change, in default whereof he is guilty of an offence.

Penalty:

Fine not exceeding 2 penalty units.

(3) Within 14 days after a person is appointed as the public officer of an incorporated association in the place of a person who has ceased to be the public officer thereof, the first-mentioned person shall give notice in writing to the Commissioner of his appointment and of his full name, address, and occupation, in default whereof he is guilty of an offence.

Penalty:

Fine not exceeding 2 penalty units.

## 16. Model rules

(1) The Governor may, by regulations under this Act, prescribe model rules for associations incorporated or desiring to become incorporated under this Act.

(2) An association that is proposed to be incorporated under this Act, or that is incorporated thereunder, may, by special resolution, adopt as its rules all or any of the model rules or may so adopt the model rules subject to such modifications as are specified in the resolution.

(3) Where an association is incorporated under this Act, in so far as any rules lodged, pursuant to section 7, with its application for incorporation are not inconsistent with or do not exclude or modify the model rules as then in force, the model rules shall be deemed to form part of the rules of the association in the same manner and to the same extent as if they were contained in the rules so lodged.

(4) No alteration of the model rules applies to an association that is incorporated before the regulation prescribing the alteration comes into operation, unless the association, by special resolution, adopts the alteration as part of its rules.

17.

## 18. Alteration of rules, objects, &c., of incorporated association

(1) The rules of an incorporated association may be altered only by special resolution.

(2) The public officer of an incorporated association shall, within one month after an alteration of –

(a) the rules of the association;

(b) the objects or purposes of the association; or

(c) any trusts relating to the association –

lodge with the Commissioner a notice of the alteration in the prescribed form.

(3) Where, under the rules of an incorporated association, the members of the association are liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges, and

expenses of a winding up of the association and an alteration of the rules of the association affects that liability, the public officer of the association shall, within one month after the alteration, give notice of that alteration in a newspaper circulating in the State.

(4) An alteration of the rules, objects or purposes of an association, or of any trusts relating to an association, is of no effect until subsections (2) and (3) have been complied with in respect of that alteration and, in the case of an alteration of the objects or purposes of the association, unless the alteration is approved by the Commissioner.

(5) A notice under subsection (2) shall, in the case of the alteration of the rules of an association, be accompanied by a copy of the special resolution by which the alteration was authorized.

(5A) An alteration to the rules of an incorporated association which purports to have the effect of enabling alterations to its rules to be carried out otherwise than in accordance with subsection (1) is of no effect.

(6) If the public officer of an incorporated association fails to comply with the provisions of subsection (2) or subsection (3), he is guilty of an offence.

Penalty:

Fine not exceeding 2 penalty units.

## **19. Obligations, &c., of association not affected by alteration of rules, objects, or trusts**

An alteration of the rules, objects, or purposes of an incorporated association, does not affect any right, liability, or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect.

## **20. Contracts**

Contracts on behalf of an incorporated association may be made as follows:

(a) a contract that, if made between natural persons, would be by law required to be in writing under seal may be made on behalf of the association in writing under the common seal of the association;

(b) a contract that, if made between natural persons, would be by law required to be in writing, signed by the parties to be charged therewith may be made on behalf of the association in writing signed by a person acting under its authority, express or implied;

(c) a contract that, if made between natural persons, would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the association by a person acting under its authority, express or implied –

and a contract so made is effectual in law and binds the association and its successors and all other parties thereto, and may be varied or discharged in the manner in which it is authorized to be made.

## **21. General powers of incorporated associations**

(1) Subject to this Act and to any special restrictions or prohibitions in its rules or trust deed, and without prejudice to any other powers contained in its rules or trust deed or implied by law, an incorporated association has power –

(a) to act as trustee for any other incorporated association or any body (whether incorporated or unincorporated) formed for charitable purposes;

(b) to accept and hold upon trust real or personal property that is given to the association subject to any trust and to carry out any such trust;

(c) to invest its money in or upon any security in which trustees are for the time being authorized by law to invest trust funds;

(d) to open and operate authorised deposit-taking institution accounts;

(e) to borrow money upon such terms and in such manner and upon such security (if any) as the association thinks fit, for the purpose of carrying out its objects and purposes; and

(f) to secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving mortgages, charges, or securities upon or over all or any of the real or personal property of the association.

(2) Nothing in this section empowers an incorporated association to carry on trading or to secure pecuniary profit, whether directly or indirectly, for its members.

(3) A person (including an incorporated association) shall not make an invitation to the public to subscribe for or purchase debentures of an association (whether an incorporated association or not) or make to the public an offer of debentures of such an association for subscription or purchase.

Penalty:

Fine not exceeding 30 penalty units.

(4) An incorporated association shall not make an invitation to the public to deposit money with, or to make a loan of money to, the association or make to the public an offer to accept a deposit or loan of money from any member of the public.

Penalty:

Fine not exceeding 30 penalty units.

(5) For the purposes of subsections (3) and (4), an incorporated 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 sections 82 and 700(2)(a) of the Corporations Act.

## 22. Disposal of property

(1) Where any property is held by an incorporated association upon trust then, notwithstanding that the deed or other instrument creating the trust or the rules of the association do not contain any power to dispose of the property or forbid any such transaction, any person who is authorized so to do by the committee of the association, may make application to a judge for an order authorizing the disposal of the whole or any portion of the property where the trusts upon which it is held have come either wholly or partially to an end.

(2) Upon an application under this section, the judge may, in any case in which he considers it proper so to do, make an order authorizing the disposal of the property to which the application relates and directing the manner in which the proceeds arising from the disposal of the property shall be disposed of.

(3) Upon the making of an order under this section the association may, in accordance with the terms of the order, dispose of the property freed from all trusts to which it was subject.

### 22A. Calling of general meeting by members

Notwithstanding any provision in its rules, a general meeting of an incorporated association may be called by not less than 10 per cent of the members of the association entitled under the rules of the association to vote at a general meeting.

### 23. Special resolutions

(1) For the purposes of this Act, a resolution is a special resolution if it is passed by a majority of not less than three-quarters of such members of an incorporated association entitled under the rules of the association to vote as may be present in person at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.

(2) At a general meeting to which subsection (1) relates, unless a poll is demanded, a declaration by the chairman that the resolution has been carried is conclusive evidence of the fact.

(3) Except as otherwise provided in this Act, notice of the passing of a special resolution shall be lodged by the public officer of the association, as prescribed, with the Commissioner within a period of one month after the passing of the resolution, and thereupon the resolution shall be registered by him and, until registered, it does not take effect.

(4) A notice under subsection (3) –

(a) shall be signed by the public officer of the association; and

(b) shall be accompanied by such other documents (including a copy of the special resolution) as may be prescribed, and those documents shall be signed or verified as prescribed.

#### 23A. Incorporated association to keep accounts

(1) An incorporated association shall –

(a) keep such accounting records as correctly record and explain the transactions of the association (including any transactions as trustee) and the financial position of the association; and

(b) keep its accounting records in such a manner as will enable –

(i) the preparation from time to time of true and fair accounts of the association; and

(ii) the accounts of the association to be conveniently and properly audited in accordance with this Act.

(2) The accounting records of an incorporated association shall be kept in writing in the English language.

(3) An incorporated association shall retain the accounting records kept under subsection (1) for such period as may be prescribed or, if no such period is prescribed, a period of 7 years after the completion of the transactions to which they relate.

(4) An incorporated association shall keep the accounting records referred to in subsection (1) at such place or places in Tasmania as the committee thinks appropriate.

(5) If default is made in complying with a provision of this section, the incorporated association and every member of the committee who failed to take all reasonable steps to secure compliance by the

incorporated association with the provision are each guilty of an offence and are liable on summary conviction to a fine not exceeding 5 penalty units.

**(6)** In any proceedings against a person for failure to take all reasonable steps to secure compliance by the incorporated association with a provision of this section, it is a defence if that person proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provision was complied with and was in a position to discharge that duty.

## **24. Accounts and audit**

**(1)** Unless an incorporated association is exempted under subsection (1B), the committee of an incorporated association shall, as soon as practicable after the end of its financial year, and at such other times (if any) as the rules of the association provide, cause the financial affairs of the association to be audited by –

**(a)** a person who is a registered company auditor within the meaning of the Corporations Act; or

**(b)** such other person as the Commissioner, having regard to the complexity of the financial affairs of the association, may approve.

**(1A)** The Commissioner may revoke an approval given by him under subsection (1)(b) at any time.

**(1B)** The Commissioner may, by notice in writing given to an incorporated association –

**(a)** exempt the incorporated association, either generally or in relation to a specified year, from complying with subsection (1); and

**(b)** revoke any exemption given under paragraph (a).

**(2)** If the committee of an association fails to comply with subsection (1), each member of the committee is guilty of an offence.

Penalty:

Fine not exceeding 1 penalty unit.

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

**(a)** the public officer, or a member of the committee, of the association;

**(b)** a servant of the association; or

**(c)** a partner, employer, or employee of the public officer, or of a member of the committee, of the association.

**(4)** A firm shall not knowingly consent to be appointed, or knowingly act, as the auditor of an incorporated association or prepare for or on behalf of such an association any financial statement or any report or certificate relating thereto that is required by or under this Act to be prepared by the auditor of such an association if any of the partners is disqualified under subsection (3) from acting as the auditor of the association.

**(5)** A person who or firm which contravenes any of the provisions of subsection (3) or subsection (4)

is guilty of an offence.

Penalty:

Fine not exceeding 10 penalty units.

#### **24A. Special investigation**

An incorporated 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 Part 3 of the ASIC Act subject to the following modifications:

- (a) a reference in Part 3 of the ASIC Act to a body corporate is taken to be a reference to an incorporated association;
- (b) a reference in Part 3 of the ASIC Act to ASIC is taken to be a reference to the Commissioner.

#### **24B. Annual returns**

(1) If an incorporated association is not exempted under section 24(1B), the incorporated association shall, within a period of 6 months after the end of its financial year, lodge with the Commissioner an annual return containing –

- (a) a report on the accounts of the association stating whether the association has, in the opinion of the auditor of that association, kept proper accounting records and other books during the period covered by those accounts;
- (b) such statements as in the opinion of the auditor are adequate to explain its financial transactions for that financial year and its financial position at the end of that financial year;
- (c) a report by the auditor on the statements referred to in paragraph (b); and
- (d) a list, signed by the auditor, of the names and residential addresses of the committee for that financial year.

(1A) If an incorporated association is exempted under section 24(1B), the incorporated association must, within a period of 6 months after the end of each financial year, lodge with the Commissioner an annual return, signed by the public officer, containing –

- (a) a statement of the association's income and expenditure for that financial year; and
- (b) a list of the names and residential addresses of the committee for that financial year.

(2) An annual return which is lodged pursuant to subsection (1) shall be accompanied by the relevant fee prescribed in the regulations.

(3) An annual return which is lodged more than 6 months after the expiration of an association's financial year shall be accompanied by a late lodgment penalty determined as prescribed in the regulations.

(4) Where the Commissioner is of the opinion that special circumstances exist, he may waive payment of the late lodgment penalty under subsection (3).

#### **25. Amalgamation of associations**

(1) Two or more incorporated associations may, by special resolution of both or all of those associations, amalgamate and become one association with or without a dissolution or division of the funds of those associations or any of them.

(2) Where 2 or more incorporated associations pass special resolutions for the amalgamation of those associations, the public officer of each association shall lodge with the Commissioner notice in the prescribed form of the passing of the resolution, and of the name of the association to be created by the amalgamation.

(3) A notice under subsection (2), when lodged with the Commissioner, shall be accompanied by such documents (if any) as may be prescribed, and those documents shall be verified as prescribed.

(4) Upon receipt of a notice under subsection (2), the Commissioner, if satisfied that the association to be created by the amalgamation could be incorporated under the name set out in the notice without contravention of section 9, may issue a certificate of incorporation of that association and if he issues such a certificate shall, by notice in the *Gazette*, give notice of the incorporation of the association.

(5) Upon the issue of a certificate of incorporation pursuant to subsection (4), all the property of the amalgamated associations vests in the association created by the amalgamation, and the provisions of section 13, with the necessary adaptations, apply to and in relation to that property accordingly.

(6) The amalgamation of 2 or more incorporated associations does not prejudice any right of a creditor of, or any person having a claim against, any of the amalgamated associations, and any such right or claim may be enforced against the association created by the amalgamation.

#### **25A. Application to bring company under Act**

(1) A company in respect of which a licence is in force under section 150 and 151 of the Corporations Act may apply in writing to the Commissioner, in a form approved by the Commissioner, for incorporation as an association under this Act where—

(a) the company has passed a special resolution approving the making of the application; and

(b) the objects of the company are objects for which an incorporated association may lawfully be carried on; and

(c) the company has articles of association that comply with this Act, or upon incorporation under this Act will have rules or articles of association that so comply, whether by reason of the adoption of rules or the model rules or the alteration of its articles of association.

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

(3) An application by a company under subsection (1) is to be in a form approved by the Commissioner and —

(a) is to state —

(i) its proposed name upon incorporation, being a name under which an association may be incorporated in accordance with section 9; and

(ii) the place in Tasmania where the principal place of administration of the



incorporated association is proposed to be situated; and

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

(b) is to be accompanied by –

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

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

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

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

(d) is to be accompanied by the prescribed fee.

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

(a) incorporate the company under this Act by granting in respect of it a certificate of incorporation; and

(b) cause a notice of the incorporation of the company under this Act to be published in the *Gazette*.

## **25B. Effect of transfer of incorporation**

(1) Subject to this section, if a company is incorporated as an incorporated association under [section 25A](#), [section 3](#) does not operate to declare the company to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to such provisions of the Corporations legislation as are necessary –

(a) to continue in existence any right, privilege, obligation or liability acquired or incurred under that Act before the incorporation; or

(b) to preserve any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act before the incorporation; or

(c) to enable any investigation, legal proceeding or remedy to be instituted, continued or enforced in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

(2) Upon the incorporation of a company as an incorporated association pursuant to [section 25A](#) –

(a) the directors of the company become the committee for the purposes of this Act; and

(b) the property of the company vests in the incorporated association subject to –

(i) any trust; and

(ii) any covenant, contract or liability –

to which the property was subject immediately before it so vested.

### **25C. Voluntary transfer of incorporation**

(1) An incorporated association may apply to the Commissioner, in a form approved by the Commissioner, to become, and may become, registered or incorporated as a prescribed body corporate.

(2) Before an incorporated association can apply to become registered or incorporated as a prescribed body corporate –

(a) the proposal to become registered or incorporated as a prescribed body corporate must have been approved by a special resolution of the incorporated association; and

(b) the special resolution must have been registered by the Commissioner under section 23.

(3) The Commissioner must approve an application made under subsection (1) if satisfied that subsection (2) has been complied with.

### **25D. Notice to Commissioner**

An incorporated association must notify the Commissioner in writing of its transfer of incorporation within 14 days after it is registered or incorporated as a prescribed body corporate.

Penalty:

Fine not exceeding 10 penalty units.

### **25E. Effect of transfer of incorporation**

(1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to the registration or incorporation of the incorporated association as a prescribed body corporate.

(2) Subject to this section, on a transfer of incorporation by an incorporated association, the incorporated association ceases to be incorporated under this Act.

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

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

(a) affects any right, privilege, obligation or liability acquired or incurred under this Act; or

(b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or

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

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

## **25F. Duty and other charges not payable**

A duty, tax, fee or charge which is otherwise payable under a law relating to the transfer of assets is not payable in respect of the transfer of any asset of an incorporated association from the name of that association to the name of the prescribed body corporate into which the association is transformed under the provisions of this Act.

## **26. Name of incorporated association to appear on documents**

(1) An incorporated association shall cause every notice, advertisement, bill of exchange, cheque, promissory note, endorsement, order, receipt, or other document given, published, drawn, endorsed, or issued by it to contain the name of the association in legible characters.

(2) If there is a contravention of the provisions of subsection (1) in relation to an incorporated association, each member of the committee of the association shall be deemed to be guilty of an offence.

Penalty:

Fine not exceeding 2 penalty units.

## **26A. Restriction on offering securities for subscription or purchase**

An incorporated 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 sections 82 and 736 of the Corporations Act subject to the necessary adaptations and modifications.

## **27. Liability of members of incorporated associations**

A member of an incorporated association is not liable, except as provided in the rules of the association, to contribute towards the payment of the debts and liabilities of the association or the costs, charges, and expenses of a winding up of the association.

## **28. Service of notices**

(1) A notice, demand, summons, writ, or other document or process may be served on an incorporated association by serving it personally on the public officer of the association or by sending it by post to him at his usual or last-known place of abode or business.

(2) An incorporated association may give a notice or make a demand by writing under the hand of the public officer of the association.

## **29. Inspection of documents**

A person may –

(a) inspect the documents kept by the Commissioner relating to incorporated associations on payment of such fee as may be prescribed; and

(b) require a certificate of the incorporation of an association or any other certificate issued under this Act or a copy or extract of any other document or any part of any other document kept by the Commissioner, on payment, for the certificate, certified copy, or extract, of such fee as may be prescribed.

### 30. Evidentiary provisions

(1) The Commissioner may, by writing under his hand, certify –

(a) that, on a date specified in the certificate, an association so specified was, or was not, an incorporated association; or

(b) that, on a date specified in the certificate, a person so specified was, or was not, the public officer of an incorporated association so specified –

and such a certificate is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(2) In any legal proceedings, a copy of any rules or trusts of an incorporated association, certified by the Commissioner to be a true copy thereof, is evidence that the rules or trusts were rules or trusts, as the case may be, of the association therein mentioned, and were in force on the date mentioned in the Commissioner's certificate.

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

### 31. Extension of time

(1) Where, by or under this Act, an act or thing is required to be performed or done within a specified time, the Commissioner may, in special circumstances, if he thinks fit, extend the time for the performance or doing of that act or thing.

(2) . . . . .

### 31A. Administration of incorporated associations

(1) The administration of an incorporated 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 Part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) of the Corporations Act, subject to the following modifications:

(a) the modifications referred to in subsection (2);

(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 apply for the purposes of subsection (1):

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

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

(c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association;

(d) a reference to the principal place of business of a company is to be read as a reference to the address of the public officer of an incorporated association last notified under this Act to

the Commissioner;

(e) a reference to a company carrying on business or having a place of business is to be read as a reference to an incorporated association pursuing its objects;

(f) a reference to ASIC is to be read as a reference to the Commissioner;

(g) a reference to a document in the prescribed form is to be read as a reference to a document in the corresponding form prescribed under the Corporations Act with all necessary modifications;

(h) a reference to the Court is to be read as a reference to the Supreme Court;

(i) a reference to the lodgment of a document is to be read as a reference to lodgment of that document with the Commissioner;

(j) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;

(k) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;

(l) a reference to an officer of a company is to be read as a reference to a member of the committee of an incorporated association and, where applicable, a reference to a past officer is a reference to a past member of the committee of an incorporated association;

(m) a reference in section 446A to a contributory of a company is to be read as a reference to a member of an incorporated association.

### **32. Winding up of incorporated associations**

(1) The winding up of an incorporated 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 Part 5.5 (Voluntary winding up), Part 5.6 (Winding up generally) and Part 5.7 (Winding up bodies other than companies) of the Corporations Act, subject to the following modifications:

(a) the modifications referred to in subsection (2);

(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 apply for the purposes of subsection (1):

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

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

(c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association;

(d) a reference to the principal place of business of a company is to be read as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commissioner;

- (e) a reference to a company carrying on business or having a place of business is to be read as a reference to an incorporated association pursuing its objects;
- (f) a reference to ASIC is to be read as a reference to the Commissioner;
- (g) a reference to a document in the prescribed form is to be read as a reference to a document in the corresponding form prescribed under the Corporations Act with all necessary modifications;
- (h) a reference to the Court is to be read as a reference to the Supreme Court;
- (i) a reference to the lodgment of a document is to be read as a reference to lodgment of that document with the Commissioner;
- (j) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;
- (k) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;
- (l) a reference to an officer of a company is to be read as a reference to a member of the committee of an incorporated association and, where applicable, a reference to a past officer is a reference to a past member of the committee of an incorporated association;
- (m) a reference in sections 495, 542(1), 547 and 548 to a contributory of a company is to be read as a reference to a member of an incorporated association.

### 33. Distribution of surplus assets

(1) Where, upon the winding up of an incorporated association, a resolution relating to the distribution of the surplus assets of the association has been passed by a majority of at least two-thirds of the members of the association, the Court shall, subject to subsection (2), make an order for the distribution of those assets in accordance with the resolution.

(2) Where –

- (a) the Court considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in subsection (1) would not be just; or
- (b) such a resolution has not been passed –

the Court shall make such order for the distribution of those assets as, having regard to the objects and purposes of the association being wound up, it considers just.

(3) In this section –

*Court* means the Supreme Court;

*surplus assets* means the assets of an incorporated association remaining on the winding up of the association after payment of the debts and liabilities of the association and the costs, charges, and expenses of the winding up.

### 34. Cancellation of incorporation of association

(1) Where the Commissioner has reasonable cause to believe that an incorporated association has ceased to exist or that the transactions of an incorporated association are such that it is not, or has ceased

to be, an association within the meaning of this Act, the Commissioner may send by post by means of the certified mail service to the person appearing to be the public officer of the association by any notice lodged in the office of the Commissioner a notice requiring him, within the period of one month from the date thereof, to satisfy the Commissioner that the association has not ceased to exist or, as the case may be, that the transactions of the association are not such that the association is not, or has ceased to be, an association within the meaning of this Act, and stating that, unless cause is shown to the contrary within that period, a notice will be published in the *Gazette* with a view to the cancellation of the incorporation of the association.

(2) If cause is not shown as provided in subsection (1) within the time mentioned in that subsection, the Commissioner may publish in the *Gazette* and send by post by means of the certified mail service to the public officer of the association a notice that, at the expiration of 3 months from the date of the publication of the notice, the incorporation of the association will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the time mentioned in the notice given by the Commissioner pursuant to subsection (2), he may, unless cause to the contrary is previously shown, cancel the incorporation of the association and publish notice of the cancellation thereof in the *Gazette*.

#### **34A. Cancellation of incorporation at request of association**

(1) An incorporated association may, by special resolution, request the Commissioner to cancel the incorporation of that association.

(2) On receipt of a resolution under subsection (1), the Commissioner may approve the cancellation of the incorporation of that association and, within 14 days of approving that cancellation, publish notice of the cancellation in the *Gazette*.

(3) On the publication of the notice of cancellation in the *Gazette* under subsection (2), the incorporation of that association is cancelled.

#### **35. Review of cancellation of incorporation**

The public officer of an association or a creditor or member of an association the incorporation of which is cancelled pursuant to section 34 may apply to the Magistrates Court (Administrative Appeals Division) for a review of the cancellation.

#### **36. Liability of association on cancellation of incorporation**

(1) Notwithstanding the cancellation of the incorporation of an association pursuant to section 34 or section 34A, the association is liable to be sued and proceeded against as a corporation, and all dealings and transactions between the association and any person are valid against the association and all persons claiming under the association.

(2) . . . . .

#### **36A. Power of Commissioner to reduce or waive fees payable under this Act**

The Commissioner may, having regard to the ability of an association to pay a fee under this Act, reduce or waive the fee.

#### **37. Regulations**

(1) The Governor may make regulations for the purposes of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the regulations may –

**(a)** prescribe the manner in which, and the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, shall or may be signed, prepared, or completed, and generally regulate the signing, preparation, and completion of those forms, or any of them;

**(ab)** prescribe penalties for the late lodgment of annual returns under [section 24B](#), which may apply differently according to such factors, whether as to time or circumstance, as may be specified in the regulations;

**(ac)** prescribe fees payable for the perusal of documents by the Commissioner, which may vary according to the length of a document or its character;

**(ad)** prescribe the fees payable for the lodgment of documents with the Commissioner under this Act, which may differ according to the document concerned;

**(b)** prescribe the times for the lodging of documents with, or the transmission of documents to, the Commissioner; and

**(c)** impose fines, not exceeding 2 penalty units, for offences against the regulations.

**(3)** The regulations may require that, in such cases as may be prescribed, documents required by or under this Act to be lodged with the Commissioner shall be verified by statutory declaration made by such persons as may be prescribed.

**38.**

## SCHEDULE 1