

Authorised Version
Associations Incorporation Reform Act 2012
No. 20 of 2012

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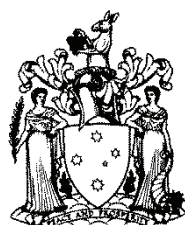
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Authorised Version



Victoria

Associations Incorporation Reform Act 2012[†]

No. 20 of 2012

[Assented to 1 May 2012]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to establish a scheme for the incorporation and registration of voluntary associations and for the registration of other registrable bodies as incorporated associations; and

- (b) to make provision for the corporate governance, financial accountability and other matters relating to the rules and membership of associations registered under that scheme.

2 Commencement

- (1) Sections 224 and 225 come into operation on the day after the day on which this Act receives Royal Assent.
- (2) Subject to subsection (3), this Act (except sections 224 and 225) comes into operation on a day or days to be proclaimed.
- (3) If a provision of this Act does not come into operation before 1 July 2013, it comes into operation on that day.

3 Definitions

In this Act—

approved form means in the form approved by the Registrar;

association means an association, society, club, institution or body formed or carried on for any lawful purpose and that has not fewer than 5 members;

Auditing Standards on Review Engagements means the standards issued by the Auditing and Assurance Standards Board for the purposes of a review of a financial report or complete set of financial statements as in force for the time being and including any modifications prescribed by the regulations;

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board for the purposes of the preparation of financial reports 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 for the purposes of the preparation of financial reports as in force for the time being and including any modifications prescribed by the regulations;

committee, of an association, means the committee of, or other body having management of, the association;

Council has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

CPA Australia means CPA Australia
ACN 008 392 452;

financial records include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry;
- (b) documents and records that record the entries referred to in paragraph (a);
- (c) working papers and other documents that are necessary to explain the methods and calculations by which the financial statements are prepared;

financial year, of an incorporated association, means—

- (a) a period of 12 months, or any 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 any 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;

general meeting, of an incorporated association, means a meeting of the members of the association convened in accordance with its rules and includes a special general meeting and an annual general meeting;

incorporated association means an association incorporated under this Act;

Note

Under sections 8(1), 14(1) and 20(1) an association becomes incorporated under this Act on being registered as an incorporated association.

independent person, in relation to an incorporated association, means a person who—

- (a) is not a member of the committee of the association; and
- (b) is not an employer or employee of a member of the committee; and
- (c) is not a member of the same partnership as a member of the committee; and
- (d) is not an employee of the association;

insolvent, in relation to an incorporated association, means that the incorporated association is unable to pay all its debts as when they become due and payable;

Note

Under section 152, an incorporated association that is insolvent is declared to be an applied Corporations legislation matter in relation to the provisions of Part 5.7B (Recovering property or compensation for

the benefit of creditors of insolvent company) of the Corporations Act. Under section 588G(3) of Part 5.7B, the contravention of the duty to avoid insolvent trading is an offence. Also, section 588G(2) is a civil penalty provision for the purposes of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. As applied, the duty to avoid insolvent trading falls on the committee of an incorporated association.

inspector means an inspector appointed under the **Fair Trading Act 1999**;

land includes an estate or interest in land;

model rules has the meaning given in section 49(1);

personal information has the same meaning as it has in section 3 of the **Information Privacy Act 2000**;

property includes real and personal property and any estate or interest in real or personal property;

public officer, of an incorporated association, means a person who, at a relevant time before the commencement of this Act, was the public officer of the association under Part V of the **Associations Incorporation Act 1981**;

purposes, of an incorporated association, means the purposes provided in the rules of the association;

registrable body has the meaning given in section 10;

Registrar means the body corporate referred to in section 187;

relevant documents, of an incorporated association, means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the association and includes the following—

- (a) its membership records;
- (b) its financial statements;
- (c) its financial records;
- (d) records and documents relating to transactions, dealings, business or property of the association;

secretary, of an incorporated association, means the person who is for the time being the secretary of the association under Division 1 of Part 6;

special resolution means a resolution of an incorporated association passed in accordance with section 64;

tier one association has the meaning given in section 90(2);

tier three association has the meaning given in section 90(4);

tier two association has the meaning given in section 90(3).

4 Securing pecuniary profit for members

- (1) For the purposes of this Act, an association is not taken to secure pecuniary profit for its members or to be formed or carried on for the purposes of securing pecuniary profit for its members merely because one or more of the following apply to the association—

-
- (a) the association itself makes a pecuniary profit, unless that profit, or any part of it, is divided among or received by its members or some of them;
 - (b) the members of the association are entitled under this Act to divide its assets among themselves on its dissolution;
 - (c) a member of the association receives—
 - (i) a payment of remuneration in good faith; or
 - (ii) a benefit to which he or she would be entitled if he or she were not a member of the association;
 - (d) the members of the association—
 - (i) compete for trophies or prizes in contests directly related to the purposes of the association; or
 - (ii) receive benefits through the enjoyment of facilities or services provided by the association for social, recreational, educational or other similar purposes;
 - (e) the association makes payments to a member that is an incorporated association having the same or similar purposes.
- (2) For the purposes of section 13(2)(a), a reference in subsection (1) to an association is taken to include a reference to a registrable body.

Note

Under section 33, an incorporated association may not be formed or carried on for the purpose of securing pecuniary profit for its members.

PART 2—FORMATION OF INCORPORATED ASSOCIATION

Division 1—Incorporation of association

5 Authority to apply for incorporation

- (1) A majority of members of an association that is unincorporated and that is not a registrable body within the meaning of section 10 may—
 - (a) authorise a person who is at least 18 years of age and is resident in Australia to apply to the Registrar for the incorporation of the association; and
 - (b) approve the rules of the proposed incorporated association.
- (2) For the purposes of subsection (1), a majority of members of an association is taken to have given the authorisation and approval under that subsection if—
 - (a) a majority of members of the association voting at a meeting of the association vote in favour of a motion to give that authorisation and approval; and
 - (b) at least 21 days' notice of the meeting and the intention to put the motion to a vote at the meeting has been given to all members of the association.
- (3) For the purposes of subsection (2)(a), a member votes at a meeting if—
 - (a) the member votes in person at the meeting;
or

- (b) the member, if allowed, votes—
 - (i) by use of technology that allows the member to clearly and simultaneously communicate with other members present at the meeting; or
 - (ii) by proxy.

6 Application for incorporation

- (1) A person who is authorised under section 5(1)(a) to do so may apply to the Registrar for the incorporation of an association.
- (2) A person who is authorised under section 5(1)(a) to apply to the Registrar for the incorporation of an association may do anything necessary to secure the incorporation of the association under this Act despite anything to the contrary contained in the rules of the association.
- (3) The application must be in the approved form and include—
 - (a) the name of the proposed incorporated association; and
 - (b) the name, address and contact telephone number and email address (if available) of the person nominated to be the first secretary of the proposed incorporated association; and
 - (c) the prescribed particulars.
- (4) The application must be accompanied by—
 - (a) in relation to the rules of the proposed incorporated association—
 - (i) a copy of those rules; or
 - (ii) a statement that the association has approved the adoption of the model rules; and

- (b) the particulars of any trusts relating to the association and a copy of any deed or other instrument creating or embodying those trusts; and
- (c) the prescribed fee.

Note

If the rules approved by an association vary in any manner from the model rules (other than in particulars relating to the name, purpose or financial year of the proposed incorporated association) the rules are taken not to be model rules. Consequently, the application must comply with subsection (3)(a)(i) and, on incorporation of the association under this Act, sections 49(3) and 49(4) do not apply to those rules.

7 Registration of proposed incorporated association

- (1) Subject to subsections (2) and (3), if an application for the incorporation of an association is made in accordance with section 6, the Registrar must register the association as an incorporated association.
- (2) The Registrar must refuse to register an association if—
 - (a) the association is carried on for the purpose of securing pecuniary profit for its members; or

Note

For circumstances under which, for the purposes of this Act, an association is taken not to be securing pecuniary profit for its members, see section 4.

- (b) the registration of the name of the proposed incorporated association is prohibited under section 22; or
- (c) the rules of the proposed incorporated association do not comply with the requirements under section 47.

-
- (3) The Registrar may refuse to register an association if the Registrar is satisfied that the incorporation of the association would be inappropriate—
- (a) by reason of the Registrar's assessment of—
 - (i) the likely scale or nature of the activities of the association; or
 - (ii) the likely value or nature of the property of the association; or
 - (iii) the extent or nature of the dealings which the association has, or is likely to have, with the public; or
 - (b) for any other prescribed reason.
- (4) If the Registrar refuses to register an association, the Registrar must—
- (a) give written notification to the applicant of the decision; and
 - (b) include in the notification the reasons for the decision.
- (5) If the applicant is notified by the Registrar under subsection (4) of the Registrar's refusal to register the association, the applicant may within 28 days after the notification apply to VCAT for a review of the decision.

8 Incorporation and certificate of registration

- (1) An association becomes an incorporated association on being registered as an incorporated association under this Act.
- (2) On the registration of the association, the Registrar must issue a certificate of registration and assign to the association a unique registration number.

- (3) The certificate of registration must be in the approved form and contain the prescribed particulars.

9 Vesting of property

- (1) Subject to this section, on the registration of an association as an incorporated association, all property held by a person on trust or otherwise for or on behalf of the association or for any of its purposes is vested in the incorporated association.
- (2) If property vests in an incorporated association under this section—
- (a) the association must not, except as provided by this Act, deal with the property contrary to the provisions of any trust affecting the property immediately before the incorporation of the association; and
 - (b) after the property is delivered or transferred to the association, the persons who held the property on trust immediately before it was vested are not—
 - (i) liable or accountable for the property; or
 - (ii) bound to see to the application, distribution or appropriation of the property; and
 - (c) the property is vested subject to any restriction, limitation, mortgage, charge, security interest, encumbrance, lien, lease, covenant, contract or liability to which the property was subject immediately before it was vested.
- (3) The receipt of the secretary of an incorporated association is sufficient discharge to a trustee delivering or transferring property to the association under this section as to that property.

- (4) If land vests in an incorporated association under this section, the secretary of the association may make a written declaration that the land has been held in trust or otherwise for or on behalf of the association or for any of its purposes.

Note

If land is vested in an incorporated association under this section, an application must be made in accordance with the **Transfer of Land Act 1958**—

- (a) for the making of any recordings in the register maintained under that Act that are necessary or expedient in consequence of the vesting of the land in the association; or
- (b) to bring the land under the operation of that Act.

Division 2—Registration of existing bodies

10 Meaning of registrable body

- (1) For the purposes of this Division, a **registrable body** includes—
- (a) a company limited by guarantee, within the meaning of the Corporations Act, that is taken to be registered in Victoria;
 - (b) a co-operative, society, association, institution or body formed, incorporated or registered (whether before or after the commencement of this Act) under the **Co-operatives Act 1996** or any Act relating to the incorporation, formation or registration of co-operatives, societies, associations, institutions or bodies.
- (2) However, for the purposes of this Division, a **registrable body** does not include a trade union registered under the **Trade Unions Act 1958**.

11 Eligibility to apply to be registered under this Act

- (1) A registrable body is eligible to apply for incorporation under this Act if—
- (a) the body has—
 - (i) in the case of a company—passed a special resolution, within the meaning of the Corporations Act, approving the application; or
 - (ii) in any other case—resolved in accordance with its rules that the application be made; and
 - (b) the purposes of the body (if any) are purposes for which an incorporated association may lawfully be carried on; and
- Note**
- Under section 33, an incorporated association may not be formed or carried on for the purpose of securing pecuniary profit for its members.
- (c) the body has rules that—
 - (i) comply with; or
 - (ii) will, on the incorporation of the body under this Act, comply with—
the requirements under section 47 applying to the rules of an incorporated association; and
 - (d) the body has nominated a person who is at least 18 years of age and is resident in Australia to be the first secretary of the proposed incorporated association.
- (2) Despite anything to the contrary in any other Act (other than the Charter of Human Rights and Responsibilities), a registrable body that intends to apply for incorporation under this Act may—
- (a) alter its rules; or

-
- (b) adopt new rules or the model rules—
to have effect from the date on which the body is registered as an incorporated association under this Act as if it were an incorporated association and the rules were the rules of an incorporated association.
- (3) The person nominated to be the first secretary of the proposed incorporated association may perform any act or do anything necessary to secure the incorporation of the body under this Act despite anything to the contrary contained in the rules of the body.
- (4) In this section—
the rules, of a registrable body, include, where appropriate, the memorandum and articles of association of the body or its constitution.

12 Application for incorporation under this Act

- (1) A registrable body that is eligible under section 11(1) to do so may apply to the Registrar for the incorporation of the body under this Act.
- (2) The application must be in the approved form and include—
- (a) the name of the proposed incorporated association; and
 - (b) the name, address and contact telephone number and email address (if available) of the person nominated to be the first secretary of the proposed incorporated association; and
 - (c) the prescribed particulars.
- (3) The application must be accompanied by—
- (a) a certificate, or other document, evidencing the incorporation, formation or registration of the registrable body; and

- (b) in relation to the rules proposed to be in force on the incorporation of the body under this Act—
 - (i) a copy of those rules; or
 - (ii) a statement that the body has approved the adoption of the model rules; and
- (c) the particulars of any trusts relating to the body and a copy of any deed or other instrument creating or embodying those trusts; and
- (d) the prescribed fee.

Note

If the rules approved by a registrable body vary in any manner from the model rules (other than in particulars relating to the name, purpose or financial year of the proposed incorporated association) the rules are taken not to be model rules. Consequently, the application must comply with subsection (3)(a)(i) and, on incorporation of the body under this Act, sections 49(3) and 49(4) do not apply to those rules.

13 Registration of registrable body

- (1) Subject to subsections (2) and (3), if an application for the incorporation of a registrable body under this Act is made in accordance with section 12, the Registrar must register the body as an incorporated association.
- (2) The Registrar must refuse to register a registrable body if—
 - (a) the body is carried on for the purpose of securing pecuniary profit for its members; or

Note

For circumstances under which, for the purposes of this Act, a registrable body is taken not to be securing pecuniary profit for its members, see section 4.

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- (b) the registration of the name of the proposed incorporated association is prohibited under section 22; or
 - (c) the rules of the proposed incorporated association do not comply with the requirements under section 47.
- (3) The Registrar may refuse to register a registrable body if the Registrar is satisfied that the registration of the body under this Act would be inappropriate—
- (a) by reason of the Registrar's assessment of—
 - (i) the likely scale or nature of the activities of the proposed association; or
 - (ii) the likely value or nature of the property of the proposed association; or
 - (iii) the extent or nature of the dealings which the proposed association has, or is likely to have, with the public; or
 - (b) for any other prescribed reason.
- (4) If the Registrar refuses to register a registrable body, the Registrar must—
- (a) give written notification to the applicant of the decision; and
 - (b) include in the notification the reasons for the decision.
- (5) If the applicant is notified by the Registrar under subsection (4) of the Registrar's refusal to register the body, the applicant may within 28 days after the notification apply to VCAT for a review of the decision.

14 Incorporation and certificate of registration

- (1) A registrable body becomes an incorporated association on being registered as an incorporated association under this Act.
- (2) On the registration of the association, the Registrar must issue a certificate of registration.
- (3) The certificate of registration must be in the approved form and contain the prescribed particulars.

15 Effect of incorporation of registrable body

- (1) The registration of a registrable body as an incorporated association under this Act does not affect the identity of the body and that body is taken to be the same body before and after the registration.
- (2) Any right or claim by or against a registrable body existing immediately before its incorporation under this Act may be continued by or against the incorporated association in its former name or in the name of the incorporated association.
- (3) On the incorporation of a registrable body under this Act—
 - (a) the registrable body is dissolved and no provision of any other Act relating to the incorporation, formation or registration of the body applies to the incorporated association; and
 - (b) the person responsible for the registration of the body under another Act may cancel that registration.
- (4) On the incorporation of a registrable body under this Act, the property of the body vests in the incorporated association subject to—
 - (a) any trust; and

- (b) any restriction, limitation, mortgage, charge, security interest, encumbrance, lien, lease, covenant, contract or liability—

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

- (5) If, immediately before the incorporation of a registrable body under this Act, the registrable body was not a body corporate, section 9 applies on the incorporation of the registrable body as if a reference in that section to an association were a reference to the registrable body.

Division 3—Amalgamation of incorporated associations

16 Definitions

In this Division—

amalgamated association means an incorporated association formed on the registration under section 19(1) of two or more incorporated associations as a single incorporated association.

17 Approval to apply for amalgamation

- (1) Two or more incorporated associations may by special resolution of each association approve—
- (a) the incorporation of the associations under this Act as an amalgamated association; and
 - (b) the name of the proposed amalgamated association; and
 - (c) the rules of the proposed amalgamated association; and
 - (d) the persons who are to be the members of the first committee of the proposed amalgamated association.

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- (2) If two or more incorporated associations approve the incorporation of the associations as an amalgamated association, a person must be nominated as the first secretary of the proposed amalgamated association.
 - (3) The person nominated as the first secretary must be at least 18 years of age and resident in Australia.

18 Application for amalgamation

- (1) The secretaries of each incorporated association that has given approval under section 17(1) to be amalgamated may apply to the Registrar for the incorporation of those associations under this Act as an amalgamated association.
- (2) The application must be in the approved form and include—
 - (a) the name of the proposed amalgamated association; and
 - (b) the name, address and contact telephone number and email address (if available) of the person nominated to be the first secretary of the proposed amalgamated association; and
 - (c) the prescribed particulars.
- (3) The application must be accompanied by—
 - (a) a notice in the approved form containing the prescribed particulars of the passing of the special resolutions referred to in section 17(1); and
 - (b) in relation to the rules proposed to be in force on the incorporation of the proposed amalgamated association—

- (i) a copy of those rules; or
- (ii) a statement that each association has approved the adoption of the model rules; and
- (c) the particulars of any trusts relating to the incorporated associations applying for amalgamation and a copy of any deed or other instrument creating or embodying those trusts; and
- (d) the prescribed fee.

Note

If the rules proposed to be in force vary in any manner from the model rules (other than in particulars relating to the name, purpose or financial year of the proposed amalgamated association) the rules are taken not to be model rules. Consequently, the application must comply with subsection (3)(a)(i) and, on incorporation of the amalgamated association under this Act, sections 49(3) and 49(4) do not apply to those rules.

19 Amalgamation of incorporated associations

- (1) Subject to subsection (2), if an application for the amalgamation of two or more incorporated associations is made in accordance with section 18, the Registrar must register the amalgamated association as a single incorporated association.
- (2) The Registrar must refuse to register the proposed amalgamated association if—
 - (a) the proposed amalgamated association is to be carried on for the purpose of securing pecuniary profit for its members; or

Note

For circumstances under which, for the purposes of this Act, an association is taken not to be securing pecuniary profit for its members, see section 4.

- (b) the registration of the name of the proposed amalgamated association is prohibited under section 22; or
- (c) the rules of the proposed amalgamated association do not comply with the requirements under section 47.

20 Amalgamation and certificate of registration

- (1) Two or more incorporated associations become a single incorporated association on the registration of the association formed by their amalgamation as an incorporated association under this Act.
- (2) On the registration of the amalgamated association, the Registrar must—
 - (a) issue a certificate of registration for the association formed by the amalgamation; and
 - (b) cancel the incorporation of each of the associations so amalgamated.
- (3) The certificate of registration must be in the approved form and contain the prescribed particulars.

21 Effect of amalgamation

- (1) On the registration of an amalgamated association under section 19(1)—
 - (a) the bodies corporate previously constituted by the constituent associations are taken to be subsumed in the body corporate constituted by the amalgamated association;
 - (b) the property of each constituent association vests in the amalgamated association and, by force of this provision, without the necessity for any conveyance, transfer or assignment;

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- (c) the amalgamated association is, by force of this provision, substituted as a party to any arrangement or contract (including a contract of employment)—
- (i) entered into by, or on behalf of, any of the constituent associations as a party; and
 - (ii) in force immediately before the registration.
- (2) Any property vested in an amalgamated association by reason of subsection (1)(b) vests in the incorporated association subject to—
- (a) any trust; and
 - (b) any restriction, limitation, mortgage, charge, security interest, encumbrance, lien, lease, covenant, contract or liability—
- to which the property was subject immediately before it was vested by reason of subsection (1)(b).
- (3) On the registration of an amalgamated association under section 19(1), all debts and liabilities, whether certain or contingent, of a constituent association existing immediately before the registration become the debts and liabilities of the amalgamated association.
- (4) A reference in a will to a constituent association must, unless the will otherwise provides, be construed as a reference to the amalgamated association.

(5) In this section—

constituent association, in relation to an amalgamated association, means an incorporated association that is subsumed by the amalgamated association on the registration of the latter under section 19(1).

PART 3—NAME AND REGISTERED ADDRESS

22 Name of incorporated association

- (1) The name of an incorporated association must have the word "Incorporated" as the last word of its name, whether or not in brackets.
- (2) The description of an incorporated association is not taken to be inadequate or incorrect by reason only of the use of the abbreviation "Inc." or "Inc" in place of the word "Incorporated".
- (3) Except with the consent of the Minister, the Registrar must not register as the name of an incorporated association a name that in the opinion of the Registrar—
 - (a) is undesirable; or
 - (b) is likely to be confused with or mistaken for—
 - (i) a name under which another incorporated association is registered under this Act; or
 - (ii) a business name registered to another body under the Business Names Registration Act 2011 of the Commonwealth; or
 - (iii) the firm-name of another body that is registered as a limited partnership or an incorporated limited partnership under the **Partnership Act 1958**; or
 - (iv) the corporate name of another body that is registered as a co-operative under the **Co-operatives Act 1996**; or

- (v) a name that is reserved or registered for another body under the Corporations Act or the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.

23 Name must appear on business documents etc.

- (1) An incorporated association must ensure that its name appears in legible characters—
 - (a) on its common seal (if any); and
 - (b) in all its notices, advertisements and other official publications; and
 - (c) in all its business documents.

Penalty: 5 penalty units.

- (2) An incorporated association must ensure that the registration number specified in its certificate of registration appears in legible characters—
 - (a) in all its notices, advertisements and other official publications; and
 - (b) in all its business documents.

Penalty: 5 penalty units

- (3) In this section—

business document, of an incorporated association, means any of the following documents issued, signed or endorsed by or on behalf of the association—

- (a) a business letter, statement of account, invoice or order for goods or services;
- (b) a bill of exchange, promissory note, cheque or other negotiable instrument;
- (c) a receipt or letter of credit;
- (d) a document of a class prescribed as a class of business documents.

24 Application to change name of incorporated association

- (1) If an incorporated association has passed a special resolution for the change of its name, the secretary of the association may apply to the Registrar to change the name of the association.
- (2) The application must be made within 28 days after the date of the meeting at which the special resolution is passed.
- (3) The application must—
 - (a) be in the approved form; and
 - (b) include the prescribed particulars; and
 - (c) be accompanied by—
 - (i) a notice in the approved form containing the prescribed particulars of the passing of the special resolution referred to in subsection (1); and
 - (ii) the prescribed fee.

25 Registration of new name

- (1) Subject to subsection (2), if an application for the change of the name of an incorporated association is made in accordance with section 24, the Registrar must amend the registration of the association accordingly.
- (2) The Registrar must refuse to register the new name if the registration of that name is prohibited under section 22.
- (3) The change of name takes effect on the amendment of the registration of the incorporated association.
- (4) On the amendment of the registration of the incorporated association, the Registrar must issue to the association a new certificate of registration.

26 Change of name does not create new legal entity etc.

- (1) A change of name of an incorporated association made in accordance with this Part does not—
 - (a) create a new legal entity; or
 - (b) prejudice or affect the identity of the body corporate constituted by the association or its continuity as a body corporate; or
 - (c) affect the property, or the rights or obligations, of the association; or
 - (d) render defective any legal proceedings by or against the association.
- (2) Any legal proceedings that may have been continued or commenced by or against an incorporated association by its former name may be continued or commenced by or against it by its new name.

27 Direction to change name

- (1) This section applies if the name of an incorporated association is a name under which it ought not, by reason of section 22, be registered.
- (2) The Registrar may give a written notice to the association—
 - (a) stating that it is his or her intention to cancel the registration of that name on the expiry of the period specified in the notice (being a period of not less than 28 days after the date of the notice); and
 - (b) setting out the reasons for the proposed cancellation; and
 - (c) requesting that the association apply under section 24 to change the name of the association.

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- (3) If, on the expiry of the period specified in the notice, the association has not applied to the Registrar to change its name, the Registrar may cancel the registration of the name of the association recorded on the register.
- (4) If the Registrar cancels the registration of the name of an incorporated association under subsection (3), the registration number of the association is taken to be its name until a new name of the association is registered under section 25.

28 Registered address of incorporated association

- (1) An incorporated association must have a registered address.
- Penalty: 5 penalty units.
- (2) For the purposes of subsection (1), the registered address of an incorporated association may be the address of its secretary.
- (3) If an incorporated association changes its registered address, it must notify the Registrar in the approved form no later than 14 days after the change.

Penalty: 5 penalty units.

**PART 4—LEGAL CAPACITY AND POWERS OF
INCORPORATED ASSOCIATION**

Division 1—General

29 Incorporated association is a body corporate

- (1) On and from the registration of an incorporated association under this Act, the persons who from time to time are members of the incorporated association are an incorporated association by the name entered in the register.

Note

Section 51 states who the members of an incorporated association are on its registration under this Act.

- (2) As a body corporate, an incorporated association—
- (a) has perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) subject to this Act, may acquire or hold (whether on trust or absolutely) and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.

30 General powers of incorporated association

Subject to its rules, an incorporated association may—

- (a) invest and deal with money of the association not immediately required in any manner as it thinks fit; and
- (b) raise and borrow money on any terms and in any manner as it thinks fit; and

- (c) secure the repayment of money raised or borrowed by the association or the payment of a debt or liability of the association by giving mortgages, charges or securities on or over all or any of the property of the association; and
- (d) do anything that is incidental or conducive to the attainment of the purposes and the exercise of the powers of the association.

31 Trust property

- (1) Subject to subsection (2) and its rules, an incorporated association may—
 - (a) act as trustee;
 - (b) accept and hold on trust real and personal property.
- (2) An incorporated association does not have power as trustee of a trust to do an act or thing if by doing that act or thing otherwise than as a trustee, the association would contravene the provisions of this Act or its rules.
- (3) The secretary of an incorporated association must, within 14 days after the association becomes a trustee of a trust, lodge with the Registrar—
 - (a) particulars of the trust; and
 - (b) a copy of any deed or other instrument creating or embodying the trust.

Penalty: 5 penalty units.

- (4) Subsection (4) does not apply in relation to a trust that is created under, or is embodied in, the rules of an incorporated association.

32 Disposal of trust property

- (1) This section applies if—
 - (a) property is held by an incorporated association on trust; and
 - (b) the trust has come wholly or partly to an end; and
 - (c) there is no power to dispose of the property contained in, or the disposal of the property is prohibited by—
 - (i) the deed or other instrument creating or embodying the trust; or
 - (ii) the rules of the association.
- (2) The secretary of the association may, with the authority of the committee, apply to the Minister for authority to dispose of the whole or part of the property.
- (3) If an application is made under subsection (2), the Minister may, in writing—
 - (a) authorise the disposal of the property, or a specified part of the property; and
 - (b) direct the manner in which the proceeds from the disposal of the property must be dealt with.
- (4) On the authority of the Minister under subsection (3), the association may—
 - (a) dispose of the property, or part of the property, specified in the authorisation, free from any trusts; and
 - (b) deal with the proceeds in the manner directed by the Minister.

33 Incorporated association not to secure pecuniary profit for members

- (1) An incorporated association must not secure pecuniary profit for any of its members.

Penalty: 60 penalty units.

- (2) An incorporated association, as trustee, must not secure pecuniary profit for any of its members.

Penalty: 60 penalty units.

- (3) A member of an incorporated association must not—

(a) aid, abet, counsel or procure; or

(b) by act or omission, be in any way directly or indirectly knowingly concerned in, or party to—

the commission of an offence by the association against subsection (1) or (2).

Penalty: 30 penalty units.

- (4) Any members of an incorporated association who commit an offence against subsection (3) are jointly and severally liable to any creditor of the association for all debts and liabilities incurred by the association in, or in consequence of, securing pecuniary profit for its members.

Note

For circumstances under which, for the purposes of this Act, an incorporated association is taken not to have secured pecuniary profit for its members, see section 4.

Division 2—Prohibited transactions, unauthorised acts etc.

34 Restriction of exercise of powers

An incorporated association must not, otherwise than as provided by this Act—

- (a) exercise any power that its rules prohibit the association from exercising; or
- (b) exercise any power contrary to any restriction on the exercise of that power contained in its rules; or
- (c) do any act that is outside the scope of the purposes of the association.

35 Prohibited transactions

- (1) No act of an incorporated association (including the entering into of an agreement by the association) and no conveyance or transfer of property to or by an incorporated association is invalid by reason only of the fact that—
 - (a) the association was without the capacity or power to do the act or execute or take the conveyance or transfer; or
 - (b) doing the act, or executing or taking the conveyance or transfer, was prohibited under section 34.
- (2) No act performed by a person for or on behalf of an incorporated association (including the entering into of an agreement on behalf of the association) is invalid by reason only of the fact that the act was prohibited under section 34.
- (3) Any lack of capacity or power or any prohibition referred to in subsection (1) or (2) may be asserted or relied on only in—
 - (a) proceedings against an incorporated association by a member of the association or the Registrar to restrain the association

- from doing any act or executing or taking a conveyance or transfer of property; or
- (b) proceedings by an incorporated association or by a member of the association against the present or former secretary or former public officer of the association; or
 - (c) an application by a member of an incorporated association or the Registrar to wind up the association; or
 - (d) an application by the Registrar to appoint a person as the statutory manager of an incorporated association.

36 Unauthorised act, conveyance or transfer performed pursuant to contract

- (1) This section applies if an unauthorised act, conveyance or transfer by an incorporated association—
 - (a) is sought to be restrained in proceedings referred to in section 35(3)(a); and
 - (b) is being, or is to be, performed or made pursuant to a contract to which the association is a party.
- (2) The court in which the proceedings are brought may take action referred to in subsection (3) if—
 - (a) all parties to the contract are parties to the proceedings; and
 - (b) the court considers it just and equitable to take the action.
- (3) If subsection (2) applies, the court may—
 - (a) set aside and restrain the performance of the contract; and

- (b) allow to the association or to the other parties to the contract (as the case requires) compensation for the loss or damage sustained by either that may result from the setting aside and restraining of the contract.
- (4) For the purposes of subsection (3)(b), any anticipated profits to be derived from the performance of the contract must not be awarded by the court as a loss or damage sustained.

Division 3—Authentication and execution of documents and confirmation of contracts

37 Authentication of document or proceeding

A document or proceeding requiring authentication by an incorporated association may be authenticated—

- (a) if the association has a common seal—under the common seal of the association; or
- (b) in any case—by the signature of the secretary of the association.

38 Execution of contract or other document by signature

- (1) An incorporated association may, subject to any greater restriction provided in its rules, execute a contract or other document if the contract or document is signed by—
 - (a) 2 members of the committee; or
 - (b) if the secretary of the association is not a member of the committee—by a member of the committee and the secretary.
- (2) To avoid doubt, subsection (1) applies whether or not the association has a common seal.

39 Incorporated association may authorise person to execute deed

- (1) An incorporated association may, by writing under its common seal or as provided in section 38, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf.
- (2) A deed signed by such an agent or attorney on behalf of the association binds the association and has effect as if it were executed as provided under section 38 or under the common seal of the association.
- (3) The authority of such an agent or attorney, as between the association and a person dealing with the agent or attorney, continues—
 - (a) during the period specified in the instrument conferring the authority; or
 - (b) if no period is specified—until written notice of the revocation or termination of the authority of the agent or attorney has been given to the person dealing with the agent or attorney.

40 Execution under seal

A contract or other document executed, or purporting to have been executed, under the seal of an incorporated association is not invalid merely because a person attesting the affixing of the seal was in any way, whether directly or indirectly, interested in the contract or other document or in the matter to which the contract or other document relates.

41 Contractual formalities

- (1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of an incorporated association may make, vary or discharge a contract in the name of, or on behalf of, the association as if that contract were made, varied or discharged by a natural person.
- (2) The making, varying or discharging of a contract in accordance with subsection (1) is effectual in law and binds the association and other parties to the contract.
- (3) This section does not prevent an incorporated association from making, varying or discharging a contract under its common seal.

42 Other requirements as to consent or sanction not affected

This Division does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, varying or discharging of a contract.

Division 4—Pre-registration contracts

43 Contracts before registration

- (1) This Division applies if a person enters into, or purports to enter into, a contract (a *pre-registration contract*) on behalf of, or for the benefit of, an association before it is registered under this Act as an incorporated association.
- (2) The association becomes bound by the contract and entitled to its benefits if the association, or an association that is reasonably identifiable with it, is registered and ratifies the contract—

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- (a) within the period agreed to by the parties to the contract; or
 - (b) if there is no agreed period—within a reasonable period after the contract is entered into.
 - (3) The person is liable to pay damages to each other party to the pre-registration contract if the association is not registered, or the association is registered but does not ratify the contract or enter into a substitute for it—
 - (a) within the period agreed to by the parties to the contract; or
 - (b) if there is no agreed period—within a reasonable period after the contract is entered into.
 - (4) The maximum amount of damages the person is liable to pay to a party is the amount the association would be liable to pay to the party if the association had been registered and had ratified the contract and then completely failed to perform it.
 - (5) If proceedings are brought to recover damages under subsection (4) because the association is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything it considers appropriate in the circumstances, including ordering the association to do one or more of the following—
 - (a) pay all or part of the damages that the person is liable to pay;
 - (b) transfer property that the association received because of the contract to a party to the contract;
 - (c) pay an amount to a party to the contract.

- (6) If the association ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the association is ordered to pay.

44 Person may be released from liability but is not entitled to indemnity

- (1) A party to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from all or part of the person's liability to the party under section 43.
- (2) The release must be in writing and signed by the party.
- (3) The party giving the release is not entitled to recover damages under section 43 from the person.
- (4) Despite any rule of law or equity, the person does not have any right of indemnity against the association in respect of the person's liability under this Division.
- (5) Subsection (4) applies even if the person was acting, or purporting to act, as trustee for the association.

45 This Division replaces other rights and liabilities

This Division replaces any rights or liabilities anyone would otherwise have in relation to the pre-registration contract.

PART 5—RULES, MEMBERSHIP AND GENERAL MEETINGS

Division 1—Rules of incorporated association

46 Rules constitute terms of contract

The rules of an incorporated association are taken to constitute the terms of a contract between the association and its members.

Note

Under section 67, an application may be made to the Magistrates' Court for an order enforcing the rules of an incorporated association.

47 Requirements

- (1) The rules of an incorporated association must specify—
 - (a) the name of the association; and
 - (b) the purposes of the association.
- (2) The rules of an incorporated association must make provision for—
 - (a) each of the matters specified in Schedule 1 to the extent the matter is applicable to the association; and

Note

Schedule 1 specifies a number of matters which apply only in certain circumstances. See items 3, 4, 7, 12 and 16 of Schedule 1.

- (b) any other prescribed matters.
- (3) An incorporated association that adopts the model rules without modification as its rules is taken to have met the requirements of subsection (2).

48 Rules of an incorporated association

- (1) On the registration of an incorporated association under this Act, the rules of the association are—
 - (a) the rules that accompanied the application for the registration of the association; or
 - (b) if the application was accompanied by a statement that the model rules have been approved as the rules of the proposed incorporated association—the model rules.
- (2) After an incorporated association is registered under this Act, the rules of the association are the rules referred to in subsection (1) as altered from time to time in accordance with this Part.
- (3) If the rules of an incorporated association do not make provision for a matter as required by section 47(2), the model rules, to the extent that they make provision for that matter, are taken to be included in the rules of the association.
- (4) A rule or purpose of an incorporated association that is inconsistent with this Act or contrary to law is of no effect.

49 Model rules

- (1) The model rules are the rules prescribed to be model rules by the regulations.
- (2) The model rules so prescribed must make provision for each matter specified in Schedule 1 and any other prescribed matter other than specifying—
 - (a) the name of the incorporated association;
 - (b) the purposes of the incorporated association;
 - (c) the financial year of the incorporated association.

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- (3) If an incorporated association approves the adoption of the model rules as its rules, it is taken to have adopted any subsequent amendment to the model rules as an alteration of its rules.
 - (4) An alteration to the rules of an incorporated association referred to in subsection (3)—
 - (a) takes effect on the day the relevant amendment to the model rules comes into operation; and
 - (b) takes effect without the requirement of a special resolution of the association; and
 - (c) does not require the approval of the Registrar.
 - (5) If an incorporated association that has approved the adoption of the model rules as its own rules alters those rules under section 50, other than an alteration to its name, purposes or financial year, the association is taken to have adopted its own rules and subsections (3) and (4) do not apply to those rules.
 - (6) An incorporated association may, by special resolution, approve the adoption of the model rules as the rules of the association at any time after its incorporation under this Act.
 - (7) An incorporated association that approves the adoption of the model rules as its own rules under subsection (6), must notify the Registrar and include in the notification—
 - (a) the name of the association;
 - (b) the purposes of the association;
 - (c) the financial year of the association.

50 Alteration of rules

- (1) Subject to this Act, an incorporated association may, by special resolution, alter its rules.
- (2) An alteration of the rules of an incorporated association does not take effect unless and until the alteration is approved by the Registrar.
- (3) An application for the approval of an alteration to the rules of an incorporated association must be made by the secretary of the association in the approved form—
 - (a) within 28 days after the alteration was passed by special resolution; or
 - (b) if a longer time has been allowed by the Registrar—within the time allowed.
- (4) The application must be accompanied by—
 - (a) a copy of the notice of the special resolution setting out the particulars of the alteration; and
 - (b) a declaration signed by at least 2 members of the committee to the effect that the special resolution was passed in accordance with the Act and the rules of the association; and
 - (c) a consolidated copy of the rules that clearly shows the alteration; and
 - (d) the prescribed fee.
- (5) Subject to subsection (6), if an application for the approval of an alteration to the rules of an incorporated association is made in accordance with subsections (3) and (4), the Registrar must approve the alteration.
- (6) The Registrar must refuse an alteration to the rules of an incorporated association if the Registrar is satisfied that the alteration is contrary to this Act or the regulations.

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- (7) If the Registrar approves the alteration of the rules of an incorporated association, the Registrar must give written notice of approval to the association.
 - (8) If a special resolution provides for more than one alteration of the rules of an incorporated association, nothing in this section prevents the Registrar from approving one or more but not all of those alterations.

Division 2—Membership

51 Membership of an incorporated association

- (1) On the registration of an incorporated association under this Act, the members of the incorporated association are—
 - (a) in the case of an association incorporated under Division 1 of Part 2—the persons who were members of the association immediately before its incorporation;
 - (b) in the case of a registrable body registered as an incorporated association under Division 2 of Part 2—the persons who were members of the registrable body immediately before its registration under this Act;
 - (c) in the case of the amalgamation of two or more incorporated associations into a single incorporated association under Division 3 of Part 2—the persons who were members of any of the incorporated associations so amalgamated immediately before the amalgamation.
- (2) Other persons may be admitted as members of an incorporated association in accordance with its rules.

52 Limitation of rights and liabilities of members

- (1) Except as otherwise provided by this Act or the rules of an incorporated association, a member of the committee, the secretary or a member of the association is not, merely because of being such a member or the secretary, liable to contribute towards the payment of—
 - (a) the debts and liabilities of the association; or
 - (b) the costs, charges and expenses of the winding up of the association.
- (2) Unless expressly provided by this Act or the rules of an incorporated association, membership of the association must not be taken to confer on a person any right, title or interest (whether legal or equitable) in the property of the association.

53 Inspection of rules and minutes

- (1) If requested to do so by one of its members, an incorporated association must permit the member at a reasonable time to inspect—
 - (a) the rules of the association;
 - (b) minutes of general meetings of the association.

Penalty: 5 penalty units.

Note

A member of an incorporated association is also entitled to inspect the register of members of the association. See section 57.

- (2) An incorporated association must give a member of the association a copy of anything referred to in subsection (1) within 14 days if the member—
 - (a) makes a written request for the copy; and
 - (b) pays the prescribed fee (if any).

Penalty: 5 penalty units.

54 Disciplinary action

- (1) This section applies if an incorporated association proposes to take disciplinary action against a member in respect of that member's status as a member of the association.
- (2) Subject to subsections (3) and (4), the procedure (*disciplinary procedure*) under which disciplinary action is taken must be in accordance with the procedure (if any) provided by the rules of the association.
- (3) In applying the disciplinary procedure, the association must ensure that—
 - (a) the member who is the subject of the disciplinary procedure—
 - (i) is informed of the grounds upon which the disciplinary action against the member is proposed to be taken; and
 - (ii) has been given an opportunity to be heard in relation to the matter; and
 - (b) the outcome of the disciplinary procedure is determined by an unbiased decision-maker; and
 - (c) to the extent that doing so is compatible with paragraphs (a) and (b), the disciplinary procedure is completed as soon as is reasonably practicable.
- (4) A member of an incorporated association who is the subject of a disciplinary procedure must not initiate a grievance procedure in relation to the matter which is the subject of the disciplinary procedure until the disciplinary procedure has been completed.

55 Grievance procedure

- (1) The rules of an incorporated association must set out a grievance procedure for dealing with any dispute under the rules between—
 - (a) a member and another member; or
 - (b) a member and the association.
- (2) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (3) In applying the grievance procedure, the association must ensure that—
 - (a) each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute; and
 - (b) the outcome of the dispute is determined by an unbiased decision-maker.

Division 3—Register of members

56 Register of members

- (1) An incorporated association must keep and maintain a register of members in accordance with this section.
Penalty: 10 penalty units.
- (2) The register of members must contain the following information about each person who is a member of the association—
 - (a) the person's name and address;
 - (b) if applicable—the class of membership of the person;
 - (c) the date on which the person became a member of the association.
- (3) The date on which a person ceases to be a member of the association must be entered in the register of members within 14 days after that date.

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- (4) Information about a person who is no longer a member of the association, other than the name of the person and the date on which the person ceased to be a member of the association, must be removed from the register of members within 14 days after the person ceases to be a member of the association.

57 Inspection of register of members

If requested to do so by one of its members and subject to section 59, an incorporated association must permit the member at a reasonable time to inspect the register of members.

Penalty: 5 penalty units.

Note

The rules of an incorporated association may allow a member to obtain a copy of the register of members. However, the provision of a copy of the register of members to a member of the association is subject to section 59.

58 Improper use of information recorded on register of members

- (1) A person must not use information about another person obtained from the register of members of an incorporated association to contact or send materials to the other person.

Penalty: 20 penalty units.

- (2) A person must not disclose information about another person obtained from the register of members of an incorporated association knowing that the information is likely to be used to contact or send materials to the other person.

Penalty: 20 penalty units.

- (3) Subsections (1) and (2) do not apply if the use or disclosure of the information—

- (a) is directly related to the management or the purposes of the association; and

- (b) is not prohibited by the rules of the association.

Example

Information from the register of members may be used to give notice to members of general meetings of the association or to distribute newsletters of the association.

59 Restriction of access to personal information

- (1) A request may be made to the secretary of an incorporated association to restrict access to the personal information of a person recorded in the register of members of the association.
- (2) A request under subsection (1) may seek to restrict access so that the personal information is available only to—
 - (a) the secretary and members of the committee; or
 - (b) the secretary and members of the committee other than a specified member or specified members of the committee.
- (3) The request may be made by—
 - (a) the person; or
 - (b) if the person is a child—by a parent or guardian of the person.
- (4) If the secretary is satisfied that there are special circumstances which justify doing so, the secretary must agree to the request.
- (5) If the secretary refuses the request, the secretary must notify the person who made the request of the decision.
- (6) The notice must—
 - (a) be in writing; and
 - (b) include the reasons for the decision.

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- (7) If the secretary refuses the request, the secretary must not release the personal information without the consent of the person unless—
- (a) at least 28 days have elapsed since the secretary gave notice to the person under subsection (5); and
 - (b) either—
 - (i) the person has not sought a review of the decision; or
 - (ii) VCAT has upheld the secretary's decision to release the information.
- (8) If a person is notified by the secretary that his or her request to restrict access to personal information has been refused, the person may, within 28 days after the notification, apply to VCAT for a review of the decision.
- (9) If—
- (a) a member of an incorporated association informs the secretary of the association that he or she wishes to circulate material to all members of the association relating to its management, activities or purposes; and
 - (b) access to the personal information of another member recorded on the register of members of the association is restricted under this section—
- the secretary must forward that material to that other member.

Division 4—General Meetings

60 Requirement to give notice of general meeting

An incorporated association must not hold a general meeting of the association unless each member of the association who is entitled to vote at general meetings—

- (a) has been given notice of the date, time and place of the general meeting in the manner provided by the rules of the association; and
- (b) if the rules of the association require that voting by proxy must be done using a standard form—has been given that form with the notice.

Penalty: 5 penalty units.

61 Right of member to attend and vote at general meeting

- (1) At any general meeting of an incorporated association, the association must not do anything with the intention of preventing—
 - (a) any member of the association from attending the meeting; or
 - (b) any member who is entitled to do so from voting at the meeting.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply in relation to a member of the association whose rights as a member have been suspended under the rules of the association.

- (3) A contravention of subsection (1) by an incorporated association constitutes oppressive conduct by the association for the purposes of section 68.

Note

Under section 68, a member of an incorporated association who believes that the association has engaged, or proposes to engage, in oppressive conduct may apply to the Magistrates' Court for an order seeking relief from the conduct.

62 Use of technology at general meetings

- (1) An incorporated association may hold its general meetings, or permit members to take part in its general meetings, by using any technology that allows members to clearly and simultaneously communicate with each other participating member.
- (2) A member of an incorporated association who participates in a general meeting in a manner permitted under subsection (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

63 Annual general meeting

- (1) An incorporated association must hold a general meeting of its members, to be called an annual general meeting, at least once in each calendar year.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to an incorporated association that holds its annual general meeting—
- (a) in accordance with subsection (3) or (4); or
 - (b) within the period allowed under an extension granted by the Registrar under section 104.

- (3) An incorporated association may hold its first annual general meeting at any time within the period of eighteen months after its incorporation.
- (4) The second and any subsequent annual general meeting must be held within 5 months after the end of the financial year of the incorporated association.

64 Special resolutions

- (1) An incorporated association may pass a special resolution at a general meeting of the association in accordance with this section.
- (2) Each member of the association who is entitled to vote at general meetings must be given at least 21 days' notice of the proposed resolution, in the manner provided by the rules of the association.
- (3) The notice must—
 - (a) specify the date, time and place of the general meeting at which the resolution is intended to be proposed; and
 - (b) state in full the proposed resolution; and
 - (c) state the intention to propose the resolution as a special resolution.
- (4) The special resolution is passed if—
 - (a) at the general meeting—
 - (i) not less than three quarters of the members of the association voting at the meeting, whether in person or (if permitted by the rules of the association) by proxy, vote in favour of the resolution; and
 - (ii) any additional requirements of the rules of the association relating to the passing of special resolutions have been met; or

- (b) the resolution is passed in a manner approved by the Registrar under section 66(2).

65 Declaration by chairperson of passing of resolution

- (1) At any general meeting of an incorporated association at which a special resolution is proposed, a declaration by the chairperson that the resolution has been passed is conclusive proof of the fact.
- (2) Subject to subsection (3), the chairperson may declare that the resolution has been passed on the show of hands or on the voices of those present.
- (3) If any member of the association present at the meeting demands that the vote of each member entitled to vote at the meeting (including any vote permitted to be made by proxy) be counted, the chairperson may not make a declaration under subsection (1) unless those votes are counted.

66 Approval to pass special resolution in other manner

- (1) An incorporated association may apply to the Registrar for approval to pass a special resolution in a manner other than specified in section 64(4)(a).
- (2) If the Registrar is satisfied that it is not practicable for a special resolution to be passed in the manner specified in section 64(4)(a), the Registrar may approve the resolution to be passed in a manner specified by the Registrar.

Division 5—Court orders enforcing rules or rights of members

67 Enforcement of rules

- (1) An incorporated association, a member of an incorporated association or the Registrar may apply to the Magistrates' Court for an order under subsection (2).
- (2) The Magistrates' Court may make an order—
 - (a) giving directions for the performance and observance of the rules of an incorporated association by a person who is under an obligation to perform or observe those rules; or
 - (b) restraining an incorporated association from doing an act that is outside the scope of its purposes; or
 - (c) declaring and enforcing the rights or obligations of—
 - (i) members of an incorporated association between themselves; or
 - (ii) an incorporated association and any of its members between themselves.
- (3) An order may be made under subsection (2) whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the incorporated association.
- (4) The Magistrates' Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of opinion that—
 - (a) the issue raised in the application is trivial; or

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- (b) it was unreasonable to make the application having regard to any one or more of the following—
- (i) the importance of the issue;
 - (ii) the nature of the incorporated association;
 - (iii) the availability of any other method of resolving the issue;
 - (iv) the costs involved;
 - (v) the lapse of time;
 - (vi) acquiescence;
 - (vii) any other relevant circumstance; or
- (c) the unreasonable or improper conduct of a party has been responsible for the making of the application, or has added to the cost of the proceedings.
- (4) The Registrar may make an application to the Magistrates' Court under subsection (1) only if the Registrar is satisfied that it is in the public interest to do so.

68 Oppressive conduct

- (1) A member or former member of an incorporated association may apply to the Magistrates' Court for an order under this section on the ground that the association has engaged, or proposes to engage, in oppressive conduct.
- (2) Unless the Magistrates' Court grants leave to apply at a later date, an application under subsection (1) by a former member must be made within 6 months after the person ceases to be a member of the association.

- (3) The Magistrates' Court may only grant leave under subsection (2) if the Magistrates' Court is satisfied that there is sufficient public interest to do so.
- (4) On hearing the application, the Magistrates' Court may, if satisfied that the incorporated association has engaged, or proposes to engage, in oppressive conduct, make one or more of the following orders—
 - (a) an order for regulating the conduct of the association's affairs in the future;
 - (b) an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the association to do so on behalf of the association;
 - (c) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
 - (d) an order requiring a person to do a specified act or thing;
 - (e) an order for the alteration of the rules of the association;
 - (f) an order that a former member be reinstated as a member of the association;
 - (g) an order terminating a person's membership of the association;
 - (h) subject to subsection (5), any other order that is, in the opinion of the Court, necessary to remedy any default or resolve any dispute.
- (5) The Magistrates' Court must not make an order that an incorporated association be wound up.

- (6) For the purposes of this section—
- (a) ***oppressive conduct***, in relation to an incorporated association, includes conduct that is—
 - (i) unfairly prejudicial to, or unfairly discriminatory against, a member of the incorporated association (including in the member's capacity as a member of the committee); or
 - (ii) contrary to the interests of the members of the incorporated association as a whole; and
 - (b) a reference to engaging in conduct includes a reference to refusing or failing to take action.

69 Oppressive conduct—transfer of proceeding to Supreme Court

- (1) The Magistrates' Court must transfer a proceeding under section 68 to the Supreme Court if—
 - (a) the Magistrates' Court has explored all possible avenues of achieving a negotiated settlement and a negotiated settlement has not occurred; and
 - (b) it appears to the Magistrates' Court that an order that the incorporated association be wound up may be an appropriate order in the proceeding.
- (2) If a proceeding has been transferred to the Supreme Court under subsection (1), it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Supreme Court.

Note

The same applies to a proceeding transferred to the Supreme Court under section 220.

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- (3) In a proceeding under this section, the Supreme Court may make—
- (a) an order that the incorporated association be wound up; or
 - (b) any order the Magistrates' Court may make under section 68(4).
- (4) The Supreme Court must not make an order under this section that an incorporated association be wound up if it is of the opinion that the winding up of the association would unfairly prejudice members affected by the conduct of the association.
- (5) If an order is made under this section that an incorporated association be wound up, Division 1 of Part 10 applies as if the order had been made under section 126.

70 Order altering rules

If an order under section 68 or 69 makes any alteration to the rules of an incorporated association—

- (a) the alteration has effect as if it had been duly made by a special resolution of the association; and
- (b) the association does not have power to make further alterations to the rules inconsistent with the provisions of the order, except with the permission of the Court that made the order.

71 Lodgement of order with Registrar

- (1) Within 14 days after the making of an order under section 68 or 69, the person who applied for the order must lodge a copy of the order with the Registrar.

Penalty: 10 penalty units.

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- (2) If the order makes any alteration to the rules of an incorporated association, the Registrar must amend the copy of the rules kept on the register accordingly.
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PART 6—MANAGEMENT

Division 1—Appointment of secretary and committee

72 First secretary

- (1) Subject to subsection (2), the first secretary of an incorporated association is—
 - (a) the person on whose application the association was registered as an incorporated association; or
 - (b) if the application provides for a different person—that person.
- (2) A person cannot be first secretary of an incorporated association unless the person—
 - (a) consents to being named as the first secretary; and
 - (b) is at least 18 years of age; and
 - (c) is resident in Australia.

73 Filling vacancy

- (1) Subject to subsection (2), if the office of the secretary of an incorporated association becomes vacant, the association must, within 14 days after the vacancy arises, fill the vacancy in accordance with the procedure provided in its rules.

Note

The period of 14 days referred to in subsection (1) applies despite any longer period provided in the rules of an incorporated association. See section 48(4).

- (2) If—
 - (a) under the rules of an incorporated association, the secretary is elected or appointed otherwise than by the committee of the association; and

- (b) it is impractical for that election or appointment to occur within 14 days after the office of the secretary becomes vacant—

the committee of the association must, within 14 days after the vacancy arises, appoint a person to fill the vacancy until a person is elected or appointed in accordance with the rules of the association.

- (3) A person must not be appointed as the secretary of an incorporated association unless the person—
- (a) consents to being appointed as secretary; and
 - (b) is at least 18 years of age; and
 - (c) is resident in Australia.

74 Notice of appointment

- (1) The secretary of an incorporated association must, within 14 days after being appointed, give written notice to the Registrar of his or her appointment.

Penalty: 5 penalty units.

- (2) The notice must be in the approved form and include the following—
- (a) the secretary's full name and address;
 - (b) the prescribed particulars.
- (3) The notice must be accompanied by the prescribed fee (if any).
- (4) This section does not apply to the first secretary of an incorporated association referred to in section 72.

75 Acts of secretary not invalid

The acts of the secretary of an incorporated association are not invalid merely because of any defect that may be discovered in the appointment or qualification of the secretary.

76 Secretary may hold other offices in association

The secretary of an incorporated association may, unless the rules of the association provide otherwise, hold any other office in the association.

77 First committee

Unless the rules of an incorporated association provide otherwise, the first members of the committee of the association are—

- (a) in the case of an association incorporated under Division 1 of Part 2—the persons who were members of the committee of the association immediately before its incorporation;
- (b) in the case of a registrable body registered as an incorporated association under Division 2 of Part 2—the persons who were members of the governing body (however described) of the registrable body immediately before its registration under this Act;
- (c) in the case of the amalgamation of two or more incorporated associations into a single incorporated association under Division 3 of Part 2—the persons approved under section 17(1)(d) to be the members of the first committee of the new association.

78 Removal from and vacation of office

- (1) A member of the committee of an incorporated association must retire, and may be removed from office, as provided in the rules of the association.
- (2) A member of the committee of an incorporated association vacates office in the circumstances (if any) provided in the rules of the association and in any of the following circumstances—
 - (a) the member resigns his or her office by written notice addressed to the committee;

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- (b) the member of the committee is removed from office by special resolution;
 - (c) the member—
 - (i) dies; or
 - (ii) becomes insolvent under administration; or
- Note**
- The term *insolvent under administration* is defined in section 38 of the **Interpretation of Legislation Act 1984**.
- (iii) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**;
 - (d) in the case of the secretary of the association—the secretary ceases to reside in Australia;
 - (e) a statutory manager is appointed under section 116 to conduct the affairs of the association.

(3) In this section—

member of the committee of an incorporated association includes the secretary of the association.

Division 2—Meetings of the committee

79 Use of technology at committee meetings

- (1) The committee of an incorporated association may hold meetings, or permit members of the committee to participate in meetings, by using any technology that allows members to clearly and simultaneously communicate with each other participating member.

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

80 Disclosure of material personal interest

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

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

- (3) Subsections (1) and (2) do not apply in respect of a material personal interest—
- (a) that exists only because the member—
 - (i) is an employee of the association; or
 - (ii) belongs to a class of persons for whose benefit the association is established; or
 - (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (4) If a member of the committee of an incorporated association discloses a material personal interest in a contract or proposed contract, in accordance with this section and the member has complied with section 81(1) or the member's interest is not required to be disclosed because of subsection (3)—

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- (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and
 - (b) the member is not liable to account for profits derived from the contract.
- (5) A disclosure of a material personal interest required by subsection (1) or (2) must give details of—
- (a) the nature and extent of the interest; and
 - (b) the relation of the interest to the activities of the incorporated association.
- (6) The details referred to in subsection (5) must be recorded in the minutes of the committee meeting at which the material personal interest is disclosed.

81 Matter on which committee member has material personal interest

- (1) A member of the committee of an incorporated association who has a material personal interest in a matter being considered at a committee meeting must not—
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter.
- Penalty: 10 penalty units.
- (2) Subsection (1) does not apply in respect of a material personal interest—
- (a) that exists only because the member belongs to a class of person for whose benefit the association is established; or

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- (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (3) If there are not enough committee members to form a quorum to consider a matter because of subsection (1)—
- (a) one or more committee members (including those who have a material personal interest in the matter) may call a general meeting; and
- (b) the general meeting may pass a resolution to deal with the matter.

Division 3—Duties of office holders

82 Definition

In this Division—

office holder, of an incorporated association, means any of the following—

- (a) a member of the committee;
- (b) the secretary;
- (c) a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association;
- (d) a person who has the capacity to significantly affect the association's financial standing;
- (e) a person in accordance with whose instructions or wishes the committee of the association are accustomed to act (but excluding a person who gives advice to the association in the proper performance of functions attaching to

the person's professional capacity or to the person's business relationship with members of the committee or with the association).

83 Improper use of information or position

- (1) An office holder or former office holder of an incorporated association must not make improper use of information acquired by virtue of holding that office—
- (a) to gain an advantage for himself or herself or any other person; or
 - (b) to cause detriment to the association.

Note

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association must not make improper use of that office—
- (a) to gain an advantage for himself or herself or any other person; or
 - (b) to cause detriment to the association.

Note

Under section 146, subsection (2) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (2) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

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- (3) An office holder or former office holder of an incorporated association must not knowingly or recklessly make improper use of information in the manner described in subsection (1).
Penalty: 60 penalty units.
- (4) An office holder of an incorporated association must not knowingly or recklessly make improper use of that office in the manner described in subsection (2).
Penalty: 60 penalty units.
- (5) If a person is found guilty of an offence against subsection (3) or (4), the court, in addition to imposing any penalty, may order the person to pay a sum specified by the court to the incorporated association as compensation.
- (6) This section—
- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
 - (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

Note

Under section 1317M of the Corporations Act which is applied by section 146, civil proceedings under Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act may not be instituted against a person in respect of conduct for which the person has been convicted of an offence.

84 Duty of care and diligence

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would if that person—
 - (a) were an office holder of the association in the circumstances applying at the time of the exercise of the power or the discharge of the duty; and
 - (b) occupied the office held by, and had the same responsibilities within the association as, the office holder.

Note

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the business judgment if the office holder—
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent that he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the association.

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- (3) For the purposes of subsection (2)—
- (a) a ***business judgment*** means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association;
 - (b) an office holder's belief that a business judgment is in the best interests of the incorporated association is a rational belief unless the belief is one that no reasonable person in the position of the office holder would hold.
- (4) This section—
- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
 - (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).
- (5) Subsection (4) does not apply to subsections (2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements under subsection (1).

85 Duty of good faith and proper purpose

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties—
- (a) in good faith in the best interests of the association; and

- (b) for a proper purpose.

Note

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) This section—

- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
- (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

86 Reliance on information or advice

- (1) This section applies if the reasonableness of an office holder's reliance on information or advice given to the office holder arises in a proceeding brought to determine whether the office holder has performed a duty under this Act or an equivalent common law duty.
- (2) Unless the contrary is proved, the office holder's reliance on the information or advice is taken to be reasonable if—
- (a) the information or advice was given or prepared by—
- (i) an employee of the incorporated association whom the office holder reasonably believed to be reliable and competent in relation to the matters concerned; or

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- (ii) a professional advisor or expert in relation to the matters that the office holder reasonably believed to be within that person's professional or expert competence; or
 - (iii) another office holder in relation to matters within the other office holder's authority; or
 - (iv) a sub-committee of the incorporated association of which the office holder was not a member in relation to matters within the sub-committee's authority; and
- (b) the reliance was made—
- (i) in good faith; and
 - (ii) after making an independent assessment of the information and advice, having regard to the office holder's knowledge of the incorporated association and the complexity and structure of the incorporated association.

87 Indemnity of office holders

An incorporated association must indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing his or her duties as an office holder.

Division 4—Miscellaneous

88 Return of documents belonging to incorporated association

- (1) This section applies if—
- (a) a person, by virtue of the person's office or role in or membership of an incorporated association, has in the person's custody relevant documents of the association; and
 - (b) the person ceases to hold that office or have that role or ceases to be a member of the association.
- (2) Within 28 days after the person ceasing to hold that office or have that role or ceasing to be a member, the person, or the estate of the person, must return the original copies of any relevant documents to the committee of the association.

Penalty: 5 penalty units.

- (3) If—
- (a) a person, or a person's estate, has failed to comply with subsection (2); and
 - (b) a written request from the secretary or the statutory manager of the association for the return of the documents has been sent by registered mail to the person, or the person's estate; and
 - (c) the documents have not been returned within 28 days after receipt of the request—

the association may apply to the Magistrates' Court for an order directing the person, or the executor or administrator of the estate of the person, to return the documents to the association.

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- (4) The Magistrates' Court may make the order applied for under subsection (3).
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PART 7—FINANCIAL REPORTING

Division 1—General requirements

89 Obligation to keep financial records

- (1) An incorporated association must keep financial records that—
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared in accordance with this Part.

Penalty: 10 penalty units.

- (2) The incorporated association must retain the financial records for 7 years after the transactions covered by the records are completed.

Penalty: 10 penalty units.

90 Tier one, tier two and tier three associations

- (1) For the purposes of the requirements under this Part relating to the financial statements for a financial year, an incorporated association falls within one of three tiers as specified in subsections (2), (3) and (4).
- (2) A tier one association is an incorporated association—
 - (a) that has a total revenue of less than the prescribed amount or, if no amount is prescribed, less than \$250 000; or
 - (b) that the Registrar has declared under section 91(1)(a) to be a tier one association.

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- (3) A tier two association is an incorporated association—
- (a) to which neither subsection (2) or (4) applies; or
 - (b) that the Registrar has declared under section 91(1)(b) to be a tier two association.
- (4) A tier three association is an incorporated association that has a total revenue of more than the prescribed amount or, if no amount is prescribed, more than \$1 000 000.
- (5) In this section, the *total revenue* of an incorporated association means the total income of the association during the last financial year of the association from all the activities of the association.
- (6) For the purposes of subsection (5), the total income of an incorporated association is the income calculated before any expenses, including the cost to the association of goods sold by it, are deducted.

91 Registrar may declare an incorporated association to be tier one or tier two association

- (1) On application by an incorporated association, the Registrar may, for the purposes of a financial year, declare the association to be—
- (a) a tier one association; or
 - (b) a tier two association.
- (2) The Registrar may make a declaration under subsection (1) only if the Registrar is satisfied that unusual and non-recurring circumstances have occurred that warrant doing so.

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- (3) An application by an incorporated association to the Registrar for a declaration under subsection (1) must be made within 3 months after the end of the financial year.

Division 2—Tier one associations

92 Obligation to prepare financial statements

- (1) As soon as practicable after the end of each financial year of the association, the committee of a tier one association must cause financial statements for that year to be prepared in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The financial statements must—
- (a) give a true and fair view of the financial position and performance of the association during and at the end of its last financial year; and
 - (b) deal with any matters prescribed by the regulations.

93 Review of financial statements

- (1) A tier one association must have its financial statements reviewed before being submitted to the annual general meeting of the association if—
- (a) at a general meeting of the association, a majority of the members present at the meeting vote to do so; or
 - (b) the association is directed by the Registrar in writing to do so.

Penalty: 10 penalty units.

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- (2) If a review is required under subsection (1), the review must be conducted in accordance with section 96 except that any reference in that section to a tier two association is to be read as a reference to a tier one association.

94 Submission of financial statement to annual general meeting

- (1) At the first annual general meeting of a tier one association following a financial year of the association, the committee must submit to the members the financial statements for that financial year.
- (2) The financial statements must—
- (a) give a true and fair view of the financial position and performance of the association during and at the end of its last financial year; and
 - (b) have attached a certificate in the prescribed form signed by two members of the committee certifying that that is the case; and
 - (c) if the association has been required under section 93(1) to have its financial statements reviewed—be accompanied by the report of that review.
- (3) At, or as soon as practicable after, the conclusion of the annual general meeting of the association, a committee member must certify, in the approved form, that—
- (a) the committee member attended the annual general meeting of the association; and
 - (b) the financial statements were submitted to the members of the association at the annual general meeting.

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- (4) The committee must ensure that the minutes of the annual general meeting include a copy of—
- (a) the financial statements submitted under subsection (1); and
 - (b) the certificate referred to in subsection (2)(b); and
 - (c) if applicable—the report of the review of the financial statements referred to in subsection (2)(c).

Division 3—Tier two associations

95 Obligation to prepare financial statements

- (1) As soon as practicable after the end of each financial year of the association, the committee of a tier two association must cause financial statements for that year to be prepared in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The financial statements must—
- (a) be prepared in accordance with the Australian Accounting Standards; and
 - (b) deal with any matters prescribed by the regulations.

96 Review of financial statements

- (1) Before the financial statements of a tier two association are submitted to the annual general meeting of the association, the committee must have the financial statements reviewed by an independent person who is—

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- (a) a member of, and holds a current practising certificate from—
- (i) CPA Australia; or
 - (ii) the Institute of Chartered Accountants in Australia; or
 - (iii) the Institute of Public Accountants; or
- (b) approved by the Registrar under subsection (4) to review the financial statements.

Penalty: 10 penalty units.

- (2) A person who conducts a review of the financial statements of the association for the purposes of subsection (1) must—
- (a) conduct the review in accordance with the Auditing Standards on Review Engagements; and
 - (b) provide the association with a written report of the review.
- (3) The report provided under subsection (2)(b) must—
- (a) be prepared in accordance with Auditing Standards on Review Engagements; and
 - (b) state whether the financial records kept by the association are such as to enable financial statements to be prepared in accordance with Australian Accounting Standards.
- (4) For the purposes of this section, the Registrar may approve a suitably qualified person or class of suitably qualified persons (other than a person who is not an independent person) to review the statements of a tier two association or a class of tier two associations.

97 Submission of financial statements to annual general meeting

- (1) At the first annual general meeting of a tier two association following a financial year of the association, the committee must submit to the members the financial statements for that financial year.
- (2) The financial statements must—
 - (a) give a true and fair view of the financial position and performance of the association during and at the end of its last financial year; and
 - (b) have attached a certificate in the prescribed form signed by two members of the committee certifying that that is the case; and
 - (c) be accompanied by the report of the review of its financial statements provided under section 96(2)(b).
- (3) At, or as soon as practicable after, the conclusion of the annual general meeting a committee member must certify, in the approved form, that—
 - (a) the committee member attended the annual general meeting; and
 - (b) the financial statements were submitted to the members of the association at the annual general meeting.
- (4) The committee must ensure that the minutes of the annual general meeting include a copy of—
 - (a) the financial statements submitted under subsection (1); and
 - (b) the certificate referred to in subsection (2)(b); and
 - (c) the report of the review of the financial statements referred to in subsection (2)(c).

Division 4—Tier three associations

98 Obligation to prepare financial statements

- (1) As soon as practicable after the end of each financial year of the association, the committee of a tier three association must cause financial statements for that year to be prepared in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The financial statements must—
- (a) be prepared in accordance with the Australian Accounting Standards; and
 - (b) deal with any matters prescribed by the regulations.

99 Audit of financial statements

- (1) Before the financial statements of a tier three association are submitted to the annual general meeting of the association, the committee must have the financial statements audited in accordance with this section.

Penalty: 10 penalty units.

- (2) The audit must be conducted by an independent person who is—
- (a) a registered company auditor; or
 - (b) a firm of registered company auditors; or
 - (c) a member of, and holds a current practising certificate from—
 - (i) CPA Australia; or
 - (ii) the Institute of Chartered Accountants in Australia; or
 - (iii) the Institute of Public Accountants; or
 - (d) approved by the Registrar under subsection (5) to audit the financial statements.

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- (3) A person who audits the financial statements of a tier three association must—
- (a) conduct the audit in accordance with the Australian Auditing Standards; and
 - (b) provide the association with a written report of the audit.
- (4) The report provided under subsection (3)(b) must—
- (a) be prepared in accordance with Australian Auditing Standards; and
 - (b) state whether the financial records kept by the association are such as to enable financial statements to be prepared in accordance with Australian Accounting Standards.
- (5) For the purposes of this section, the Registrar may approve a suitably qualified person or class of suitably qualified persons (other than a person who is not an independent person) to audit the statements of a tier three association or a class of tier three associations.

100 Submission of financial statements to annual general meeting

- (1) At the first annual general meeting of a tier three association following a financial year of the association, the committee must submit to the members the financial statements for that financial year.
- (2) The financial statements must—
- (a) give a true and fair view of the financial position and performance of the association during and at the end of its last financial year; and

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- (b) have attached a certificate in the prescribed form signed by two members of the committee certifying that that is the case; and
 - (c) be accompanied by the report of the audit of its financial statements provided under section 99(3)(b).
- (3) At, or as soon as practicable after, the conclusion of the annual general meeting a committee member must certify, in the approved form, that—
- (a) the committee member attended the annual general meeting; and
 - (b) the financial statements were submitted to the members of the association at the annual general meeting.
- (4) The committee must ensure that the minutes of the annual general meeting include a copy of—
- (a) the financial statements submitted under subsection (1); and
 - (b) the certificate referred to in subsection (2)(b); and
 - (c) the report of the audit of the financial statements referred to in subsection (2)(c).

Division 5—General requirements relating to financial statements

101 Content of financial statements

- (1) In addition to any other requirements under this Part, the financial statements of an incorporated association submitted at an annual general meeting of the association must contain particulars of the following—

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- (a) the income and expenditure of the association during and at the end of its last financial year;
 - (b) the assets and liabilities of the association at the end of its last financial year;
 - (c) the mortgages, charges and securities of any description affecting any property of the association at the end of its last financial year;
 - (d) for each trust of which the association was trustee during a period, being the whole or any part of its last financial year—
 - (i) the income and expenditure of the trust during that period; and
 - (ii) the assets and liabilities of the trust during that period; and
 - (iii) the mortgages, charges and securities of any description affecting any of the property of the trust at the end of that period;
 - (e) any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.
- (2) If requested in writing to do so by one of its members, an incorporated association must permit the member at a reasonable time to inspect a copy of the trust deed of any trust referred to in subsection (1)(e).

Penalty: 5 penalty units.

102 Lodgement of financial statements with Registrar

- (1) Subject to section 103, after each financial year of the association, the secretary of an incorporated association must lodge with the Registrar in accordance with this section a copy of the financial statements of the association prepared for that year.

Penalty: 5 penalty units.

- (2) The financial statements must be lodged with the Registrar—
- (a) within one month after the date of the annual general meeting of the association in which the financial statements were submitted to the members of the association; or
 - (b) if the annual general meeting is not held within the period within which it is required under this Act to be held—within one month after the last day of that period.

Note

Under section 63(4), an annual general meeting of an incorporated association (other than the first annual general meeting) must be held within 5 months after the end of the previous financial year.

- (3) The financial statements must be attached to an annual statement in the approved form and be accompanied by—
- (a) in the case of a tier two association or a tier one association to which section 93(1) applies—a copy of the report of the review of the financial statements provided in accordance with section 96(2)(b); and
 - (b) in the case of a tier three association—a copy of the auditor's report referred to in section 99(3)(b); and
 - (c) the prescribed fee (if any).

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- (4) In addition, the financial statements must be accompanied by—
- (a) a copy of the certificate referred to in section 94(3), 97(3) or 100(3) (as the case may be); and
 - (b) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements.
- (5) Subsection (4) does not apply if the financial statements are lodged within the period specified in subsection (2)(b) and before the association has held its annual general meeting.

103 Exemption from requirement to lodge financial statements

- (1) The secretary of an incorporated association may apply to the Registrar to be exempt from one or more of the requirements under section 102 either generally or in relation to a specified year.
- (2) The application must—
 - (a) be in writing; and
 - (b) state the reasons for the exemption; and
 - (c) be accompanied by the prescribed fee.
- (3) On receipt of the application, the Registrar may approve or refuse the exemption and must give written notification of the decision to the secretary.

104 Extension of time to hold annual general meeting or to lodge financial statements

- (1) The secretary of an incorporated association may apply to the Registrar to extend, or further extend, the period—
 - (a) for holding an annual general meeting of the association; or

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- (b) for lodging the financial statements of the association under section 102.
- (2) The application must—
- (a) be in writing; and
 - (b) state the reasons for the extension; and
 - (c) be accompanied by the prescribed fee.
- (3) On receipt of the application, the Registrar may approve or refuse the extension and must give written notification of the decision to the secretary.
- (4) An application for an extension under subsection (1) may be made, and the power of the Registrar under subsection (3) may be exercised, even if the period sought to be extended has expired.

105 Retention of financial statements and other documents

- (1) An incorporated association must keep the financial statements submitted to an annual general meeting of the association for at least 7 years after the date of the annual general meeting.
- Penalty: 20 penalty units.
- (2) An incorporated association must keep the certificate referred to in section 94(3), 97(3) or 100(3) (as the case may be) for at least 7 years after the date the certificate is signed.
- Penalty: 10 penalty units.

Division 6—Removal of auditor

106 Removal of auditor by resolution

- (1) An auditor of an incorporated association may be removed from office by resolution at a general meeting of the association in accordance with this Division but not otherwise.
- (2) Written notice of an intention to move a resolution referred to in subsection (1) must be given to every member of the association at least 2 months before the general meeting is to be held.
- (3) The notice must state in full the proposed resolution.
- (4) As soon as possible after being given the notice of the resolution, the secretary of the association must—
 - (a) give a copy of the notice to the auditor; and
 - (b) lodge a copy of the notice with the Registrar.

Penalty: 5 penalty units.

107 Auditor may make representation

- (1) An auditor of an incorporated association who receives a notice from the association under section 106(4)(a) may, within 7 days after receiving the notice, make a written representation, not exceeding a reasonable length, to the secretary of the association.
- (2) Subject to section 108, if the auditor makes a representation under subsection (1), a resolution proposing the auditor's removal is of no effect unless—
 - (a) the secretary gives a copy of the representation to all members of the association prior to the meeting at which the resolution is to be considered; and

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- (b) the auditor is allowed to attend the meeting and address the members present prior to the vote on the resolution.
 - (3) A document required to be given to a member of an incorporated association under this section may be given—
 - (a) personally; or
 - (b) by post; or
 - (c) by any other means authorised under the rules of the association.
 - (4) All costs associated with giving a document to the members of an incorporated association under this section are to be borne by the association.

108 Exemption from requirements

- (1) An incorporated association may apply to the Registrar for an order exempting the association from the requirements of section 107(2).
 - (2) The application must—
 - (a) be in writing; and
 - (b) state the reasons for the exemption; and
 - (c) be accompanied by the prescribed fee.
 - (3) The Registrar may make the order subject to any conditions the Registrar considers appropriate.
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PART 8—TRANSFER OF INCORPORATION

109 Definitions

In this Part—

prescribed body corporate means—

- (a) a company within the meaning of the Corporations Act; or
- (b) a co-operative under the **Co-operatives Act 1996**; or
- (c) a body corporate that—
 - (i) is incorporated, registered or otherwise established under a law applying in Victoria or in any place outside Victoria; and
 - (ii) is prescribed for the purposes of this section;

transfer of incorporation, by an incorporated association, means the registration or incorporation of the association as a prescribed body corporate under the law applicable to the prescribed body corporate.

110 Application for transfer of incorporation

- (1) An incorporated association may apply to be registered or incorporated as a prescribed body corporate if a special resolution of the association is passed approving the application.
- (2) An incorporated association must apply to be registered or incorporated as a prescribed body corporate if the association is directed to do so by the Registrar.

111 Direction to transfer incorporation

- (1) The Registrar may direct an incorporated association to apply to be registered or incorporated as a prescribed body corporate.

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- (2) The direction must be in writing and specify the period (being not less than 6 months after the date of the direction) within which the application must be made.
 - (3) The direction may be made subject to any conditions specified in the direction.
 - (4) The Registrar may only give a direction under subsection (1) if the Registrar is satisfied that the continued incorporation of the association under this Act would be inappropriate—
 - (a) by reason of the Registrar's assessment of—
 - (i) the scale and nature of the activities of the association; or
 - (ii) the value and nature of the property of the association; or
 - (iii) the extent or nature of the dealings which the association has with the public; or
 - (b) for any other prescribed reason.
 - (5) Before giving a direction under subsection (1), the Registrar must give written notice to the association stating—
 - (a) the Registrar's intention to direct the association to apply to be incorporated or registered as a prescribed body corporate; and
 - (b) the reasons for the proposed direction; and
 - (c) that the direction will be made unless an answer showing cause to the contrary is received within 2 months after the date of the notice.
 - (6) An incorporated association may apply to VCAT for review of a decision by the Registrar to give a direction under subsection (1).

- (7) An application for review must be lodged with VCAT within 28 days after notice of the direction given under subsection (5) is received by the association.

Note

Under section 127, an incorporated association that has failed to comply with a direction of the Registrar under this section within the period specified in the notice may be wound up on the certificate of the Registrar.

112 Notice of transfer to Registrar

Within 14 days after an incorporated association is registered or incorporated as a prescribed body corporate, it must notify the Registrar in writing of its transfer of incorporation.

Penalty: 10 penalty units.

113 Validity of contracts

A contract to which an incorporated association is a party is not illegal, void or unenforceable merely because the association fails to comply with a direction of the Registrar under this Part.

114 New body ceases to be incorporated under this Act

- (1) On the transfer of incorporation by an incorporated association, the association ceases to be incorporated under this Act.
- (2) On being notified under section 112 of the transfer of incorporation, the Registrar must remove the association from the register.

115 Effect of transfer of incorporation

- (1) This section applies subject to the law applicable to the prescribed body corporate formed by the transfer of incorporation of an incorporated association.

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- (2) The transfer of incorporation by an incorporated association does not affect the identity of the association which is taken to be the same body before and after the transfer.
 - (3) Any right or claim by or against an incorporated association existing immediately before its transfer of incorporation may be continued by or against the prescribed body corporate formed by the transfer in the name of the incorporated association or in the name of the prescribed body corporate.
 - (4) Without limiting the generality of subsections (2) and (3), nothing in section 114(1) affects—
 - (a) any right, privilege, obligation or liability acquired or incurred under this Act; or
 - (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or
 - (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.
 - (5) Any investigation, legal proceeding or remedy referred to in subsection (4)(c) may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed as if the incorporated association had not ceased to be incorporated under this Act.
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**PART 9—STATUTORY MANAGEMENT OF
INCORPORATED ASSOCIATION**

116 Appointment of statutory manager

- (1) The Registrar may apply to the Magistrates' Court for the appointment of a statutory manager to conduct the affairs of an incorporated association.
- (2) On an application under subsection (1), the Magistrates' Court may, by order, appoint a person as statutory manager of the association subject to the terms and conditions the Court determines.
- (3) The order must specify—
 - (a) the date of appointment; and
 - (b) the appointee's name; and
 - (c) the appointee's business address.
- (4) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.
- (5) The Magistrates' Court must not appoint a statutory manager unless the Registrar certifies that following an investigation pursuant to the provisions of this Act into the affairs of the association or the working and financial condition of the association, the appointment is in the interests of its members, its creditors or the public.

117 Effect of appointment of statutory manager

- (1) On the appointment of a statutory manager of an incorporated association the committee members and the secretary of the association cease to hold office.
- (2) A committee member or the secretary of the association cannot be appointed or elected while the statutory manager is in office except as provided by this Part.

118 Powers of statutory manager

- (1) A statutory manager of an incorporated association—
 - (a) has control of, and may manage, the property and affairs of the association; and
 - (b) may dispose of all or part of the property of the association; and
 - (c) may engage or discharge employees on behalf of the association; and
 - (d) may perform any function and exercise any power that could, were the association not under statutory management, be performed or exercised by—
 - (i) the association; or
 - (ii) the committee of the association; or
 - (iii) a member of the committee or the secretary of the association; or
 - (iv) the members of the association.
- (2) To avoid doubt and without limiting subsection (1)(d), the statutory manager may perform any function and exercise any power the association has as trustee.

119 Revocation of appointment

- (1) A statutory manager of an incorporated association holds office until the statutory manager's appointment is revoked.
- (2) A statutory manager's appointment is revoked if any of the following occurs—
 - (a) on application by the Registrar, the Magistrates' Court orders the revocation of the appointment of a statutory manager;

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- (b) a liquidator of the association is appointed by the Supreme Court;
 - (c) the association is registered or incorporated as a prescribed body corporate, within the meaning of Part 8;
 - (d) the Registrar cancels the incorporation of the association under section 138(1).
- (3) Immediately on the revocation of a statutory manager's appointment, the statutory manager must submit to the Registrar a report showing how the statutory management was carried out.
 - (4) For the purposes of preparing the report the statutory manager has access to the records and documents of the association.
 - (5) The Registrar may provide a copy of the report to the association.
 - (6) On submitting the report under subsection (3) and accounting fully in relation to the statutory management of the association to the satisfaction of the Registrar, the statutory manager is released from any further duty to account in relation to the statutory management of the association other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.
 - (7) Before revoking the appointment of a statutory manager of an incorporated association, the Magistrates' Court must—
 - (a) appoint another statutory manager; or
 - (b) be satisfied that the committee members of the association have been elected in accordance with its rules at a meeting convened by the statutory manager in accordance with those rules; or

- (c) be satisfied that the Registrar has appointed committee members of the association under subsection (8).
- (8) The Registrar may appoint the committee members of an incorporated association for which a statutory manager is appointed.
- (9) Committee members elected or appointed in accordance with this section—
 - (a) take office on revocation of the statutory manager's appointment; and
 - (b) in the case of committee members appointed by the Registrar—hold office, subject to section 123, until the next annual general meeting of the association after that revocation.

120 Expenses of statutory management

- (1) The expenses of and incidental to the conduct of an incorporated association's affairs by a statutory manager are payable from the association's funds.
- (2) The expenses of conducting an incorporated association's affairs include—
 - (a) if the statutory manager is not an employee of the public service—remuneration of the statutory manager at a rate approved by the Magistrates' Court; or
 - (b) if the statutory manager is an employee of the public service—the amount that the Magistrates' Court certifies should be paid to the Crown as repayment of the statutory manager's remuneration.
- (3) An amount certified under subsection (2)(b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.

- (4) A statutory manager has, in relation to the expenses specified in subsection (1), the same priority on the winding up of an incorporated association as the liquidator of the association has.

121 Liabilities arising from statutory management

- (1) If an incorporated association incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the association by a statutory manager, the statutory manager is liable for the loss.
- (2) A statutory manager is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 119(3) or 122.

122 Statutory manager to report to Registrar

- (1) On the receipt of a request from the Registrar, a statutory manager must, without delay, prepare and give to the Registrar a report showing how the statutory management is being carried out.
- (2) The Registrar may give a copy of the report to the incorporated association.

123 Additional powers of Registrar

- (1) If the Registrar appoints committee members of an incorporated association under section 119(8), the Registrar may, by written notice given to the association, specify—
- (a) a time during which this section is to apply in relation to the association; and
 - (b) the terms and conditions on which all or any of the committee members hold office; and
 - (c) with the consent of the Magistrates' Court, the rules that are to be the association's rules.

- (2) While this section applies to an incorporated association, the Registrar may—
 - (a) from time to time remove and appoint committee members; and
 - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1)(b); and
 - (c) with the consent of the Magistrates' Court, amend all or any of the rules specified under subsection (1)(c).
- (3) The Registrar may, by written notice given to the association, extend the time for which this section is to apply in relation to the association.
- (4) A rule specified by the Registrar under this section as a rule of an incorporated association—
 - (a) is not to be altered except in the way set out in this section; and
 - (b) if it is inconsistent with any other rule of the association, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and
 - (c) is a rule of the association for the purposes of this Act.

124 Stay of proceedings

- (1) If the Magistrates' Court appoints a statutory manager to conduct an incorporated association's affairs, a person must not begin or continue any proceeding in a court against the association until the statutory manager's appointment is revoked except with the leave of the Magistrates' Court and, if the Magistrates' Court grants leave, in accordance with any terms and conditions that the Magistrates' Court imposes.

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- (2) A person intending to apply for leave of the Magistrates' Court under subsection (1) must give the Registrar not less than 10 days' notice of intention to apply.
- (3) On the hearing of an application under subsection (1), the Registrar may be represented and may oppose the granting of the application.
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PART 10—WINDING UP AND CANCELLATION

Division 1—Winding up

125 Voluntary winding up

An incorporated association may be wound up voluntarily if the association by special resolution resolves that it be wound up voluntarily.

Note

Under sections 149 and 151, the voluntary winding up of an incorporated association is declared to be an applied Corporations legislation matter in relation to, respectively, the provisions of Part 5.5 (Voluntary winding up) and Part 5.6 (Winding up generally) of the Corporations Act. As such, the voluntary winding up of an incorporated association is subject to any requirements under those provisions.

126 Winding up by the court

- (1) The Supreme Court may order the winding up of an incorporated association if—
 - (a) the association has by special resolution resolved that it be wound up by the court; or
 - (b) the association suspends its operations for a whole year; or
 - (c) the association is unable to pay its debts; or
 - (d) the association has secured pecuniary profit for its members; or
 - (e) the association has, as trustee, secured pecuniary profit for its members; or

Note

For circumstances under which, for the purposes of this Act, an incorporated association is taken not to have secured pecuniary profit for its members, see section 4.

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- (f) the association has engaged in activities outside the scope of its purposes; or
 - (g) the court is of the opinion that it is just and equitable that the association be wound up.
- (2) An application for the winding up of an incorporated association must be made by—
- (a) the association; or
 - (b) a member of the association; or
 - (c) a creditor of the association; or
 - (d) the Registrar; or
 - (e) the statutory manager of the association.

Note

Under sections 150 and 151, the winding up of an incorporated association by the court is declared to be an applied Corporations legislation matter in relation to the provisions of Part 5.4 (Winding up in insolvency); Part 5.4B (Winding up in insolvency or by the court) and Part 5.6 (Winding up generally) of the Corporations Act. As such, the winding up of an incorporated association by the court is subject to any requirements under those provisions.

127 Winding up on certificate of Registrar

- (1) An incorporated association may be wound up on the certificate of the Registrar if the Registrar certifies that the necessary grounds for taking that action exist.
- (2) For the purposes of subsection (1), the necessary grounds exist if—
 - (a) there are fewer than 5 members of the association; or
 - (b) the association is not in operation; or

- (c) the association has secured pecuniary profit for its members; or
- (d) the association has, as trustee, secured pecuniary profit for its members; or

Note

For circumstances under which, for the purposes of this Act, an incorporated association is taken not to have secured pecuniary profit for its members, see section 4.

- (e) the association has not lodged with the Registrar copies of the financial statements of the association in accordance with section 102 for each of the preceding 2 years; or
- (f) the incorporation of the association has been obtained by fraud or mistake; or
- (g) the association exists for an illegal purpose; or
- (h) the association has—
 - (i) been given notice by the Registrar of a breach of this Act or the regulations or the rules of the association; and
 - (ii) failed to remedy the breach within the time specified in the notice; or
- (i) the association has failed to comply with a direction by the Registrar under section 111(1) within the period specified in the notice; or
- (j) in the opinion of the Registrar, circumstances exist which, in the public interest, justify the winding up of the association.

- (3) The Registrar must not certify any matter referred to in subsection (2) unless the matter has been proved to the satisfaction of the Registrar.

Note

Under section 151, the winding up of an incorporated association is declared to be an applied Corporations legislation matter in relation to the provisions of Part 5.6 (Winding up generally) of the Corporations Act. As such, the winding up of an incorporated association is subject to any requirements under those provisions.

128 Procedure before certification

- (1) Before issuing a certificate under section 127 in respect of an incorporated association, the Registrar must—
- (a) give notice to the association stating—
 - (i) the Registrar's intention to issue the certificate; and
 - (ii) the grounds for issuing the certificate; and
 - (iii) that the certificate will be issued unless an answer showing cause to the contrary is received within 2 months after the date on which the notice is sent or published, whichever is the later; and
 - (b) give the association a reasonable opportunity to show cause why the certificate should not be issued.
- (2) A notice under subsection (1) must be given by—
- (a) sending it by prepaid letter addressed to the registered address of the association; and
 - (b) publishing it in a newspaper circulating generally in the State.

129 Review of certificate

- (1) An incorporated association may apply to the Supreme Court for review of a decision of the Registrar to issue a certificate under section 127.
- (2) An application for review must be made within 28 days after the certificate is issued.

130 Procedure for winding up on certificate

- (1) The winding up of an incorporated association on the certificate of the Registrar commences—
 - (a) at the end of 28 days after the certificate is issued, unless an application is made under section 129; or
 - (b) if an application is made under section 129 and the Supreme Court upholds the decision to issue the certificate—on the determination of the application.
- (2) On the commencement of the winding up, the Registrar may appoint a person to be the liquidator of the association.
- (3) A liquidator appointed under this section need not be a registered liquidator under the Corporations Act.
- (4) A liquidator must within 10 days after being appointed under this section publish notice of the appointment in the Government Gazette.

Penalty: 10 penalty units.

- (5) The liquidator must—
 - (a) have adequate and appropriate professional indemnity insurance and fidelity insurance; or
 - (b) give to the Registrar the prescribed security.
- (6) The liquidator is entitled to receive the fees determined by the Registrar.

- (7) If the office of liquidator becomes vacant, the Registrar must appoint a person to fill the vacancy.

Division 2—Distribution of surplus assets on winding up

131 Definition

In this Division—

surplus assets, in relation to the winding up of an incorporated association, means the assets of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up.

132 Distribution of surplus assets

- (1) This section applies if an incorporated association has been wound up under this Act.
- (2) Subject to this section and any court order, the surplus assets of the association must be distributed in accordance with—
- (a) the rules of the association; or
 - (b) if there are no valid rules governing the distribution of its surplus assets—a special resolution of the association.
- (3) An asset or part of an asset of the association consisting of property supplied by a government department, public authority or Council, including the unexpended portion of a grant, must be returned to—
- (a) the department, authority or Council that supplied the property; or
 - (b) a body nominated by that department, authority or Council.

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- (4) Subject to subsection (5), the association must not distribute a surplus asset to—
- (a) any member or former member of the association; or
 - (b) any person to be held on trust for any member or former member of the association.
- Penalty: 20 penalty units.
- (5) The surplus assets of the association may be distributed to a member or former member if—
- (a) the member or former member is a body corporate or an association (whether incorporated or not) and the Registrar is satisfied that—
 - (i) at the time of the distribution, the body corporate or association referred to in paragraph (a) is prevented by its rules or otherwise from distributing the surplus assets to its members; and
 - (ii) the distribution is not contrary to this Act or the regulations; or
 - (b) the member or former member is a trustee who holds, or held, membership of the association on behalf of a trust and the Registrar is satisfied that—
 - (i) at the time of the distribution, the trustee is prevented by the terms of the trust or otherwise from distributing the surplus assets to the beneficiaries of the trust; and
 - (ii) the distribution is not contrary to this Act or the regulations.
- (6) This section applies subject to any trust affecting all or any of the assets of the association.

133 Court order relating to distribution of surplus assets

- (1) The Supreme Court may make an order relating to the distribution of the surplus assets of an incorporated association that is being wound up on the application of—
 - (a) the Registrar; or
 - (b) a liquidator of the association; or
 - (c) a member or former member of the association; or
 - (d) any person aggrieved by the operation of section 132 in relation to the surplus assets of the association.
- (2) The Supreme Court may make an order under subsection (1) permitting the distribution of surplus assets to the members of the association.
- (3) The Supreme Court, in making an order under subsection (1), must have regard to—
 - (a) the terms of any trust affecting all or any of the assets of the association; and
 - (b) the purposes and any relevant rules of the association.

Division 3—Cancellation of incorporation

134 Cancellation on winding up

- (1) The Registrar may, by notice published in the Government Gazette, cancel the incorporation of an incorporated association that has been wound up or has commenced to be wound up.
- (2) The cancellation of incorporation does not affect the winding up of the association.

135 Cancellation on ceasing to operate

- (1) If the Registrar is of the opinion that an incorporated association is not in operation, the Registrar may, by written notice, require the association to show cause why its incorporation should not be cancelled.
- (2) The notice must be—
 - (a) served on the association at its registered address; or
 - (b) if service cannot reasonably be effected—published in a newspaper circulating generally in the State.
- (3) The Registrar may, by notice published in the Government Gazette, cancel the incorporation of the association if—
 - (a) 28 days have expired since the notice under subsection (2) was given; and
 - (b) the Registrar is satisfied that the incorporation of the association should be cancelled.
- (4) If the incorporation of an association is cancelled, the Registrar must send notice of the cancellation to the registered address of the association.

136 Application for cancellation of incorporation

- (1) An application may be made to the Registrar to cancel the incorporation of an incorporated association if the association—
 - (a) has gross assets of less than \$10 000 or such other amount as is prescribed by regulation; and
 - (b) has no outstanding debts or liabilities; and

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- (c) has paid all fees and penalties applying to it under this Act; and
 - (d) is not a party to any legal proceedings.
- (2) The application may only be made by—
- (a) the association, if the association has passed a special resolution approving the making of the application; or
 - (b) if the association is not in operation—a member or former member of the association; or
 - (c) a statutory manager of the association appointed under section 116; or
 - (d) if the association is under voluntary administration—the administrator of the association.
- (3) The application must be—
- (a) in the approved form; and
 - (b) accompanied by the prescribed fee (if any).
- (4) The application must include a declaration from the applicant—
- (a) that all of the matters specified in subsection (1) exist in relation to the association; and
 - (b) that the applicant is qualified under subsection (2) to make the application; and
 - (c) in the case of an application by a member or former member of the association—that the association is not in operation; and
 - (d) setting out the reasons why the applicant has formed the view that the incorporation of the association should be cancelled.

137 Consideration of application by Registrar

- (1) The Registrar must not accept an application under section 136 by a member or former member of an incorporated association unless the Registrar is satisfied that the association is not in operation.
- (2) The Registrar may make any inquiries necessary to establish the validity of any information provided in a declaration under section 136(4).
- (3) The Registrar may require the applicant to provide further information or copies of documents to enable the Registrar to determine the application.
- (4) The Registrar may make any further inquiries necessary to establish that a special resolution approving the application for cancellation was validly passed.

138 Cancellation of incorporation on application

- (1) If the Registrar receives an application under section 136, the Registrar must cancel the incorporation of the incorporated association if—
 - (a) the Registrar is satisfied that the circumstances set out in section 136 exist in relation to the association; and
 - (b) the Registrar has complied with subsections (2), (3) and (4).
- (2) Before cancelling the incorporation of an incorporated association under subsection (1), the Registrar must give notice stating—
 - (a) that an application for the voluntary cancellation of incorporation of the association has been received by the Registrar; and
 - (b) unless a person makes a written objection to the cancellation to the Registrar within 28 days after the publication of the notice,

the Registrar intends to cancel the incorporation of the association.

- (3) The notice must be published in the Government Gazette and in a newspaper circulating generally in the State.
- (4) If, within 28 days after the publication of the notice, the Registrar receives a written objection to the cancellation of incorporation, the Registrar must not cancel the incorporation unless the Registrar is satisfied, after making further inquiries, that the circumstances set out in section 136 exist in relation to the association.
- (5) If the incorporation of an association is cancelled under subsection (1), the Registrar must—
 - (a) notify the applicant in writing that the incorporation of the association has been cancelled; and
 - (b) include in the notification the date on which the cancellation took effect.

139 Liability continues

- (1) This section applies if, immediately before the cancellation of the incorporation of an association under this Division, a person has incurred a liability by virtue of the person's role in or membership of the association.
- (2) Despite the cancellation of incorporation, that liability continues and may be enforced as if the incorporation had not been cancelled.

140 Vesting of property after cancellation

- (1) This section applies if the incorporation of an association is cancelled under section 135.
- (2) On the cancellation of the incorporation, the property of the association vests in the Registrar.

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- (3) The Registrar may do one or more of the following—
- (a) give any directions the Registrar thinks just for or with respect to—
 - (i) the discharge of the debts and liabilities of the association;
 - (ii) the distribution of its assets;
 - (iii) the winding up of its affairs;
 - (b) appoint a person to investigate the affairs of the association with a view to the realisation of its assets, discharge of its debts and liabilities, distribution of its assets and winding up of its affairs;
 - (c) if the Registrar is not able to arrange for the distribution of any property vested in the Registrar under this section—sell, or otherwise dispose of, or deal with that property;
 - (d) deduct any costs incurred by the Registrar under paragraph (c) from the sale or disposal of the property;
 - (e) do any act or thing reasonably necessary to be done in the exercise of the Registrar's powers under this section.

141 Proceeds from sale or disposal of property

- (1) The Registrar must pay into the Consolidated Fund any amount received from the sale or disposal of property under section 140(3)(c) after deduction of costs.
- (2) A person who claims an entitlement to any money paid into the Consolidated Fund under subsection (1) may, at any time within 15 years after the cancellation of the association, apply to

the Supreme Court for an order for payment to the person of the amount claimed.

- (3) Any amount ordered to be paid to a person under subsection (2) must be paid out of the Consolidated Fund (which is hereby appropriated to the necessary extent).

142 Reinstatement of cancelled association by Registrar

- (1) If the Registrar is satisfied that the incorporation of an association should not have been cancelled, the Registrar may reinstate the association as an incorporated association.
- (2) On the reinstatement of the incorporation of the association—
- (a) the incorporated association is taken to have continued in existence as if its incorporation had not been cancelled; and
- (b) any property vested in the Registrar under section 140 that has not been distributed, sold or disposed of under that section is re-vested in the incorporated association.

143 Reinstatement of cancelled association by Supreme Court

- (1) A person who is aggrieved by the cancellation of the incorporation of an association may, at any time within 15 years after the cancellation, apply to the Supreme Court for an order to reinstate the incorporation of the association.
- (2) On the application made by a person under subsection (1), the Supreme Court may, if satisfied that it is just that the incorporation of the association be reinstated, order the Registrar to reinstate the incorporation of the association.

- (3) The order may be subject to any directions and conditions the Supreme Court thinks fit including directions in relation to the transfer back to the association of property vested in the Registrar under section 140.
 - (4) On the reinstatement of the incorporation of the association the incorporated association is taken to have continued in existence as if its incorporation had not been cancelled.
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PART 11—CORPORATIONS LEGISLATION

Division 1—Exclusion from Corporations legislation

**144 Incorporated association excluded from
Corporations legislation**

- (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) if the incorporated association is a company under the Corporations Act—to the extent necessary for an association to be deregistered as a company under that Act;
 - (b) if the incorporated association is authorised or directed under Part 8 to become registered as a company under that Act—to the extent necessary for an association to be registered as a company under Chapter 5B of that Act;
 - (c) for the purposes of Division 5 of Part 5.7B of the Corporations Act and in respect of the definition of *corporation* applying for the purposes of that Division.

Note

This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to an incorporated association, other than as provided in subsection (2). Section 5F of the Corporations Act 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 not apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Part apply certain provisions of the Corporations legislation to incorporated associations as laws of this State.

- (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.

Division 2—Declaration of applied Corporations Legislation

Note

Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

145 Common modifications

- (1) For the purposes of any matter declared under this Division to be an applied Corporations legislation matter, the following modifications to the text of the Corporations Act apply—
 - (a) a reference to a company or body is to be read as a reference to an incorporated association;
 - (b) a reference to the incorporation of a body is to be read as the incorporation of an association under this Act;
 - (c) a reference to the deregistration of a company is to be read as a reference to the cancellation of incorporation of an association under Division 3 of Part 10 of this Act;
 - (d) 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;

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- (e) a reference to the board of a body corporate is to be read as a reference to the committee of an incorporated association;
 - (f) a reference to the secretary of a company is to be read as a reference to the secretary of an incorporated association;
 - (g) a reference to the principal place of business of a company is to be read as a reference to the registered address of an incorporated association;
 - (h) 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 purposes;
 - (i) a reference to ASIC is to be read as a reference to the Registrar;
 - (j) 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;
 - (k) a reference to the Court is to be read as a reference to the Supreme Court;
 - (l) a reference to the lodgment of a document is to be read as a reference to lodgement of a document with the Registrar;
 - (m) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;
 - (n) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;

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- (o) a reference to an officer of a company is to be read as a reference to an office holder of an incorporated association and, where applicable, a reference to a former officer is a reference to a past office holder of the committee of an incorporated association;
 - (p) a reference to a contributory of a company is to be read as a reference to a member of an incorporated association;
 - (q) a reference to a registered liquidator is to be read as a reference to a person registered as a liquidator under section 1282(2) of the Corporations Act;
 - (r) a reference to a registered company auditor is to be read as a reference to a person permitted to audit the accounts of an incorporated association under this Act;
 - (s) a reference to the Commonwealth is to be read as a reference to the State.
- (2) For the purposes of any matter declared under this Division to be an applied Corporations legislation matter, a reference in a provision of the Corporations Act to "this Act" is to be read as a reference to—
- (a) the provisions of the Corporations Act declared to apply to the matter, with the modifications to which the declaration is made subject; and
 - (b) the provisions of the Corporations Act that are taken to apply to the matter by virtue of section 19(1) of the **Corporations (Ancillary Provisions) Act 2001**.

146 Civil penalties applying to office holders

- (1) This section applies to the following provisions—
 - (a) section 83(1) (improper use of information);
 - (b) section 83(2) (improper use of position);
 - (c) section 84(1) (breach of duty of care and diligence);
 - (d) section 85(1) (breach of duty of good faith and proper purpose).
- (2) The provisions referred to in subsection (1) 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 the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act subject to the following modifications—
 - (a) the modifications referred to in section 145, other than section 145(1)(i);
 - (b) a reference to the provisions specified in section 1317E(1) of the Corporations Act is to be read as a reference to the provisions referred to in subsection (1);
 - (c) a reference to \$200 000 in section 1317G(1) of the Corporations Act is to be read as a reference to \$20 000;
 - (d) a reference to ASIC is to be read as a reference to the Director of Consumer Affairs Victoria;
 - (e) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

147 Receivers and other controllers of property of incorporated association

The entering into possession or assumption of control of any property of an incorporated association by a receiver or any other controller 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 5.2 (Receivers, and other controllers, of property of corporations) of the Corporations Act subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) any applicable modifications referred to in section 154;
- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) prescribed by the regulations.

148 Voluntary administration

The voluntary 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 section 145;
- (b) any applicable modifications referred to in section 154;

- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) prescribed by the regulations.

149 Voluntary winding up

The winding up of an incorporated association under section 125 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 5.5 (Voluntary winding up) of the Corporations Act, subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) any applicable modifications referred to in section 154;
- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) prescribed by the regulations.

150 Winding up by the court

The winding up of an incorporated association by the court under section 126 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 Parts 5.4 (Winding up in insolvency) and 5.4B (Winding up in insolvency or by the court) of the Corporations Act, subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) any applicable modifications referred to in section 154;

- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) prescribed by the regulations.

151 Winding up generally

The winding up of an incorporated association under Division 1 of Part 10 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 5.6 (Winding up generally) of the Corporations Act, subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) any applicable modifications referred to in section 154;
- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) prescribed by the regulations.

152 Insolvency

- (1) An incorporated association that is insolvent 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 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company) of the Corporations Act subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) the text of section 588E of the Corporations Act is modified as follows—
 - (i) a reference to keep is to be read as reference to maintain;

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- (ii) a reference to subsection 286(1) is to be read as a reference to section 89(1) of this Act;
 - (iii) a reference to subsection 286(2) is to be read as a reference to section 89(2) of this Act;
 - (c) a reference in section 588FJ(1) of the Corporations Act to a company being wound up in insolvency is to be read as an incorporated association being wound up under sections 459A and 459P of the Corporations Act as applied by section 150 of this Act;
 - (d) section 588Z of the Corporations Act is omitted;
 - (e) any applicable modifications referred to in section 154;
 - (f) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.
- (2) To the extent Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act applies to a contravention of section 588G(2) of the Corporations Act by virtue of section 19(1)(c) of the **Corporations (Ancillary Provisions) Act 2001** the application of that Part is subject to the following modifications—
- (a) the modifications referred to in section 145, other than section 145(1)(i);
 - (b) a reference to \$200 000 in section 1317G(1) of the Corporations Act is to be read as a reference to \$20 000;

- (c) a reference to ASIC is to be read as a reference to the Director of Consumer Affairs Victoria;
- (d) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

153 General

Any matter declared under this Division to be an applied Corporations legislation matter is, in addition, an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to Part 5.8 (Offences), Part 5.8A (Employee entitlements) and Part 5.9 (Miscellaneous) of the Corporations Act subject to the following modifications—

- (a) the modifications referred to in section 145;
- (b) any applicable modifications referred to in section 154;
- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

154 Offences under applied provisions

- (1) A provision of the Corporations Act as applied under this Division that is specified in Column 2 of Schedule 2 is subject to any modifications specified opposite in Column 3.
- (2) A contravention of a provision of the Corporations Act specified in Column 2 of Schedule 3, is taken to be an offence against this Act and subject to the penalty specified opposite in Column 3.

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- (3) To avoid doubt—
- (a) section 1311 of, and Schedule 3 to, the Corporations Act do not apply to a provision referred to in subsection (2); and
 - (b) the penalty referred to in subsection (2) applies despite section 20(2)(a) of the **Corporations (Ancillary Provisions) Act 2001**.

155 Commonwealth Criminal Code does not apply

- (1) For the purposes of any proceedings for a contravention of a provision referred to in section 154(2), the Criminal Code of the Commonwealth does not apply.
 - (2) As a consequence of subsection (1), a note to an applied provision that refers to a provision of the Criminal Code of the Commonwealth must be disregarded.
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PART 12—POWERS OF ENTRY AND INSPECTION

Division 1—General

156 Definitions

In this Part—

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**.

157 Production of identification

- (1) An inspector must produce his or her identification for inspection—
 - (a) before exercising a power under this Part; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to—
 - (a) a requirement made by post; or
 - (b) the exercise of a power under section 165.

Division 2—Requirements to produce information

158 Inspector may seek court order

- (1) If an inspector believes on reasonable grounds that a person may have contravened this Act or the regulations, the inspector may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the inspector—
 - (a) to answer orally or in writing any questions put by an inspector in relation to the alleged contravention;

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- (b) to supply orally or in writing information required by an inspector in relation to the alleged contravention;
 - (c) to produce to an inspector specified documents or documents of a specified class relating to the alleged contravention.
- (2) An application under subsection (1) must be made with the written approval of the Registrar.
 - (3) The Magistrates' Court may make the order if the court is satisfied that there are reasonable grounds to believe that a person may have contravened this Act or the regulations.
 - (4) An order must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

159 Inspection of documents under court order

- (1) If any documents are produced to an inspector under an order made under section 158, the inspector may—
 - (a) inspect the documents or authorise a person to inspect the documents;
 - (b) make copies of or take extracts of the documents;
 - (c) seize the documents;
 - (d) secure any seized documents against interference;
 - (e) retain possession of the documents in accordance with this Part.
- (2) An inspector may only seize documents under subsection (1)(c) if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations.

160 Notification of execution of court order

- (1) An inspector who executes an order under this Division must, as soon as practicable after the execution of the order, notify the Magistrates' Court in writing of—
 - (a) the time and place of execution; and
 - (b) the documents or classes of documents seized; and
 - (c) if documents were seized under section 159(1)(c) in respect of an alleged contravention other than a contravention for which the order was made, the alleged contravention in respect of which the documents were seized.
- (2) The Magistrates' Court may direct the inspector to bring before the court a document to which subsection (1)(c) applies so that the matter may be dealt with according to law.
- (3) The Magistrates' Court may direct that a document brought before it under subsection (2) be returned to its owner, if in the opinion of the court the document can be returned consistently with the interests of justice.
- (4) A direction under subsection (3) may be subject to any condition the court thinks fit.

161 Publisher required to produce information

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Registrar or an inspector may in writing require a publisher to produce specified information which has been published by the publisher.
- (2) A publisher must produce information in the form in which it is retained by the publisher.

(3) A requirement of an inspector under subsection (1) must be made with the written approval of the Registrar.

(4) In this section—

publisher means a person who publishes a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form).

Division 3—Entry and search of premises with consent

162 Entry and search with consent

(1) If an inspector believes on reasonable grounds that a person has contravened this Act or the regulations, the inspector, with the consent of the occupier of premises, may—

- (a) enter and search the premises; and
- (b) exercise a power referred to in subsection (2) and (3) at the premises.

(2) An inspector may—

- (a) seize any thing the inspector finds on the premises if the inspector believes on reasonable grounds the thing is connected with the alleged contravention;
- (b) examine, take and keep samples of any goods the inspector finds on the premises if the inspector believes on reasonable grounds the goods are connected with the alleged contravention;

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- (c) in the case of any document on the premises, do any of the following in relation to the document, if the inspector believes on reasonable grounds the document is connected with the alleged contravention—
- (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.
- (3) An inspector may make any still or moving image or audio-visual recording if the inspector believes on reasonable grounds it is necessary to do so for the purpose of establishing the alleged contravention.

163 Notice before entry and search

An inspector must not enter and search any premises under section 162 unless, before the occupier consents to the entry and search, the inspector has—

- (a) produced his or her identification for inspection; and
- (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and

- (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
- (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

164 Acknowledgement of consent to entry and search

- (1) If an occupier of premises consents to the entry and search of the premises by an inspector under section 162, the inspector must, before entering the premises, ask the occupier to sign an acknowledgment.
- (2) For the purpose of subsection (1), the acknowledgment must state—
 - (a) that the occupier has been informed—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
 - (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings; and

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- (b) that the occupier has consented to the entry and search; and
 - (c) the date and time that the occupier consented.
- (3) If an occupier of premises consents to the seizure or taking of any thing during a search of the premises by the inspector, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgement.
 - (4) For the purpose of subsection (3), the acknowledgment must state—
 - (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
 - (5) An inspector must give a copy of a signed acknowledgement to the occupier before leaving the premises.
 - (6) If, in any proceeding, a signed acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

Division 4—Entry and search of premises without consent

165 Entry of premises open to the public

An inspector may enter and inspect any part of a premises that is, at the time of the entry and inspection, open to the public.

166 Entry without consent or warrant

- (1) For the purpose of monitoring compliance with this Act or the regulations, or an order made by a court or tribunal under this Act or the regulations, an inspector may enter and search any premises at

which the inspector believes on reasonable grounds—

- (a) the affairs of an incorporated association are being conducted; or
 - (b) a person is keeping a record or document that—
 - (i) is required to be kept by this Act or the regulations; or
 - (ii) may show whether or not this Act or the regulations are being complied with.
- (2) An inspector who enters and searches premises under subsection (1) may—
- (a) examine any thing found on the premises;
 - (b) seize any thing found on the premises or secure any thing found on the premises against interference, if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
 - (c) take and keep samples of any thing found on the premises if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
 - (d) examine and test any equipment found on the premises that is of a kind used in connection with the supply of goods or services;
 - (e) in the case of any document on the premises, do any of the following—
 - (i) require the document to be produced for examination;

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- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (f) make any still or moving image or audio-visual recording;
 - (g) bring any equipment onto the premises that the inspector believes on reasonable grounds is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (3) A power under subsection (1)—
- (a) must not be exercised in any part of the premises that is used for residential purposes; and
 - (b) must be exercised between the hours of 9 a.m. to 5 p.m., or when the premises are open for business.
- (4) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector must, on leaving the premises, leave a notice setting out—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of things done while on the premises; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the Registrar for further details of the entry.

167 Use or seizure of electronic equipment at premises

- (1) If an inspector, during a search under section 166—
- (a) finds a thing at the premises that is or includes a disc, tape or other device for the storage of information; and
 - (b) there is at the premises equipment that may be used with the disc, tape or other storage device; and
 - (c) the inspector believes on reasonable grounds that information stored in the disc, tape or other storage device may be relevant to determine whether this Act or the regulations have been complied with—

the inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.

- (2) If the inspector believes on reasonable grounds that a disc, tape or other storage device at the premises contains, stores or is otherwise used in the transmission of information that is relevant to determine whether this Act or the regulations have been complied with, the inspector may—
- (a) put the information in a documentary form and seize the documents so produced; or
 - (b) copy the information to another disc, tape or other storage device and remove that disc, tape or storage device from the premises; or
 - (c) if it is not practicable to put the information in a documentary form or to copy the information—seize the disc, tape or other storage device and the equipment that enables the information to be accessed.

- (3) An inspector must not operate or seize equipment for a purpose set out in this section unless the inspector believes on reasonable grounds that the operation can be carried out without damage to the equipment.

Division 5—Entry and search of premises with warrant

168 Search warrants

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person may have contravened this Act or the regulations.
- (2) An application under subsection (1) must be made with the written approval of the Registrar.
- (3) If a magistrate is satisfied by the evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is a thing, or things of a particular kind, connected with a contravention of this Act or the regulations on the premises, the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.

169 Form and content of search warrants

- (1) A search warrant issued under section 168(3) may authorise the inspector named in the warrant to enter premises specified in the warrant, if necessary by force, and do any of the following—
 - (a) if the inspector believes on reasonable grounds that a thing, or a thing of a particular kind, named or described in the warrant is connected with the alleged contravention—
 - (i) search for the thing;
 - (ii) seize the thing;

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- (iii) secure the thing against interference;
 - (iv) examine, inspect, take or keep samples of the thing;
 - (b) in the case of a document, or a document of a particular kind, named or described in the warrant, if the inspector believes on reasonable grounds that the document is connected with the alleged contravention—
 - (i) require the document to be produced for inspection;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (c) make any still or moving image or audio-visual recording of any thing of a particular kind, named or described in the warrant, if the inspector believes on reasonable grounds it is connected with the alleged contravention.
 - (2) A search warrant issued under section 168(3) may authorise, in addition to an inspector, any other person named or otherwise identified in the warrant to execute the warrant.
 - (3) A search warrant issued under section 168(3) must state—
 - (a) the purpose for which the search is required and the nature of the alleged contravention; and

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- (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 168(3).

170 Announcement before entry

- (1) On executing a search warrant issued under section 168(3), the inspector named in the warrant—
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

171 Details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.

172 Seizure of things not mentioned in the warrant

A search warrant issued under section 168(3) authorises an inspector named in the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the inspector believes on reasonable grounds that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under this Part; or
 - (ii) will afford evidence about the contravention of this Act or the regulations; and
- (b) in the case of the seizure of a thing, the inspector believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act.

Division 6—Documents

173 Copies of seized documents

- (1) If an inspector retains possession of a document seized from a person under this Part, the inspector must give the person, within 21 days after the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

174 Retention and return of seized documents or things

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 175 extending the period during which the document or thing may be retained.
- (3) This section does not apply to a sample taken by an inspector in the exercise of a power under this Part.

175 Magistrates' Court may extend 3 month period

- (1) If an inspector seizes a document or other thing under this Part, the inspector may apply to the Magistrates' Court for an order for an extension, not exceeding 3 months, of the period for which the inspector may retain the document or thing.
- (2) An application under subsection (1) must be made—
 - (a) within 3 months after seizing a document or other thing under this Part; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension.
- (3) The Magistrates' Court may make the order if it is satisfied that—
 - (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (4) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

Division 7—Offences

176 Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of the Registrar or an inspector under this Part.

Penalty: 60 penalty units.

177 Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

178 Offence to give false or misleading information

- (1) A person must not give information to an inspector under this Part that the person believes to be false or misleading in any material particular.
- Penalty: 60 penalty units.
- (2) A person must not produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

179 Offence to hinder or obstruct inspector

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

180 Offence to impersonate inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

Division 8—Miscellaneous

181 Entry to be reported to the Registrar

- (1) If an inspector exercises a power of entry under this Part, the inspector must report the exercise of the power to the Registrar within 7 days after the entry.
- (2) The report must include all relevant details of the entry including—
 - (a) the time and place of the entry; and
 - (b) the purpose of the entry; and
 - (c) a description of things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
 - (d) the time of departure.

182 Requirement to assist inspector during entry

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations, an inspector exercising a power of entry under this Part who produces his or her identification for inspection by the occupier of the

premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

183 Register of exercise of powers of entry

The Registrar must keep a register containing the particulars of all matters reported to the Registrar under section 181.

184 Complaints

- (1) Any person may complain to the Registrar about the exercise of a power by an inspector under this Part.
- (2) The Registrar must—
 - (a) investigate any complaint made to the Registrar; and
 - (b) provide a written report to the complainant on the results of the investigation.

185 Service of documents

- (1) A written requirement by an inspector under this Part may be—
 - (a) given personally or sent by registered post to a person at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, given personally or sent by post at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the Registrar by registered post.

186 Confidentiality

- (1) An inspector must not disclose to any other person, whether directly or indirectly, any information obtained by the inspector in carrying out his or her functions under this Part.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information—
- (a) to the extent necessary to carry out the inspector's functions under this Part; or
 - (b) to a court or tribunal in the course of legal proceedings; or
 - (c) pursuant to an order of a court or tribunal; or
 - (d) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
 - (e) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
 - (f) with the written authority of the Registrar; or
 - (g) with the written authority of the person to whom the information relates.
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PART 13—ADMINISTRATION

Division 1—Registrar

187 Registrar of Incorporated Associations

- (1) Subject to the **Public Administration Act 2004** there is to be a Registrar of Incorporated Associations.
- (2) The person employed as the Registrar of Incorporated Associations under the **Public Administration Act 2004** is a body corporate under the name "Registrar of Incorporated Associations".
- (3) By that name, the Registrar of Incorporated Associations—
 - (a) has perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all things that a body corporate may by law do and suffer.

188 Official seal

- (1) The official seal of the Registrar—
 - (a) must be kept as directed by the Registrar; and
 - (b) must not be used except as authorised by the Registrar.
- (2) All courts, tribunals and other persons acting judicially—
 - (a) must take judicial notice of the official seal of the Registrar on a document; and

- (b) until the contrary is proved, must presume that it was duly affixed.

189 Registrar may delegate

The Registrar may, by instrument, delegate any of the Registrar's powers under this Act or the regulations, other than this power of delegation, to any person employed under Part 3 of the **Public Administration Act 2004**.

190 Agents of the Registrar

The Registrar may enter into arrangements or agreements with any person or body to act as the agent of the Registrar in the performance of the Registrar's functions under this Act.

Division 2—Register and documents held by Registrar

191 Register

- (1) The Registrar must keep a register of incorporated associations in the form determined by the Registrar.
- (2) The register must be open for public inspection.
- (3) The purpose of keeping the register is to enable members of the public to have access to—
 - (a) information about the purposes, rules, contact details and secretaries of incorporated associations in Victoria; and
 - (b) the financial statements of incorporated associations in Victoria.
- (4) The register must include the following details for each association incorporated under this Act—
 - (a) the number issued to the association by the Registrar on its incorporation;
 - (b) its name;

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- (c) any previous names and the dates they were current;
 - (d) its current registered address and the date registered;
 - (e) its previous registered address and the date registered;
 - (f) its current postal address;
 - (g) whether or not it is currently incorporated;
 - (h) the date it was incorporated;
 - (i) the name and date of appointment of its current secretary;
 - (j) the name and date of appointment of each previous secretary and public officer;
 - (k) the date on which the financial year of the association ends;
 - (l) a copy of each financial statement lodged and the date of lodgement;
 - (m) the date of its last annual general meeting;
 - (n) whether, for the purposes of the last financial year, the association is a tier one association, a tier two association or a tier three association;
 - (o) a copy of its rules and the date they were approved;
 - (p) any business name that has been registered by the association;
 - (q) any Australian Business Number issued to the association under A New Tax System (Australian Business Number) Act 1999 of the Commonwealth;
 - (r) any other information prescribed by the regulations.

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- (5) The register must contain the following details for each association the incorporation of which has been cancelled—
- (a) the name of the association immediately before its incorporation was cancelled;
 - (b) the date that its incorporation was cancelled.
- (6) Subject to the **Public Records Act 1973**, the Registrar may destroy or dispose of any document contained in the register if—
- (a) a transparency or electronic copy of the document has been incorporated in the register; and
 - (b) the Registrar considers it is no longer necessary or desirable to retain the original document.

192 Corrections of register

- (1) The Registrar may, if the Registrar decides it is necessary to do so, correct any error or omission in the register of incorporated associations.
- (2) The Registrar may correct the register by—
 - (a) inserting an entry;
 - (b) amending an entry;
 - (c) omitting an entry.
- (3) The Registrar must not omit an entry in the register unless satisfied that the whole of the entry was included in error.

193 Restriction on personal information

- (1) A person whose personal information is held on the register of incorporated associations may apply to the Registrar to restrict public access to some or all of that personal information.

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- (2) If the Registrar is satisfied that there are special circumstances which justify doing so, the Registrar may restrict public access to some or all of that person's personal information.
 - (3) The restriction of public access under subsection (2) may be for the period and on the conditions that the Registrar thinks fit.

194 Release of restricted information

- (1) A person may apply to the Registrar for the release of personal information the access to which is otherwise restricted under section 193.
- (2) If the Registrar is satisfied that it is in the public interest to do so, the Registrar may decide to release some or all of the information to the person on any condition that the Registrar thinks fit.
- (3) If the Registrar decides to release restricted personal information, the Registrar must give written notice of the decision to the person to whom the information relates.
- (4) The Registrar must not release a person's restricted personal information without the consent of the person unless—
 - (a) at least 28 days have elapsed since the Registrar gave notice to the person under subsection (3); and
 - (b) either—
 - (i) the person has not sought a review of the decision; or
 - (ii) VCAT has upheld the Registrar's decision to release the information.

195 Rights of review

- (1) A person whose interests are affected by a decision of the Registrar under section 193(2) or 194(2) may apply to VCAT for a review of the decision.
- (2) The application must be lodged with VCAT within 28 days after—
 - (a) notice of the decision was given; or
 - (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision—
 - (i) the day on which the statement of reasons is given to the person; or
 - (ii) the day on which the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

196 Inspection of register and obtaining copies of documents

- (1) On payment of the prescribed fee (if any), a person may inspect—
 - (a) the register of incorporated associations; or
 - (b) prescribed documents or documents of a prescribed class kept by the Registrar relating to an incorporated association.
- (2) On payment of the prescribed fee (if any), a person may obtain—
 - (a) a copy of a document that the person may inspect under subsection (1)(b); or
 - (b) a certified copy of a document that the person may inspect under subsection (1)(b).

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- (3) If a reproduction, transparency or electronic copy of a document or an extract of information contained in a document and recorded in the register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of the document.

197 Duplicate certificate of registration

A person may, on payment of the prescribed fee, obtain from the Registrar a certified duplicate of a certificate of registration of an incorporated association.

Division 3—Lodgement of documents

198 Payment of fee

If a fee is payable to the Registrar for the lodgement of a document with the Registrar, the document is taken not to have been lodged until the fee has been paid.

199 Method of lodgement

- (1) Subject to section 198, if a document is required under this Act or the regulations to be lodged with the Registrar, it is sufficient compliance with that requirement if the Registrar receives a copy of the document by facsimile or electronic transmission.
- (2) Despite subsection (1), if the Registrar receives from a person a copy of a document under subsection (1), the Registrar may, in writing, require the person to produce and lodge the original of the document.
- (3) Subsection (2) does not apply to any document—
- (a) created by a person using software approved by the Director of Consumer Affairs Victoria and lodged on an internet site operated by the State; and

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- (b) forwarded by electronic transmission to the Registrar.
 - (4) A person must comply with a requirement of the Registrar under subsection (2)—
 - (a) within 28 days after the person receives the request from the Registrar; or
 - (b) if the Registrar has specified a longer time for compliance—within the specified time.
 - (5) If a person has not complied with a requirement of the Registrar in relation to the lodging of the document within the time required under subsection (4), the person is taken not to have lodged the document.

200 Special arrangements for the lodgement of documents

- (1) The Registrar may, in writing, approve a special arrangement for the electronic transmission or lodgement of copies of documents required to be lodged under this Act.
- (2) An approval under subsection (1) may provide an exemption (or a partial exemption) from specified provisions of this Act relating to—
 - (a) the authentication or signature of documents;
 - (b) the lodgement of documents.
- (3) The Registrar may impose any condition on an approval under subsection (1).

201 Retention of original documents

- (1) This section applies if a copy of a document has been lodged under section 199 or in accordance with an approval under section 200.

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- (2) The incorporated association to which the document relates must—
- (a) for a period of not less than 7 years after the copy of the document is lodged, retain the original document signed by any person required to sign the document; and
 - (b) if requested to do so by the Registrar within that period, produce that document to the Registrar.

Penalty: 20 penalty units.

202 Requirement to produce and lodge documents

- (1) The Registrar may, in writing, require a person to produce and lodge the original of any document an incorporated association is required to keep under this Act.
- (2) Subsection (1) does not apply to—
- (a) the register of members of the association; or
 - (b) any document—
 - (i) created by a person using software approved by the Director of Consumer Affairs Victoria and lodged on an internet site operated by the State; and
 - (ii) forwarded by electronic transmission to the Registrar.
- (3) A person must comply with a requirement of the Registrar under subsection (1)—
- (a) within 28 days after the person receives the request from the Registrar; or
 - (b) if the Registrar has specified a longer time for compliance—within the specified time.

Penalty: 5 penalty units.

203 Signatures

- (1) Despite any other provision of this Act, if the Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document, the Registrar may accept the document without it having been signed by the person.
- (2) The acceptance of an unsigned document by the Registrar under subsection (1) does not relieve a person required to sign the document of that requirement.
- (3) If a document is received by the Registrar for lodgement under this Act or the regulations and the document is required to be signed, it is sufficient compliance with that requirement if the original of the document is signed.

204 Refusal to register or receive document

- (1) The Registrar may refuse to register or receive a document submitted for lodgement with the Registrar if the Registrar is of the opinion that the document—
 - (a) contains matter contrary to law; or
 - (b) contains matter that, in a material particular, is false or misleading in the form and context in which it is included; or
 - (c) because of an omission or misdescription, has not been duly completed; or
 - (d) is illegible in any part; or
 - (e) if submitted in electronic form—is not readily accessible by the Registrar so as to be useable by the Registrar; or
 - (f) does not comply with the requirements of this Act; or
 - (g) contains an error, alteration or erasure.

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- (2) If the Registrar refuses to register or receive a document under subsection (1), the Registrar may request—
- (a) that the document be appropriately amended or completed and resubmitted; or
 - (b) that a fresh document be submitted in its place; or
 - (c) if the document has not been duly completed—that a supplementary document in the approved form be lodged.

205 Refusal to register or receive invalid document

- (1) The Registrar may refuse to register or receive a document submitted for lodgement by or on behalf of an incorporated association if the Registrar is of the opinion that the document is not a valid document of the association.
- (2) If the Registrar refuses under subsection (1) to register or receive a document, the incorporated association that lodged the document or on whose behalf the document was lodged—
- (a) may request that the Registrar reconsider the refusal; and
 - (b) may provide to the Registrar any documents in support of the request.
- (3) The Registrar must refer to the Magistrates' Court the question of whether or not a document is valid if—
- (a) an incorporated association has requested under subsection (2) that the Registrar reconsider a refusal to register or receive the document; and
 - (b) the Registrar remains of the opinion that the document is not a valid document; and

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- (c) the incorporated association requests that the Registrar refer the matter to the Magistrates' Court.
 - (4) The Magistrates' Court may—
 - (a) make an order declaring a document to be a valid document of an incorporated association; or
 - (b) make an order declaring a document not to be a valid document of an incorporated association.
 - (5) If the Magistrates' Court makes an order declaring a document to be a valid document of an incorporated association, the Registrar must register the document.

206 Records and documents in language other than English

- (1) The records of an incorporated association may be kept in any language.
- (2) A certified English translation of any record of an incorporated association not kept in English must be made available within a reasonable time on the request of—
 - (a) a member of the association; or
 - (b) the Registrar, or anyone else who is entitled to inspect the record.
- (3) If under this Act a person gives to or lodges with the Registrar a document not written in English, the person must at the same time give to or lodge with the Registrar a certified English translation of the document.

Penalty: 5 penalty units.

(4) In this section—

certified, in relation to the translation of a record or document, means certified by a written statement given by the translator to be a correct translation of the record or document into English;

document means any rules, trust or other document and includes a copy of a document;

records, of an incorporated association, include—

- (a) the minutes of general meetings and committee meetings of the association;
- (b) the financial records of the association.

Division 4—Fees

207 Waiver or refund of fees

The Registrar may, in a particular case or class of cases—

- (a) waive or reduce fees that would otherwise be payable under this Act; or
- (b) refund, in whole or in part, fees paid under this Act.

PART 14—OFFENCES AND PROCEEDINGS

Division 1—General enforcement provisions

208 False and misleading statements

- (1) A person must not, in a document referred to in subsection (6), make or authorise the making of a statement that the person knows is false or misleading in a material particular.

Penalty: 60 penalty units.

- (2) A person must not, from a document referred to in subsection (6), omit or authorise the omission of anything knowing that the omission makes the document false or misleading in a material respect.

Penalty: 60 penalty units.

- (3) A person must not, in a document referred to in subsection (6), make or authorise the making of a statement that is false or misleading in a material particular without having taken reasonable steps to ensure that the statement was not false or misleading in a material particular.

Penalty: 30 penalty units.

- (4) A person must not, from a document referred to in subsection (6), omit or authorise the omission of anything without which the document would be misleading, without having taken reasonable steps to ensure that the document did not omit anything without which the document would be misleading.

Penalty: 30 penalty units.

- (5) For the purposes of this section, a person is taken to have authorised the making of a statement in, or the omission of a thing from, a document if at a meeting, a person votes in favour of a resolution approving, or otherwise approves, the document.

- (6) This section applies in relation to a document that is—
- (a) required by or for the purposes of this Act; or
 - (b) lodged with, or submitted to, the Registrar;
or
 - (c) a declaration made under this Act; or
 - (d) submitted to a general meeting of members of an incorporated association.

209 Use of the word "Incorporated"

- (1) A person or body must not use as the person's or the body's name or title a name or title that includes the word "Incorporated", "Inc." or "Inc".

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to a body corporate or association incorporated under this or any other Act or under an Act or law of any other place.
- (3) If a body contravenes subsection (1), each member of the body is taken to have contravened the same provision and may be held liable to the same penalty.
- (4) In this section—

body includes an association, society, club, institution or group of persons.

210 Limitation on proceedings for offence

Despite anything to the contrary in any other Act, proceedings for an offence against this Act may not be commenced any later than 3 years after the commission of the alleged offence.

211 Continuing offences

- (1) If a provision of this Act requires a person to do an act, the obligation to do the act continues until the person does the act—

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- (a) even if the person has already been convicted of an offence for the failure to do the act; and
- (b) even if the provision required the person to do the act within a particular period or before a particular time and that period has ended or that time passed.
- (2) If a person is convicted of an offence (a *primary conviction*) for a failure to do an act (whether it is the first or a second or subsequent offence in relation to the failure) and the person continues to fail to do the act after the time of the conviction, the person commits a further offence for the continuing failure.
- (3) The further offence is constituted by the person's failure to do the act during the period (the *further offence period*) that begins with the primary conviction and ends when proceedings for the further offence are commenced or the act concerned is done (whichever occurs first).
- (4) For the purpose of subsection (3), proceedings for the further offence are taken to commence on the day the charge-sheet for the further offence is filed or signed in accordance with section 6 of the **Criminal Procedure Act 2009**.
- (5) The maximum penalty for the further offence is the penalty calculated by multiplying one penalty unit by the number of days in the further offence period.

Division 2—Infringement notices

212 Infringement notices

- (1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act or the regulations that is prescribed for the purposes of this subsection.

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- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), an infringement notice must—
- (a) be in the form required by the **Infringements Act 2006**; and
 - (b) include details of the additional steps (if any) required to expiate the offence.
- (4) Despite anything to the contrary in the **Infringements Act 2006**, a notice under subsection (1) may be served on an incorporated association in accordance with this section.
- (5) The Registrar may, in writing, authorise a person to serve infringement notices under this section.
- (6) In this section—
- authorised officer* means—
- (a) the Registrar;
 - (b) a person authorised by the Registrar under subsection (5);
 - (c) an inspector;
- person* includes an incorporated association.

213 Additional step for ongoing offence

- (1) This section applies if a person is served with an infringement notice for a prescribed offence constituted by the failure of the person to do an act.
- (2) The additional step required to expiate the offence is for the person to do the act.

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- (3) If within the required period the person informs the Registrar that the act has been done, the Registrar must—
- (a) without delay, ascertain whether or not the act has been done; and
 - (b) serve on the person a notice stating whether or not the act has been done.
- (4) A statement that an act has been done contained in a notice served under subsection (3)(b) is for all purposes conclusive proof of that fact.
- (5) If, at the expiration of the required period, the person has paid the prescribed penalty but has not done the act—
- (a) no proceedings may be instituted against the person in respect of the prescribed offence; but
 - (b) the obligation to do the act continues and section 211 applies in relation to the continued failure to do the act as if, on the day on which the person paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do the act.
- (6) If, at the expiration of the required period, the person has not paid the prescribed penalty but has done the act, proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Infringements Act 2006** may be used, against the person in respect of the prescribed offence.
- (7) If, at the expiration of the required period, the person has neither paid the prescribed penalty nor done the act—
- (a) the obligation to do the act continues; and

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- (b) proceedings may be instituted, or procedures for the enforcement of infringement penalties under the **Infringements Act 2006** may be used, against the person in respect of the prescribed offence.
- (8) Except as provided by subsection (5), this section does not affect the operation of any provision of this or any other Act in relation to the institution of proceedings in respect of a prescribed offence.
- (9) In this section—
- required period* means—
- (a) the period specified in the infringement notice for doing the act; or
 - (b) if the Registrar allows—the period within which late payment is to be made in accordance with section 15 of the **Infringements Act 2006**.
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PART 15—GENERAL

214 Notice of register or document held by Registrar

A person has notice of a fact or matter noted on the register of incorporated associations or of a document held by the Registrar and available for inspection in accordance with this Act if—

- (a) the person has actual notice of the fact, matter or document; or
- (b) the person—
 - (i) has been put upon inquiry as to the existence of the fact, matter or document; and
 - (ii) has deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the fact, matter or document.

215 Assumptions

- (1) This section applies if a person has dealings with an incorporated association or with anyone who has acquired rights from the incorporated association.
- (2) The person may assume, in relation to those dealings, that—
 - (a) the rules of the association have been complied with; and
 - (b) the person whose name was last notified to the Registrar as the secretary or the public officer of the association is the secretary of the association.

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- (3) In any proceeding—
- (a) the association; or
 - (b) a guarantor of an obligation of the association; or
 - (c) anyone acquiring rights from the association—

may not assert against the person that an assumption referred to in subsection (2) is incorrect.

- (4) Subsection (3) does not apply if the person—
- (a) has actual knowledge of the matter asserted; or
 - (b) ought to have knowledge of the matter asserted by reason of the person's connection or relationship with the association.

216 Evidentiary provisions

- (1) The Registrar may, in writing, certify—
- (a) that, on a specified date, an association was, or was not, an incorporated association;
 - (b) that a specified requirement of this Act—
 - (i) had or had not been complied with at a specified date or within a specified period; or
 - (ii) had been complied with at a specified date but not before then;
 - (c) that, on a specified date, a specified person was or was not the secretary or public officer of a specified incorporated association;

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- (d) that, on a specified date—
- (i) a specified address was the registered address of a specified incorporated association last notified under this Act to the Registrar; or
 - (ii) a specified address was the address of the secretary or public officer of a specified incorporated association last notified under this Act to the Registrar;
- (e) that, as at a specified date, a copy of the rules of, or trusts relating to, an incorporated association is a true copy of the rules or trusts.
- (2) A certification of a matter made by the Registrar under subsection (1) is prima facie evidence of the matter or matters stated in the certificate.
- (3) A certificate of registration issued to an incorporated association under section 8, 14 or 20 is conclusive evidence of the incorporation of the association under this Act.
- (4) A copy of a document relating to an incorporated association that is certified by the Registrar as a true copy is admissible in evidence as if it were the original document.

217 Service of documents

A document may be served on an incorporated association by addressing it to the incorporated association and leaving it at, or by sending it by post to, the registered address of the incorporated association.

218 Exemption from duty

An instrument for the conveyance or transfer of real property or any estate or interest in real property to give effect to the vesting of land in an incorporated association under section 9 or 21 is

exempt from the charging of duty under the
Duties Act 2000.

219 Application of Fair Trading Act 1999

- (1) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except section 155) of the **Fair Trading Act 1999** extend and apply (with the necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
- (2) For the purposes of subsection (1), section 152A of the **Fair Trading Act 1999** applies as if—
 - (a) a reference in that section to any section of the **Fair Trading Act 1999** were a reference to section 106HA of that Act (as applied by subsection (1)); and
 - (b) section 152A(2) of the **Fair Trading Act 1999** did not apply.
- (3) For the purposes of subsection (1), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2A, 5B or 6 of the **Fair Trading Act 1999** were a reference to this Act.
- (4) For the purposes of subsection (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
 - (a) proceedings for an offence against a provision of this Act (except Part 12); or
 - (b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Part 12); or

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- (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (1)).

Note

The above applied provisions address 1) the power of the Director of Consumer Affairs to obtain documents and information to monitor compliance with legislation; 2) the enforcement of offence provisions and remedies against corporate entities and the officers, employees and agents of corporate entities; and 3) provide generally for remedies (e.g. injunctions, undertakings and other orders) and legal proceedings.

220 Transfer of proceeding to Supreme Court

- (1) In any proceeding under this Act, the Magistrates' Court may, on its own initiative or on application by a party to the proceeding—
- (a) transfer the proceeding to the Supreme Court on the ground that the proceeding raises a complex question or matter of general importance; or
 - (b) reserve a question of law for determination by the Supreme Court.
- (2) If a proceeding has been transferred to the Supreme Court under subsection (1)(a), it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Supreme Court.

221 Qualified privilege

- (1) A person who performs any functions or exercises any powers as the auditor or statutory manager of an incorporated association has qualified privilege in respect of a statement made by the person, whether orally or in writing, in the course of performing those functions or exercising those powers.

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- (2) An independent accountant who conducts a review of the accounts of an incorporated association under section 93 or 96 has qualified privilege in respect of a statement made by the person, whether orally or in writing, in the course of conducting that review.
 - (3) A person has qualified privilege in respect of publishing a document—
 - (a) prepared by an auditor for the purposes of this Act; or
 - (b) required by or under this Act to be lodged, regardless of whether or not the document has been lodged.

222 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) the particulars to be included in—
 - (i) applications or notifications to the Registrar;
 - (ii) certificates of registration issued by the Registrar;
 - (b) prescribing forms for the purposes of this Act;
 - (c) the fees payable to the Registrar in relation to—
 - (i) applications and notifications;
 - (ii) lodgement of documents;
 - (iii) inspection of the register of incorporated associations;
 - (iv) the production of copies of documents or duplicate certificates of incorporation;

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- (d) the reasons for which the Registrar may refuse to incorporate an association or other body or decide that the continued incorporation of an association is inappropriate;
 - (e) prescribing rules to be model rules, being rules that make provision for each matter specified in Schedule 1 and any prescribed matter, whether or not they make provision for other matters;
 - (f) any other matters (in addition to the matters specified in Schedule 1) that the model rules must provide for;
 - (g) matters which the financial statements of an incorporated association must deal with;
 - (h) prescribing a class of documents to be a class of business documents;
 - (i) prescribing a body corporate to be a prescribed body corporate for the purposes of Part 8;
 - (j) modifications to—
 - (i) the Auditing Standards on Review Engagements, the Australian Accounting Standards and the Australian Auditing Standards as they apply for the purposes of this Act;
 - (ii) the provisions of the Corporations Act in relation to which a matter is declared to be an applied Corporations matter;
 - (k) additional information to be included in the register of incorporated associations;
 - (l) the documents contained in the register of incorporated associations that a person may inspect;

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- (m) prescribing the amount of total revenue of an incorporated association—
- (i) below which the association is a tier one association;
 - (ii) above which the association is a tier three association;
- (n) the security the liquidator of an incorporated association must give;
- (o) the value of the gross assets of an incorporated association below which the association may apply to the Registrar to cancel its incorporation;
- (p) the fees an incorporated association may charge a member for the inspection or the copying of its rules and minutes;
- (q) prescribing fines, not exceeding 5 penalty units, that the committee of an incorporated association may impose on a member who breaches its rules;
- (r) prescribing offences against this Act or the regulations to be infringement offences;
- (s) in relation to each infringement offence, prescribing the penalty that is payable to expiate the offence;
- (t) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;

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- (c) apply, adopt or incorporate any matter contained in any document whether—
- (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at the time the regulations are made or at any time before then; or
 - (iii) as published or amended from time to time;
- (d) impose penalties, not exceeding 5 penalty units, for a contravention of the regulations.
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**PART 16—TRANSITIONAL PROVISIONS,
CONSEQUENTIAL AMENDMENTS AND REPEALS**

Division 1—Transitional provisions

223 Transitional provisions

Schedule 4 has effect.

Division 2—Consequential amendments

**224 Amendment of Associations Incorporation
Amendment Act 2009**

- (1) In section 2(4) of the **Associations Incorporation Amendment Act 2009** for "1 July 2012" substitute "1 December 2012".
- (2) Section 36 of the **Associations Incorporation Amendment Act 2009** is repealed.

**225 Amendment of Associations Incorporation
Amendment Act 2010**

- (1) In section 2(2) of the **Associations Incorporation Amendment Act 2010** for "1 July 2012" substitute "1 December 2012".
- (2) Section 53 of the **Associations Incorporation Amendment Act 2010** is repealed.

226 Consequential amendments of other Acts

An Act specified in the heading to an item in Schedule 5 is amended as set out in that item.

Division 3—Repeals

227 Repeal of Associations Incorporation Act 1981

The **Associations Incorporation Act 1981** is repealed.

228 Repeal of other Acts

The following Acts are **repealed**—

- (a) the **Associations Incorporation Amendment Act 2009**;
 - (b) the **Associations Incorporation Amendment Act 2010**.
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SCHEDULES

SCHEDULE 1

Sections 47 and 222

MATTERS TO BE PROVIDED FOR IN THE RULES OF AN INCORPORATED ASSOCIATION

Note

Under section 48(4), a rule or purpose of an incorporated association that is inconsistent with this Act or contrary to law is of no effect. Under section 50(6) the Registrar may refuse an alteration to the rules of an incorporated association if satisfied that the alteration is contrary to this Act or the regulations.

The Association

- 1 The name of the incorporated association.
- 2 The purposes of the incorporated association.

Membership

- 3 The qualifications (if any) for membership of the incorporated association.
- 4 The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
- 5 The rights, obligations and liabilities of members.
- 6 Provisions for the resignation of a member or cessation of membership.
- 7 The procedure (if any) for the disciplining of members and the mechanism (if any) for appearances by members in respect of disciplinary action taken against them.
- 8 The grievance procedures for settling disputes under the rules between the incorporated association and any of its members or between a member and any other member.

Management and record keeping

- 9 The name, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as the committee) and—
- (a) the election or appointment of members of the committee;
 - (b) the terms of office of members of the committee;
 - (c) the grounds on which, or reasons for which, the office of a member of the committee becomes vacant;
 - (d) the filling of casual vacancies occurring within the committee;
 - (e) the quorum and procedure at meetings of the committee.
- 10 The procedures for the appointment and removal of the secretary of the incorporated association.
- 11 The custody of records, securities and other relevant documents of the incorporated association.
- 12 Provisions for the custody and use of the common seal (if any) of the incorporated association.
- 13 Provision for members to have access to, and to be able to obtain copies of, the records, securities and other relevant documents of the incorporated association.
- 14 The preparation and retention of accurate minutes of—
- (a) general meetings of the incorporated association; and

(b) meetings of the committee or other body having the management of the incorporated association.

- 15 Provision for members to have access to, and to be able to obtain copies of, minutes of general meetings of the incorporated association, including financial statements submitted at a general meeting.
- 16 Right of access (if any) by members to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted.

Meetings

- 17 The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
- 18 The quorum and procedure at general meetings and whether members are entitled to vote by proxy at general meetings.
- 19 The time within which, and the manner in which, notices of general meetings and notices of motion must be given, published or circulated.

Funds

- 20 The sources from which the funds of the incorporated association are to be or may be derived.
- 21 The manner in which the funds of the incorporated association must be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association.

Alteration of rules

- 22 The manner of altering and rescinding the rules of the incorporated association and of making additional rules.

Winding up and dissolution

- 23 The disposition of any surplus assets on the winding up or dissolution of the incorporated association.

Note

The rules of an incorporated association may not make provision for the distribution of its surplus assets on the winding up or dissolution of the incorporated association except as may be permitted by this Act.

SCHEDULE 2

Section 154(1)

**MODIFICATION OF APPLIED OFFENCE PROVISIONS OF
CORPORATIONS ACT**

<i>Column 1 Item</i>	<i>Column 2 Provision of Corporations Act</i>	<i>Column 3 Modification to applied provision</i>
1	428	Subsection (3) is deleted
2	437C	Subsection (1B) is deleted
3	438B	Subsection (5) is deleted
4	438C	Subsection (7) is deleted
5	446C	Subsection (10) is deleted
6	448B	Subsection (3) is deleted
7	448C	Subsection (1A) is deleted
8	450E	Subsection (3) is deleted
9	471A	Subsection (2B) is deleted
10	475	Subsection (10) is deleted
11	497	Subsection (7A) is deleted
12	530A	Subsection (6A) is deleted
13	530B	Subsection (6B) is deleted
14	532	Subsection (10) is deleted
15	541	Subsection (2) is deleted
16	588G	Subsections (3A) and (3B) are deleted
17	590	Subsection (2) is deleted
18	592	Subsections (1A) and (6A) are deleted
19	595	Subsection (2) is deleted
20	596	Subsection (2) is deleted

SCHEDULE 3

Section 154(2)

**PENALTIES FOR OFFENCES UNDER APPLIED
PROVISIONS OF CORPORATIONS ACT**

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Provision of Corporations Act</i>	<i>Column 3</i> <i>Penalty</i>
1	428(1)	10 penalty units
2	428(2)	10 penalty units
3	437C(1)	20 penalty units
4	437D(5)	20 penalty units
5	438B(4)	60 penalty units
6	438C(5)	60 penalty units
7	446C(4)	20 penalty units
8	448B(1)	20 penalty units
9	448C(1)	20 penalty units
10	448D	20 penalty units
11	450E(1)	10 penalty units
12	450E(2)	10 penalty units
13	471A	20 penalty units
14	475	20 penalty units
15	486A(8)	120 penalty units or imprisonment for 1 year or both
16	494	60 penalty units
17	497	10 penalty units
18	530A(6)	60 penalty units
19	530B(3)	60 penalty units
20	530B(6)	60 penalty units
21	532	10 penalty units
22	541(1)	10 penalty units
23	588G(3)	240 penalty units

Associations Incorporation Reform Act 2012
No. 20 of 2012

Sch. 3

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Provision of Corporations Act</i>	<i>Penalty</i>
24	590(1)	60 penalty units
25	590(5)	120 penalty units
26	592(1)	60 penalty units
27	592(6)	120 penalty units
28	595(1)	10 penalty units
29	596(1)	120 penalty units or imprisonment for 1 year or both
30	596AB(1)	240 penalty units or imprisonment for 2 years
31	596F(3)	60 penalty units
32	597(6)	120 penalty units or imprisonment for 1 year or both
33	597(7)	120 penalty units
34	597(10A)	120 penalty units
35	597(13)	60 penalty units
36	597A(3)	120 penalty units or imprisonment for 1 year or both

SCHEDULE 4

Section 223

TRANSITIONAL PROVISIONS

1 Definitions

(1) In this Schedule—

commencement day means the day on which section 224 comes into operation;

corresponding provision means a provision of this Act that re-enacts (with or without modification) a provision of the **Associations Incorporation Act 1981**;

old model rules means the model rules made under the **Associations Incorporation Act 1981**;

old rules, of an incorporated association, has the meaning given in clause 7(1).

(2) For the purposes of the definition of *corresponding provision* in subclause (1), in determining whether a provision is a corresponding provision—

(a) regard must be had to the substance of the provision; and

(b) if the provision appears to have expressed the same idea in a different form of words for the purposes of using a clearer style—the difference must be disregarded.

2 Re-enactment of Associations Incorporation Act 1981

This Act re-enacts the **Associations Incorporation Act 1981** with certain modifications.

3 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) Without limiting subclause (1), in declaring that this Act re-enacts with certain modifications the **Associations Incorporation Act 1981**, this Schedule must not be taken to—
 - (a) limit the operation of any provision of the **Interpretation of Legislation Act 1984**; or
 - (b) be an exhaustive list of the provisions of the **Associations Incorporation Act 1981** re-enacted by this Act.
- (3) This Schedule applies despite anything to the contrary in any other provision of this Act.

4 Incorporated associations

- (1) An association that, immediately before the commencement day, was incorporated under the **Associations Incorporation Act 1981** is, on that day, taken to be incorporated under this Act.
- (2) Subclause (1) does not affect the date of incorporation of an incorporated association referred to in subclause (1) which continues to be the date the association became incorporated under the **Associations Incorporation Act 1981**.
- (3) On and from the commencement day, a certificate of incorporation issued under the **Associations Incorporation Act 1981** to an incorporated association referred to in subclause (1) is taken to have been issued under this Act.

5 Registrar of Incorporated Associations

On and from the commencement day, the Registrar of Incorporated Associations established under section 38 of the **Associations Incorporation Act 1981** (as in force immediately

before the commencement day) continues in existence under this Act.

6 Register of incorporated associations

On and from the commencement day, the register of incorporated associations kept under section 39 of the **Associations Incorporation Act 1981** is taken to be the register of incorporated associations kept under this Act.

7 Incorporated association may operate under old rules

- (1) Subject to subclauses (2) and (3), an incorporated association may continue to operate under the rules of the association as in force immediately before the commencement day (the *old rules*) until the rules are altered in accordance with clause 8.
- (2) While an incorporated association is operating under its old rules, if there is an inconsistency between those rules and any provision of this Act, the provision of this Act prevails except as provided in this Schedule.
- (3) If the old rules of an incorporated association are the old model rules, the association may only operate under those rules for 12 months after the commencement date or until the rules are altered in accordance with clause 8.
- (4) If, after the expiry of the period of 12 months commencing on the commencement date, an incorporated association operating under the old model rules has not taken either action referred to in clause 8(2), it is taken to have adopted the model rules under this Act and its old rules are of no effect.

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- (5) If—
- (a) an incorporated association is operating under its old rules by virtue of subclause (1); and
 - (b) under those old rules there is an office holder of the association, separate to the office of public officer, who has the title of secretary—

any reference in this Act to the secretary of an incorporated association is not to be taken as a reference to that office holder.

- (6) The Registrar may, in writing, approve changes to the composition of the office holders of an incorporated association that would otherwise be contrary to the rules of the association if satisfied those changes are necessary to facilitate the transition of the association from its old rules to rules that comply with this Act.

8 Alteration of old rules

- (1) For the purposes of this clause, the rules of an incorporated association operating under its old rules are altered when—
- (a) the association has notified the Registrar in accordance with section 49(7) that it has approved the adoption of the model rules under this Act as its own rules; or
 - (b) the Registrar, subject to subclause (3), has approved the alteration of the association's rules under section 50.
- (2) Within 12 months after the commencement day, an incorporated association operating under the old model rules must—

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- (a) notify the Registrar in accordance with section 49(7) that it has approved the adoption of the model rules under this Act as its own rules; or
 - (b) apply in accordance with section 50 for the approval of the alteration of its rules.
- (3) The Registrar must not approve the alteration of the old rules of an incorporated association unless satisfied that all the rules as altered comply with this Act.

Example

The Registrar must be satisfied that the rules make provision for each of the matters specified in Schedule 1 and any other prescribed matter and that any references in the rules to the public officer of the association have been changed to a reference to the secretary.

- (4) For the purposes of this clause, an alteration, of the rules of an incorporated association, includes the substitution of its old rules with new rules.

9 Public officer of an incorporated association

- (1) While an incorporated association is operating under its old rules as provided for in clause 7, a person appointed as the public officer of the association under those rules is taken to be the secretary of the association but only for the purposes of this Act.

Note

If under those old rules there is an office holder of the association, separate to the public officer, who has the title of secretary, subclause (1) does not operate to deem the public officer to be that office holder.

- (2) Section 35(3)(b) only applies in relation to a secretary (other than a person who is taken to be the secretary under subclause (1)) of an incorporated association appointed after the commencement day.

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- (3) The authenticity of a document authenticated by the public officer of an incorporated association under section 19(6) of the **Associations Incorporation Act 1981** is not affected.
- (4) On and from the commencement day, the secretary of an incorporated association (other than the office holder referred to in clause 7(5)(b)) may continue and complete any continuing act or thing commenced by or against the public officer of the association.

10 Statement of purposes

The statement of purposes of an incorporated association that, immediately before the commencement day, is included in the register of incorporated associations as the current statement of purposes of the association, is on the commencement day taken to be part of the rules of the association until such time as an alteration of those rules is approved by the Registrar.

11 Financial reporting

Despite anything to the contrary in this Act, an incorporated association to which clause 4(1) applies may elect to comply with Part VI of the **Associations Incorporation Act 1981** in relation to the submission to its members of its financial statement for the last financial year of the association ending prior to 30 June 2013 and the giving of that statement to the Registrar.

12 Corresponding provisions

To avoid doubt and unless the context demands otherwise, on the commencement day—

- (a) any application made under a provision of the **Associations Incorporation Act 1981** that, immediately before the commencement day, had not been determined is taken to have been made under the corresponding

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- provision of this Act and may be determined accordingly;
- (b) any resolution, appointment, notice or anything else made, given or done (however described) by an incorporated association under a provision of the **Associations Incorporation Act 1981** and that is in effect immediately before the commencement day is taken to have been made, given or done under the corresponding provision of this Act;
- (c) any instrument made, given, issued or served (however described) by the Registrar under a provision of the **Associations Incorporation Act 1981** and that is in force immediately before the commencement day is taken to have been made, given, issued or served by the Registrar under the corresponding provision of this Act.
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SCHEDULE 5

Section 226

CONSEQUENTIAL AMENDMENTS

1 Aboriginal Land (Northcote Land) Act 1989

In section 5(1) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

2 Bus Safety Act 2009

In section 3(1), in the definition of *officer* (as it applies in relation to an incorporated association)—

- (a) in paragraph (a) **omit** "public officer or";
- (b) in paragraphs (a) and (b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

3 Children, Youth and Families Act 2005

In section 66(2) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

4 Co-operatives Act 1996

In section 306(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

5 Confiscation Act 1997

In section 137(1)(c) for "**Associations Incorporation Act 1981**, in accordance with section 48 of that Act" substitute "**Associations Incorporation Reform Act 2012**, in accordance with section 217 of that Act".

6 Coptic Orthodox Church (Victoria) Property Trust Act 2006

In section 3, in the definition of *Church association* for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

7 Corporations (Victoria) Act 1990

In section 93(a) for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

8 Council of Law Reporting in Victoria Act 1967

In section 5(1)(d) for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

9 Country Fire Authority Act 1958

In section 100(6) for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

10 Criminal Procedure Act 2009

In section 393(3)—

(a) for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012";

(b) for "section 48" substitute "section 217".

11 Disability Act 2006

In section 101(2) for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

12 Education and Training Reform Act 2006

In sections 2.4.30(4)(b) and 3.1.27(1)(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

13 Firearms Act 1996

In sections 123A(1)(b) and 123H(1)(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

14 Gambling Regulation Act 2003

In section 1.3(1)—

(a) in paragraph (c) of the definition of *authorising officer*—

(i) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**";

(ii) omit "public officer or";

(b) in paragraph (c) of the definition of *constituting document* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

15 Health Services Act 1988

(1) In section 62(3) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

(2) In section 62(6)(a) for "Part VIII of the **Associations Incorporation Act 1981**" substitute "Part 10 of the **Associations Incorporation Reform Act 2012**".

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- (3) In section 64(3)(c) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (4) For section 65(2)(b)(ii) substitute—
- "(ii) it had been registered as an incorporated association under the **Associations Incorporation Reform Act 2012**; or".
- (5) For section 115U(2)(b)(ii) substitute—
- "(ii) in the case of an incorporated association, it had been registered as an incorporated association under the **Associations Incorporation Reform Act 2012**; and".

16 Housing Act 1983

- (1) In section 4(1), in the definition of *incorporated association* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (2) In section 129(2) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (3) In section 132(12), in paragraph (a) of the definition of *relevant regulatory body* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (4) In Part 1 of Schedule 8, in items 1(6), 1(10) and 1(11) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

17 Legal Profession Act 2004

- (1) In section 1.2.1(1), in the definition of *Victorian Bar* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

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- (2) In section 3.5.2(9) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (3) In section 7.2.3(c) for "**Associations Incorporation Act 1981**, in accordance with section 48 of that Act" substitute "**Associations Incorporation Reform Act 2012**, in accordance with section 217 of that Act".

18 Liquor Control Reform Act 1998

- (1) In section 55 for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".
- (2) In section 67(1) for "Part VII of the **Associations Incorporation Act 1981**" substitute "Part 2, Division 3 of **Associations Incorporation Reform Act 2012**".

19 Local Government Act 1989

In section 3(1), in the definition of *corporation* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

20 Parliamentary Administration Act 2005

In section 28(4)(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

21 Public Administration Act 2004

In section 32(4)(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

22 Scotch College Common Funds Act 2001

In section 3, in the definition of *Scotch College Foundation* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

**23 Transport (Compliance and Miscellaneous)
Act 1983**

In section 130A(1)—

- (a) in the definition of *incorporated association* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**";
- (b) in the definition of *officer* (as it applies in relation to an incorporated association)—
 - (i) in paragraph (a) for "public officer (within the meaning of the **Associations Incorporation Act 1981**)" substitute "secretary (within the meaning of the **Associations Incorporation Reform Act 2012**)";
 - (ii) in paragraph (b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

24 Victoria Law Foundation Act 2009

In section 3, in the definition of *Victorian Bar* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

**25 Victorian Civil and Administrative Tribunal
Act 1998**

In section 140(1)(c) for "**Associations Incorporation Act 1981**, in accordance with section 48 of that Act" substitute "**Associations Incorporation Reform Act 2012**, in accordance with section 217 of that Act".

26 Water Act 1989

In section 329(1)(b) for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

27 Wrongs Act 1958

In section 34, in paragraph (a) of the definition of *community organisation* for "**Associations Incorporation Act 1981**" substitute "**Associations Incorporation Reform Act 2012**".

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 7 December 2011

Legislative Council: 29 March 2012

The long title for the Bill for this Act was "A Bill for an Act to re-enact the law providing for the incorporation of voluntary associations and the registration of other bodies as incorporated associations and to make provision for the corporate governance, financial accountability and other matters relating to the rules and membership of those associations, to repeal the **Associations Incorporation Act 1981** and for other purposes."