

(Reprint No. 1)

SOUTH AUSTRALIA

ASSOCIATIONS INCORPORATION ACT, 1985

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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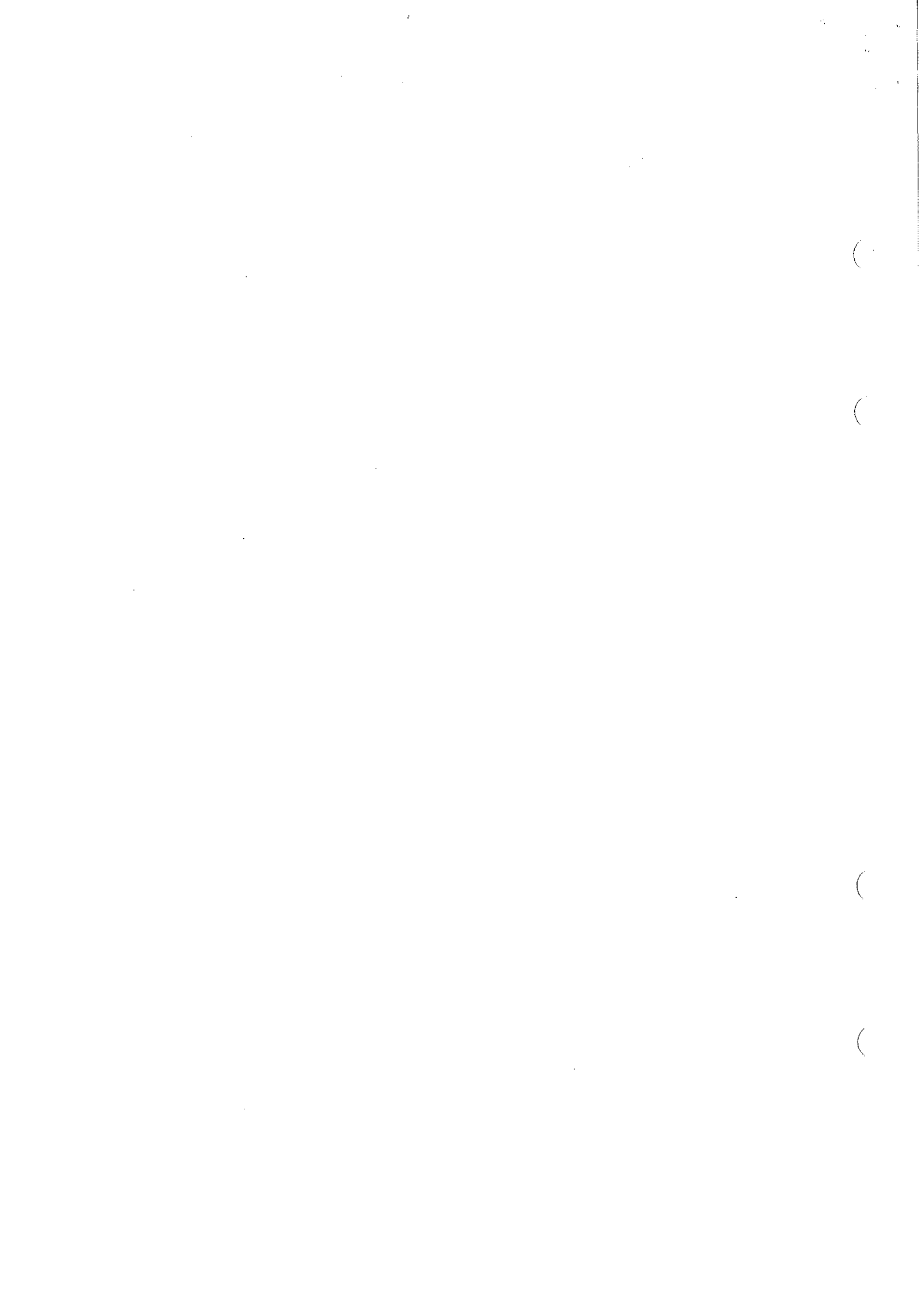
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ASSOCIATIONS INCORPORATION ACT, 1985

being

Associations Incorporation Act, 1985, No. 30 of 1985 [Assented to 4 April 1985]¹

as amended by

Associations Incorporation Act Amendment Act, 1985, No. 100 of 1985 [Assented to 7 November 1985]²

An Act to make provision for the incorporation, administration and control of associations; to repeal the Associations Incorporation Act, 1956; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Associations Incorporation Act, 1985*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

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

“accounts” of an incorporated association means—

- (a) an account of receipts and payments;
- (b) an account of income and expenditure;
- (c) a statement of assets and liabilities;

and

¹Came into operation 28 June 1985: *Gaz.* 27 June 1985, p. 2244.

²Came into operation 28 June 1985: s. 2.

(d) any other prescribed accounts,

relating to the financial affairs of the association:

“association” includes society, club, institution or body:

“books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document:

“the Commission” means the Corporate Affairs Commission:

“committee” of an association means the governing or controlling body of the association:

“financial year” means—

(a) in relation to an incorporated association that is incorporated after the commencement of this Act—

(i) in relation to its first financial year—a period, commencing on the date of incorporation of the association and not exceeding eighteen months, determined by the association as its first financial year or, in the absence of such a determination, the period commencing on the date of incorporation of the association and ending on the next succeeding thirtieth day of June;

and

(ii) thereafter—each period of twelve months, or a lesser period determined by the association, commencing at the end of the last preceding financial year;

(b) in relation to an incorporated association that was incorporated under the repealed Act—

(i) in relation to its first financial year after the commencement of this Act—a period, commencing on or before the commencement of this Act and not exceeding eighteen months, determined by the association as its financial year or, in the absence of such a determination, the period commencing on the commencement of this Act and ending on the next succeeding thirtieth day of June;

and

(ii) thereafter—each period of twelve months, or a lesser period determined by the association, commencing at the end of the last preceding financial year:

“incorporated association” means an association incorporated under this Act:

“insolvent under administration” means a person who—

(a) under the *Bankruptcy Act 1966* of the Commonwealth is a bankrupt in respect of a bankruptcy from which he has not been discharged;

or

(b) under the law of a country other than Australia has the status of an undischarged bankrupt,

and includes—

(c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of the law of a country other than Australia where the terms of the deed have not been fully complied with;

and

(d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of the law of a country other than Australia where a final payment has not been made under that composition:

“member” of an incorporated association means—

(a) a person who is under the rules of the association a member of the association;

or

(b) a body that is under the rules of the association a member of the association:

“officer” of an association means—

(a) a person who is—

(i) a member of the committee of the association;

(ii) the secretary or treasurer of the association;

or

(iii) any other person, by whatever name called, who is concerned, or takes part, in the management of the affairs of the association;

(b) the public officer of the association;

or

(c) the holder of any other office established by the rules of the association (except a patron or the holder of some other honorary office that confers no right to participate in the management of the affairs of the association):

“the repealed Act” means the *Associations Incorporation Act, 1956*, repealed by this Act:

“special resolution” of an incorporated association means—

(a) where the rules of the association provide for the membership of the association—a resolution passed at a duly convened meeting of the members of the association if—

(i) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the association;

and

(ii) it is passed by a majority of not less than three-quarters of the total number of members of the association who, being entitled to do so, vote personally or, where the rules of the association so provide, by proxy at the meeting;

(b) where the rules of the association do not provide for the membership of the association—a resolution passed at a duly convened meeting of the members of the committee of the association if—

(i) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the committee;

and

(ii) it is passed by a majority of not less than three-quarters of the total number of members of the committee who, being entitled to do so, vote at the meeting:

“transparency”, in relation to a document, means—

(a) a developed negative or positive photograph of that document (in this definition referred to as an “original photograph”) made, on a transparent base, by means of light reflected from, or transmitted through, the document;

(b) a copy of an original photograph made by the use of photosensitive material (being photosensitive material on a transparent base) placed in surface contact with the original photograph;

or

(c) any one of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material (being photosensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

(2) A reference in this Act to the rules of an association is a reference to the rules relating to the constitution, powers, management and administration of the association, and the rights and liabilities of its members, but does not extend to rules, by-laws or ordinances relating to or affecting personal dress or behaviour, practices, procedures or other matters that are of a religious, ceremonial or doctrinal nature, or any other prescribed matter.

(3) Where under the rules of an incorporated association provision is made for confirmation or approval of a resolution of the association by some other person or body, such a resolution shall not be regarded as having been duly passed until it has been confirmed or approved as required by the rules.

(4) A provision in the rules of an association requiring confirmation or approval of a resolution or decision of the association by some other person or body shall not be regarded as oppressive or unreasonable.

(5) For the purposes of this Act, a reference to a modification, when used in relation to the application of a provision or provisions of the *Companies (South Australia) Code* under this Act, includes a reference to an addition or exclusion.

Repeal and transitional provision

4. (1) The *Associations Incorporation Act, 1956*, is repealed.

(2) Every association that was, immediately before the commencement of this Act, an association incorporated under the repealed Act shall, on the commencement of this Act, be deemed to be an association incorporated under this Act, and the rules of the association under the repealed Act shall, subject to alteration under this Act, be the rules of the association as registered at the commencement of this Act.

(3) Where an application for the incorporation of an association was made under the repealed Act, but the association had not, as at the commencement of this Act, been incorporated—

- (a) the proceedings for incorporation of the association may be continued and completed under the repealed Act as if this Act had not been enacted;
- (b) on completion of those proceedings, the association shall be deemed to have been incorporated under this Act.

PART II

ADMINISTRATION

DIVISION I—THE COMMISSION

Administration by the Commission

5. (1) Subject to subsection (2), the Commission shall be responsible for the administration of this Act.

(2) The Commission shall, in relation to the administration of this Act, be subject to the control and direction of the Minister.

Inspection of documents

6. (1) For the purposes of this Act, the Commission shall keep, in such form as it thinks fit—

(a) a register of incorporated associations;

and

(b) such other registers as the Commission thinks fit.

(2) A person may, on payment of the prescribed fee—

(a) inspect a register kept by the Commission under this Act;

(b) inspect any document registered or held by the Commission under this Act (not being a document that has been destroyed or otherwise disposed of);

or

(c) obtain from the Commission—

(i) a certified copy of, or extract from, an entry in a register kept under this Act or the repealed Act;

(ii) a certified copy of a certificate of incorporation issued under this Act or the repealed Act;

or

(iii) a certified copy of, or extract from, any document registered or held by the Commission under this Act, or registered or held under the repealed Act.

(3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled pursuant to subsection (2) to require the production of the original of that document.

(4) The reference in subsection (2)(c) to a certificate or document includes, where a reproduction or transparency of that certificate or document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that subsection to a copy of, or extract from, the original of that certificate or document.

Power of Commission to refuse to register or receive document and to request amendments, etc.

7. (1) Where the Commission is of the opinion—

(a) that a document submitted for lodgment with the Commission—

(i) contains matter contrary to law;

or

(ii) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;

or

(b) that a document submitted for lodgment with the Commission or registered or held by the Commission for the purposes of this Act—

(i) by reason of an omission or misdescription has not been duly completed;

(ii) does not comply with the requirements of this Act;

or

(iii) contains an error, alteration or erasure,

the Commission may request—

(c) that the document be appropriately amended or completed and returned to the Commission;

(d) that a fresh document be provided in its place;

or

(e) where the document has not been duly completed, that a supplementary document in the prescribed form be provided to the Commission.

(2) Where the Commission makes a request under subsection (1) in relation to a document submitted for lodgment with the Commission, the Commission may refuse to register or receive the document until the request is complied with to the satisfaction of the Commission.

(3) The Commission may request a person who submits a document for lodgment with the Commission to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it may refuse to register or receive the document.

(4) If a person, having made default in complying with a request of the Commission to amend or complete and return a document or to provide a fresh document, fails to make good the default within fourteen days after the service on the person of a notice requiring it to be done, a court of summary jurisdiction may, on an application by the Commission, order the person to make good the default within such time as is specified in the order.

(5) An order made under subsection (4) may provide that all costs of and incidental to the application shall be borne by the person responsible for the default.

(6) A person who contravenes or fails to comply with an order made under subsection (4) shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(7) Nothing in this section prejudices the operation of any other provision of this Act imposing penalties on an association or its officers or on another person in respect of a default mentioned in subsection (4).

Power of the Commission to grant extensions

8. (1) The Commission may, on the written application of an incorporated association, an officer of an incorporated association or a person authorized by an incorporated association to make an application under this section, extend any limitation of time prescribed by or under this Act, whether or not the prescribed period has expired.

(2) An extension under subsection (1) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

Annual report

9. (1) The Commission shall, on or before the thirty-first day of December in each year, deliver to the Minister a report on the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament.

DIVISION II—POWER OF INSPECTION, ETC.**Power of Commission to require production of books**

10. For the purpose of ascertaining whether the provisions of this Act have been or are being complied with, an authorized person may, by notice in writing, require—

- (a) any incorporated association to produce to the authorized person forthwith or, if a time and place at which the books are to be produced are specified in the notice, at that time and place such books relating to affairs of the association as are specified by the authorized person;
- (b) any person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for, or on behalf of, an incorporated association (including an association that is in the course of being wound up or has been dissolved) to produce to the authorized person forthwith such books relating to affairs of the association as are specified by the authorized person;

or

- (c) any person to produce to the authorized person forthwith any books relating to affairs of an incorporated association (including an association that is in the course of being wound up or has been dissolved) that are in the custody or under the control of that person.

Power of Commission to carry out investigations in relation to books

11. (1) Subject to this Division, where an authorized person exercises a power under this Division to require another person to produce books—

- (a) if the books are produced, the authorized person—
 - (i) may take possession of the books and may make copies of, or take extracts from, the books;
 - (ii) may require the other person, or any person who was party to the compilation of the books, to make a statement providing any explanation that the person concerned is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;

(iii) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission;

and

(iv) during that period shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the authorized person to inspect that book or those books at any reasonable time;

or

(b) if the books are not produced, the authorized person may require the other person—

(i) to state, to the best of his knowledge and belief, where the books may be found;

and

(ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that person may be found.

(2) Where an authorized person exercises a power under this Division to require another person to produce books that are recorded, kept and reproduced by electronic means, the other person may comply with the requirement to produce those books by providing a printed reproduction of the information contained in the books.

(3) Where this Division confers a power on an authorized person to require a person to produce books relating to affairs of an incorporated association, the authorized person also has power to require that person (whether or not he requires that person to produce books and whether or not any books are produced pursuant to such a requirement), so far as the other person is able to do so, to identify property of the association and explain the manner in which the association has kept account of that property.

Protection from liability

12. A person shall not be subject to any liability by reason of compliance with a direction or requirement given or made under this Division.

Privileged communications

13. (1) Where—

(a) an authorized person makes a requirement under this Division of a duly qualified legal practitioner in respect of a book;

and

(b) the book contains a privileged communication made by or on behalf of the legal practitioner, or to the legal practitioner, in his capacity as such,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he shall forthwith furnish, in writing, to the authorized person—

(c) if he knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address;

and

- (d) sufficient particulars to identify the book, or the part of the book, containing the communication.

Penalty: One thousand dollars.

(2) Where—

- (a) an authorized person, acting in pursuance of this Division, requires a duly qualified legal practitioner to make a statement providing an explanation as to any matter relating to the compilation of books or as to any matter to which any books relate;

and

- (b) the legal practitioner is not able to make that statement without disclosing a privileged communication made by or on behalf of the legal practitioner, or to the legal practitioner, in his capacity as such,

the legal practitioner is entitled to refuse to comply with the requirement, except to the extent that he is able to comply with the requirement without disclosing any privileged communication referred to in paragraph (b), unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he shall forthwith furnish, in writing, to the authorized person—

- (c) if he knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address;

and

- (d) if the communication was made in writing—sufficient particulars to identify the document containing the communication.

Penalty: One thousand dollars.

Offences

14. (1) Subject to this section, a person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under this Division.

Penalty: Two thousand dollars.

(2) A person shall not, in purported compliance with a requirement made under this Division, furnish information or make a statement that is false or misleading in a material particular.

Penalty: Two thousand dollars.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(4) A person shall not, without reasonable excuse, obstruct or hinder the Commission or another person in the exercise of any power under this Division.

Penalty: Two thousand dollars.

Self-incrimination

15. (1) A person is not excused from making a statement providing an explanation as to any matter relating to the compilation of any books or as to any matter to which any books relate pursuant to a requirement made of him in accordance with this Division on

the ground that the statement might tend to incriminate him but, where the person claims before making a statement that the statement might tend to incriminate him, the statement is not admissible in evidence against him in criminal proceedings other than proceedings under section 14.

(2) Subject to subsection (1), a statement made by a person in compliance with a requirement made under this section may be used in evidence in any criminal or civil proceedings against that person.

Liens on books

16. Where an authorized person requires the production of any books under this Division and a person has a lien on the books, the production of the books does not prejudice the lien.

Interpretation

17. In this Division—

“authorized person” means a person appointed by the Commission by instrument in writing to be an authorized person for the purposes of this Division.

PART III
INCORPORATION OF ASSOCIATIONS
DIVISION I—INCORPORATION

Eligibility for incorporation

18. (1) An association formed—

- (a) for a religious, educational, charitable or benevolent purpose;
- (b) for the purpose of promoting or encouraging literature, science or the arts;
- (c) for the purpose of providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability;
- (d) for the purpose of sport, recreation or amusement;
- (e) for the purpose of establishing, carrying on, or improving a community centre, or promoting the interests of a local community or a particular section of a local community;
- (f) for conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
- (g) for the purpose of promoting the interests of students or staff of an educational institution;
- (h) for political purposes;
- (i) for the purpose of administering any scheme or fund for the payment of superannuation or retiring benefits to the members of any organization or the employees of any body corporate, firm or person;
- (j) for the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry;

or

- (k) for any purpose approved by the Minister,

is, subject to this Act, eligible to be incorporated under this Act.

(2) Subject to subsection (4), an association of the kind referred to in subsection (1)(i) is not, unless the Minister otherwise approves, eligible to be incorporated under this Act.

(3) Subject to subsection (4), an association which is formed for the purpose of furthering or protecting the interests of employers or employees and which is eligible for registration under the *Industrial Conciliation and Arbitration Act, 1972*, is not, unless the Minister otherwise approves, eligible to be incorporated under this Act.

(4) Subsections (2) and (3) do not apply to an association that was, immediately before the commencement of this Act, an association incorporated under the repealed Act.

(5) Subject to subsection (6), an association of which—

- (a) a principal or subsidiary object is to secure a pecuniary profit for the members of the association or any of those members;

or

- (b) a principal or subsidiary object is to engage in trade or commerce,

is not, unless the Minister otherwise approves, eligible to be incorporated under this Act.

(6) An association shall not, for the purposes of this Act, be regarded as having as a principal or subsidiary object the securing of a pecuniary profit for its members or any of its members or engaging in trade or commerce by reason only of any one or more of the following circumstances:

- (a) that the association itself makes a pecuniary profit, unless that profit or any part of it is divided among or received by the members or some of them;
- (b) that the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal objects of the association and, in the case of transactions with the public, the transactions—

- (i) are not substantial in number or value in relation to the other activities of the association;
- (ii) are intended to provide financial support to the association in a manner that is directly related to the objects of the association;

or

- (iii) consist in the charging of admission fees to functions organized for the promotion of the objects of the association;

- (c) that the association is established for the protection of a trade, business, industry or calling in which the members are engaged or interested, if the association itself does not engage or take part in any such activity;

or

- (d) that the members of the association compete for trophies or prizes in contests directly related to the objects of the association.

(7) An approval of the Minister under this section may be given on such conditions as the Minister thinks fit.

Manner in which application for incorporation is to be made

19. (1) An application for the incorporation of an association must be made to the Commission in the prescribed manner and form by a person duly authorized by the association to apply for incorporation.

(2) The application must be accompanied by—

- (a) a copy of the rules of the association;
- (b) a statutory declaration made by the applicant verifying—
 - (i) that he is authorized by the association to apply for registration;
 - (ii) the particulars contained in the application;

and

- (iii) that the copy of the rules of the association which accompanies the application is a true copy;

(c) a copy of any instrument creating or establishing a trust—

- (i) which is referred to in the rules of the association;

or

- (ii) upon which any rule of the association relies for its operation;

and

(d) the prescribed fee.

Incorporation of association

20. (1) If, on an application for incorporation duly made under this Part, the Commission is satisfied—

(a) that the association is eligible to be incorporated under this Act;

(b) that the rules of the association conform with the requirements of this Act;

and

(c) that the name of the association—

(i) is not such as to be misleading as to the nature, objects or purposes of the association;

(ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name;

(iii) is not undesirable as a name for an incorporated association;

and

(iv) conforms with any direction of the Minister relating to the names of incorporated associations,

the Commission shall, subject to subsection (2), register the rules of the association and issue to the association a certificate of incorporation.

(2) The Commission may—

(a) decline to incorporate an association under this Act if, in its opinion, it would be more appropriate for its activities to be carried on by a body corporate incorporated under some other Act;

or

(b) with the consent of the Minister, decline to incorporate an association under this Act if, in its opinion, the incorporation of the association under this Act would not be in the public interest.

(3) Upon incorporation under this section—

(a) the association becomes a body corporate—

(i) with perpetual succession and a common seal;

and

(ii) with a corporate name as set forth in the certificate of incorporation (in which the word "Incorporated" must appear as part, and at the end, of the name);

(b) all real and personal property held by any person for or on behalf of the association shall be vested in and held by the incorporated association (subject to any trusts that may affect that property);

and

(c) all rights and liabilities (whether certain or contingent) of the association immediately before the incorporation of the association become rights and liabilities of the incorporated association.

(4) The Registrar-General shall—

(a) on the application of an incorporated association in which any estate or interest in land has vested by virtue of this section;

and

(b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the association.

Rights and liabilities of members

21. (1) Membership of an incorporated association does not confer on a member, except as may be provided by the rules of the association, any right, title or interest in any real or personal property of the association.

(2) A member of an incorporated association is not liable, except as may be provided by the rules of the association, for the debts and liabilities of the association.

(3) Subsection (2) does not apply in respect of debts or liabilities incurred by or on behalf of the association prior to incorporation.

DIVISION II—AMALGAMATION

Amalgamation

22. (1) Any two or more incorporated associations—

(a) may, by special resolution passed by each association, resolve to amalgamate;

and

(b) may, not later than one month after those resolutions have been passed, apply to the Commission for amalgamation as a single incorporated association.

(2) An application under subsection (1)—

(a) must be made in the prescribed form;

(b) must be accompanied by a copy of the special resolution passed by each of the incorporated associations supporting the amalgamation;

(c) must be accompanied by a copy of the rules of the association proposed to be formed by the amalgamation;

(d) must be accompanied by a copy of any instrument creating or establishing a trust—

(i) which is referred to in the rules of the association proposed to be formed by the amalgamation;

or

(ii) upon which any rule of the association proposed to be formed by the amalgamation relies for its operation;

(e) must be accompanied by such certificates and other documents as may be prescribed;

and

(f) must be accompanied by the prescribed fee.

(3) A party to an application under this section shall, at the request of the Commission, supply it with such further documents or information as the Commission may require.

(4) Where the Commission is satisfied—

(a) that the association proposed to be formed by the amalgamation is eligible to be incorporated under this Act;

(b) that the rules of that association conform with the requirements of this Act;

and

(c) that the name of that association—

(i) is not such as to be misleading as to the nature, objects or purposes of the association;

(ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name;

(iii) is not undesirable as a name for an incorporated association;

and

(iv) conforms with any direction of the Minister relating to the names of incorporated associations,

the Commission shall, subject to subsection (5), register the rules of the association and issue to the association a certificate of incorporation.

(5) The Commission may—

(a) decline to incorporate an association under subsection (4) if, in its opinion, it would be more appropriate for its activities to be carried on by a body corporate incorporated under some other Act;

or

(b) with the consent of the Minister, decline to incorporate an association under subsection (4) if, in its opinion, the incorporation of the association under this Act would not be in the public interest.

(6) Upon incorporation of an association under subsection (4)—

(a) the association becomes a body corporate—

(i) with perpetual succession and a common seal;

and

(ii) with a corporate name as set forth in the certificate of incorporation (in which the word “Incorporated” must appear as part, and at the end, of the name);

(b) any incorporated association that was a party to the application for amalgamation is dissolved;

(c) the property of the associations that were parties to the application for amalgamation becomes the property of the incorporated association formed by the amalgamation (subject to any trusts that may affect that property);

and

(d) the rights and liabilities (whether certain or contingent) of the associations that were parties of the application for amalgamation become rights and liabilities of the incorporated association formed by the amalgamation.

(7) The Registrar-General shall—

(a) on the application of an incorporated association in which any estate or interest in land has vested by virtue of this section;

and

(b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the association.

(8) A reference in a will or other instrument to an association that is a party to an amalgamation under this section shall, after the amalgamation, be construed (subject to any provision in the will or other instrument to the contrary) as a reference to the association formed by the amalgamation.

DIVISION III—RULES

Rules binding on association and its members

23. The rules of an incorporated association bind the association and all members of the association.

Alteration of rules

24. (1) Every incorporated association shall, within one month after the making of any alteration to its rules, register the alteration with the Commission.

Penalty: Five hundred dollars.

(2) Where an incorporated association had resolved before the commencement of this Act to alter its rules and that alteration had not been registered at the commencement of this Act, it shall, within one month after the commencement of this Act, register the alteration with the Commission.

Penalty: Five hundred dollars.

(3) An application for registration of a proposed alteration of the rules of an incorporated association—

(a) must be made in the prescribed form;

(b) must be accompanied by a statutory declaration made by a member of the committee of the association or the public officer verifying the alteration;

and

(c) must be accompanied by the prescribed fee.

(4) Subject to subsection (5), where the Commission is satisfied that the proposed alteration conforms with the requirements of this Act, the Commission shall register the alteration.

(5) Where an alteration to the rules of an incorporated association consists of or includes an alteration to the name of the association—

(a) the Commission shall not register the alteration unless it is satisfied that the name—

(i) is not such as to be misleading as to the nature, objects or purposes of the association;

(ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name;

(iii) is not undesirable as a name for an incorporated association;

and

(iv) conforms with any directions of the Minister as to the names of incorporated associations;

and

(b) the Commission shall, if it registers the alteration, issue to the association a new certificate of incorporation and make an appropriate notation on the register of incorporated associations.

(6) Subject to any provision in the rules of the association or a resolution to the contrary, an alteration to the rules of an incorporated association comes into force at the time that the alteration is passed.

(7) Notwithstanding subsection (6), an alteration to the name of an incorporated association does not come into force until the alteration is registered by the Commission in accordance with this section.

DIVISION IV—POWERS

Powers of an incorporated association

25. For the purpose of carrying out its objects, an incorporated association may, subject to this Act and its rules—

(a) acquire, hold, deal with, and dispose of, any real or personal property;

(b) administer any property on trust;

(c) open and operate bank accounts;

(d) invest its moneys—

(i) in any security in which trust moneys may, by Act of Parliament, be vested;

or

(ii) in any other manner authorized by the rules of the association;

(e) borrow money upon such terms and conditions as the association thinks fit;

(f) give such security for the discharge of liabilities incurred by the association as the association thinks fit;

(g) appoint agents to transact any business of the association on its behalf;

and

(h) enter into any other contract it considers necessary or desirable.

DIVISION V—TRANSACTIONS

Manner in which contracts may be made

26. (1) Contracts may be made by or on behalf of an incorporated association as follows:

(a) a contract which, if made between private persons, would be required to be in writing under seal may be made by the incorporated association under its common seal;

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

(c) a contract which, if made between private persons, would be valid although made by parol only may be made by parol on behalf of the association by any person acting under its authority, express or implied.

(2) A contract may be varied or rescinded by or on behalf of an incorporated association in the same manner as it is authorized to be made.

Limitation of doctrine of *ultra vires*

27. (1) A contract made with an incorporated association is not invalid by reason of any deficiency in the capacity of the association to enter into, or carry out, the contract unless the person contracting with the association has actual notice of the deficiency.

(2) An incorporated association that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.

(3) This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into or carrying out a transaction that lies beyond the powers conferred on the association by this Act or its rules.

Abolition of doctrine of constructive notice in relation to incorporated association

28. It shall not be presumed that a person dealing with an incorporated association, or an agent of an incorporated association, has notice of the rules of the association, or of any other document registered by, or lodged with, the Commission in relation to the association.

PART IV

MANAGEMENT OF INTERNAL AFFAIRS

DIVISION I—THE COMMITTEE

Management of incorporated association

29. (1) Subject to this Act, the persons who have under the rules of an incorporated association power to administer the affairs of the association constitute, for the purposes of this Act, the committee of the association.

(2) No person shall be precluded from being appointed as a member of the committee of an incorporated association by reason only of the fact that he is a member of a class of persons for whose benefit the association is established.

(3) Subject to the rules of the association, no employee of an incorporated association shall be precluded by reason of that employment from being appointed as a member of the committee of the association.

Certain persons not to be members of the committee

30. (1) A person who is an insolvent under administration shall not act as a member of the committee of an incorporated association.

(2) A person who has been convicted, within or outside the State—

(a) on indictment of an offence in connection with the promotion, formation or management of a body corporate;

or

(b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than three months,

shall not, within a period of five years after his conviction or, if he was sentenced to imprisonment, after his release from prison, without leave of the Supreme Court, act as a member of the committee of an incorporated association.

Penalty: Two thousand dollars.

(3) When granting leave under this section, the Court may impose such conditions or limitations as it thinks fit and a person who contravenes or fails to comply with any such condition or limitation that is applicable to him is guilty of an offence.

Penalty: Two thousand dollars.

(4) A person intending to apply for leave of the Court under this section shall give to the Commission not less than twenty-one days notice of his intention to make the application.

(5) The Court may, on the application of the Commission, revoke leave granted by the Court under this section.

Disclosure of interest

31. (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee—

(a) shall, as soon as he becomes aware of his interest, disclose the nature and extent of his interest to the committee;

and

(b) shall disclose the nature and extent of his interest in the contract at the next annual general meeting of the association (if an annual general meeting is required to be held by the association).

Penalty: One thousand dollars.

(2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact—

(a) that the member of the committee is an employee of the association;

or

(b) that the member of the committee is a member of a class of persons for whose benefit the association is established.

(3) Where a member of the committee of an incorporated association discloses a pecuniary interest in a contract, or proposed contract, in accordance with this section, or his interest is not such as need be disclosed under this section—

(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.

Voting on a contract in which a committee member has an interest

32. (1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee, shall not take part in any decision of the committee with respect to that contract (but may, subject to complying with the provisions of this Division, take part in any deliberations with respect to that contract).

Penalty: One thousand dollars.

(2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established.

Duties of committee members

33. (1) A member of the committee of an incorporated association shall at all times act honestly and with reasonable diligence in the discharge of the duties of his office.

(2) A member of the committee of an incorporated association shall not make improper use of information acquired by virtue of his position as a member of the committee so as to gain directly or indirectly an advantage for himself or any other person, or so as to cause a detriment to the association.

(3) A person who contravenes a provision of this section—

(a) shall be liable to the association for any profit made by him, and any damage suffered by the association, as a result of that contravention;

and

(b) shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

DIVISION II—ACCOUNTS AND AUDIT OF CERTAIN INCORPORATED ASSOCIATIONS

Application of this Division

34. (1) This Division applies—

- (a) to an incorporated association that has gross receipts in excess of the prescribed amount per annum;
 - (b) to an incorporated association of a class prescribed by regulation;
- and
- (c) to any other incorporated association to which the Minister has, by notice in writing served on the association, declared that the provisions of this Division should extend.

(2) The Minister may, as he thinks fit, rescind a notice served on an association under subsection (1)(c).

(3) This Division does not apply in respect of a financial year of an association incorporated under the repealed Act that is the first such financial year of the association to end after the commencement of this Act.

(4) In this section—

“gross receipts” of an incorporated association means the total amount of the receipts of the association other than moneys received—

- (a) by way of subscriptions;
 - (b) as gifts, donations, devises or bequests;
- or
- (c) from the realization of capital:

“prescribed amount” means one hundred thousand dollars or such greater amount as may be prescribed by regulation.

Accounts to be kept

35. (1) An incorporated association to which this Division applies shall keep its accounting records in such a manner as will enable—

- (a) the preparation from time to time of true and fair accounts of the association;
- and
- (b) the accounts of the association to be conveniently and properly audited in accordance with this Division.

Penalty: One thousand dollars.

(2) An incorporated association to which this Division applies shall, as soon as practicable after the end of a financial year of the association, cause accounts in respect of the financial year to be prepared and audited by a registered company auditor, a firm of registered company auditors, a member of the Australian Society of Accountants, a member of The Institute of Chartered Accountants in Australia or such other person who may be approved by the Commission as an auditor of the accounts of the association for the purposes of this section.

Penalty: One thousand dollars.

(3) A person who is a member of the committee of an incorporated association to which this Division applies may not be appointed as auditor of the accounts of the association for the purposes of this section.

(4) The committee of an incorporated association to which this Division applies shall cause the audited accounts of the association to be laid before the members of the association at the annual general meeting of the association or, if an annual general meeting is not to be held, within five months after the end of the financial year to which the accounts relate.

Penalty: One thousand dollars.

Lodgment of periodic returns

36. (1) An incorporated association to which this Division applies shall lodge with the Commission such periodic returns, containing accounts and other information relevant to the affairs of the association, as the regulations may require.

(2) The requirements of the regulations in relation to periodic returns and the accounts and other information to be contained in them may vary according to the various classes of associations to which the regulations are expressed to apply but no such regulation may require the disclosure of the identity of members of the association.

(3) If an incorporated association fails to comply with subsection (1), it shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Powers and duties of auditors acting under this Division

37. (1) An auditor of an incorporated association to which this Division applies has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from any officer of the association such information and explanations as he desires for the purposes of an audit.

(2) An officer of an incorporated association to which this Division applies shall not, without lawful excuse—

(a) refuse or fail to allow an auditor of the association access, for the purposes of this Division, to any accounting records and other records of the association in his custody or control;

(b) refuse or fail to give any information or explanation as and when required by the auditor;

or

(c) otherwise hinder, obstruct or delay an auditor in the performance of his duties or the exercise of his powers as auditor.

Penalty: One thousand dollars.

(3) If an auditor, in the course of the performance of his duties as auditor of an incorporated association to which this Division applies, is satisfied that—

(a) there has been a contravention of, or failure to comply with, a provision of this Act or a rule of the association;

and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the committee of the association,

he shall immediately report the matter to the Commission by notice in writing.

(4) An auditor of an incorporated association to which this Division applies is not, in the absence of malice on his part, liable to any action for defamation in respect of any statement that he makes, orally or in writing, in the course of the performance of his duties as auditor under this Act.

(5) Subsection (4) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as defendant in an action for defamation.

Power of exemption

38. (1) The Commission may, on the written application of an incorporated association to which this Division applies, or on its own motion, exempt an association from the obligation to comply with one or more provisions of this Division.

(2) An exemption under subsection (1) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

DIVISION III—ANNUAL GENERAL MEETING

Annual general meeting

39. (1) Subject to this section, an incorporated association to which Division II applies shall hold an annual general meeting within five months after the end of the financial year of the association.

(2) An incorporated association to which Division II applies may hold its first annual general meeting at any time within the period of eighteen months after its incorporation.

(3) This section does not require an association incorporated under the repealed Act to hold an annual general meeting before the end of the second financial year of the association to end after the commencement of this Act.

(4) The Commission may, on the written application of an incorporated association to which Division II applies, or on its own motion, exempt an association from the obligation to comply with a requirement of this section.

(5) An exemption under subsection (4) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

(6) This section does not apply to an incorporated association where the rules of the association do not provide for the membership of the association.

DIVISION IV—DISPUTES

Rules of natural justice to be applied in relation to adjudication of dispute

40. Where the committee of an incorporated association exercises any power of adjudication that it may have in relation to a dispute between its members, or a dispute between itself and members of the association, the rules of natural justice shall be observed.

PART V

WINDING UP, TRANSFER OF ACTIVITIES AND DISSOLUTION

Winding up of incorporated association

41. (1) Subject to the succeeding provisions of this Part, an incorporated association may be wound up—

(a) by the Supreme Court;

(b) voluntarily;

or

(c) on the certificate of the Commission issued with the consent of the Minister.

(2) The regulations may provide that the provisions of Part XII of the *Companies (South Australia) Code* apply, with such modifications as may be necessary for the purpose or as may be prescribed, to a winding up under this section as if an incorporated association were a company as defined in the Code.

(3) The grounds on which an incorporated association may be wound up by the Supreme Court are as follows:

(a) that the association has by a resolution passed in accordance with subsection (4) resolved that it be wound up by the Court;

(b) that—

(i) the association has not commenced any activity or function;

and

(ii) more than one year has elapsed since the date of its incorporation;

(c) that the association is unable to pay its debts;

(d) that the members of the committee of the association have acted in the affairs of the association in their own interests rather than in the interests of the members as a whole, or in any other manner that appears to be oppressive or unreasonable to other members;

or

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

(4) A resolution of an incorporated association that the association be wound up by the Court—

(a) where the rules of the association provide for the membership of the association—must be passed by a special resolution of the association or in such other manner as the rules of the association may provide;

(b) where the rules of the association do not provide for the membership of the association—subject to the rules of the association, may be passed in such manner as the association may determine.

(5) For the purposes of subsection (3), if—

(a) a creditor by assignment or otherwise to whom an association is indebted in a sum exceeding one thousand dollars then due has served on the association a demand, signed by or on behalf of the creditor, requiring the association

to pay the sum so due and the association has, for three weeks after service of the demand, failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor;

- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of an association is returned unsatisfied in whole or in part;

or

- (c) the Court, after taking into account any contingent and prospective liabilities of an association, is satisfied that the association is unable to pay its debts,

the association shall be deemed to be unable to pay its debts.

(6) The grounds on which the Commission may issue a certificate for the winding up of an incorporated association are as follows:

- (a) that the association has contravened or failed to comply with a condition imposed in relation to the association by the Commission or the Minister under this Act;
- (b) that the incorporation of the association has been obtained by mistake or fraud;
- (c) that the association has, after notice by the Commission of any breach of this Act or the rules of the association, failed, within the time referred to in the notice, to remedy the breach;
- (d) that the association has not, within three months of notice being given by the Commission under section 42, requested the Commission to transfer its undertaking to another body corporate.

(7) The Commission may, in relation to the voluntary winding up of an incorporated association under this section, approve the appointment of a person to act as liquidator who is not a registered company liquidator.

(8) The Commission may, in relation to a winding up of an incorporated association by the Commission under this section, appoint a person (who may, but need not, be a registered company liquidator) to act as liquidator.

(9) The Commission shall cause notice of a decision to appoint a liquidator under subsection (8) to be published in the *Gazette* and in a daily newspaper circulating generally throughout the State.

(10) The reasonable costs of a winding up shall be payable out of the property of the association.

(11) A member of an incorporated association is not liable, except as may be provided in the rules of the association, for the costs and expenses of a winding up of the association.

Power of Commission to require transfer of activities

42. (1) Where the Commission is of the opinion—

- (a) that an incorporated association has ceased to be an association eligible to be incorporated under this Act;

or

- (b) that the undertaking or operations of an incorporated association are being carried on by a body corporate incorporated under some other Act, or would more appropriately be carried on by such a body corporate,

it may give notice to the association under this section.

(2) If, within three months of the date of a notice under subsection (1), the incorporated association requests the Commission to transfer its undertaking to a body corporate specified in the request, the Commission may, by instrument published in the *Gazette*, order that the undertaking of the association be transferred accordingly.

(3) On the publication of an order under subsection (2)—

(a) the incorporated association is dissolved;

(b) the property of the association becomes the property of the body corporate referred to in the order;

and

(c) the rights and liabilities of the association (whether certain or contingent) become rights and liabilities of the body corporate referred to in the order.

(4) The Registrar-General shall—

(a) on the application of a body corporate in which any estate or interest in real property has vested by virtue of this section;

and

(b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the body corporate.

Distribution of assets upon winding up

43. (1) Notwithstanding any Act or law to the contrary, if at the completion of a winding up under this Part there are surplus assets available for distribution, it shall not be lawful for those assets to be distributed amongst the members, or former members, of the association.

(2) Subject to this section and any order of the Supreme Court, the surplus assets of an incorporated association shall on a winding up of the association be distributed in accordance with—

(a) the rules of the association;

or

(b) where there are no valid rules of the association governing distribution of the surplus assets—a special resolution of the association.

(3) The Supreme Court may, on the application of the Commission, a liquidator or a member of an incorporated association, determine how surplus assets of the association are to be distributed on a winding up.

(4) The Court shall, in determining how the surplus assets of an association are to be distributed, have regard to the objects of the association and any relevant provisions of the rules of the association.

(5) In this section—

“surplus assets”, in relation to the winding up of an incorporated association, means those assets that remain after the liabilities of the association have been discharged and the costs and expenses of the winding up have been paid.

Defunct associations

44. (1) Where the Commission is of the opinion that an incorporated association is defunct, it may, by notice served upon the association or, where service cannot reasonably be effected in accordance with this Act, by notice published in a daily newspaper circulating generally throughout the State, require the association to show good cause why the association should not be dissolved.

(2) If, upon the expiration of one month from giving notice under subsection (1), the Commission is satisfied that the incorporated association should be dissolved, it may, by notice published in the *Gazette*, cancel the incorporation of the association, whereupon the incorporated association is dissolved.

Outstanding property of former association

45. (1) Any estate or interest in outstanding property of an association which was incorporated under the repealed Act and whose incorporation was cancelled under the repealed Act before the commencement of this Act shall, on the commencement of this Act, vest in the Commission.

(2) Any estate or interest in outstanding property of an association that is dissolved under this Act vests in the Commission.

(3) In this section—

“outstanding property”, in relation to an association, means any property, whether within or outside the State, which was vested in the association, to which the association was entitled, or over which the association had a disposing power, at the time that the association was dissolved but which had not got in, realized upon or otherwise disposed of or dealt with at that time.

Disposal of outstanding property

46. (1) Upon proof to the satisfaction of the Commission that there is vested in it by force of section 45 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Commission may get in, sell or otherwise dispose of or deal with that estate or interest, or any part of that estate or interest, as it sees fit.

(2) The power of the Commission under subsection (1) to sell or otherwise dispose of or deal with any such estate or interest may be exercised, either solely or together with any other person, by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Commission thinks fit, and includes power to rescind any contract and resell or otherwise dispose of or deal with that property as the Commission thinks expedient, and power to make, execute, sign and give such contracts, instruments and documents as the Commission thinks necessary.

(3) There is payable to the Commission in respect of the exercise of the powers conferred upon the Commission by subsections (1) and (2), out of any income derived from, or the proceeds of sale or other disposition of, the estate or interest concerned, such commission as is prescribed.

(4) The Commission shall apply any moneys received by it in the exercise of any power conferred on it by this section in defraying the costs and expenses of and incidental to the exercise of that power and shall pay the remainder (if any) of the moneys to the Treasurer.

(5) The Treasurer shall pay all moneys paid to him under this section into the Consolidated Account.

(6) A person making a claim in respect of any money paid to the Treasurer under subsection (4) may apply to the Supreme Court for an order of payment of an amount to him and the Court, if satisfied that an amount should be paid to him, shall make an order for the payment accordingly.

(7) On the making of an order under subsection (6) of an amount to a person or where the Treasurer is otherwise of the opinion that an amount should be paid to a person out of moneys paid to the Treasurer under this section, the Treasurer shall pay that amount to that person out of moneys lawfully available for that purpose.

Liability of Commission and Crown as to property vested in Commission

47. Property vested in the Commission by operation of section 45 is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any laws as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the association, but there shall not be imposed, on the Commission or the Crown, any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the property of the association so far as it is, in the opinion of the Commission, properly available for and applicable to such a payment.

Accounts

48. The Commission shall—

- (a) keep a record of any property coming into its possession or under its control or to its knowledge vested in it by force of section 45 and of its dealings with that property;
- (b) keep accounts of all moneys arising from those dealings and of how they have been disposed of;

and

- (c) keep all accounts, vouchers, receipts and papers relating to that property and those moneys.

Removal of name from register

49. On the dissolution of an incorporated association, its name shall be removed from the register of incorporated associations.

PART VI
MISCELLANEOUS

Right of appeal

50. (1) Subject to this section, a person aggrieved by an act or decision of the Commission under this Act may appeal to a District Court against that decision.

(2) An appeal under this section must be lodged with the Court within twenty-one days after the act or decision being appealed against.

(3) On the hearing of an appeal under this section, the Court may—

(a) vary or reverse the decision of the Commission and make such consequential or ancillary orders as may be just in the circumstances;

or

(b) uphold the decision of the Commission and dismiss the appeal.

(4) Where a decision of the Commission to cancel the incorporation of a defunct association is reversed by a District Court under subsection (3), the Commission shall restore the registration of the association under this Act and, if the Court so orders, the incorporation of the association shall be deemed to have continued during the period of deregistration.

(5) No appeal shall lie against a decision of a District Court on an appeal under this section.

Triennial returns

51. (1) Subject to this section, an incorporated association shall, within two months after the end of each return period of the association, furnish to the Commission, in a manner and form approved by the Commission, a return specifying—

(a) the general nature of the operations of the association during the return period;

(b) the dates of each financial year of the association during the return period;

(c) the gross income of the association in each financial year of the association during the return period;

(d) the membership of the committee of the association as at the expiration of the return period;

(e) the number of members of the association as at the expiration of the return period;

(f) the nature of any licences held by the association during the return period;

(g) whether the association borrowed money during the return period;

(h) the nature of any government grant received by the association during the return period;

and

(i) such other details as may be prescribed.

(2) A regulation made for the purposes of subsection (1)(i) may not require an incorporated association to disclose the identity of the members of the association.

(3) An incorporated association that is required to lodge a periodic return in pursuance of section 36 may, at the end of a return period, comply with the requirements of this section by completing a return in accordance with this section and lodging that return as an annexure to the periodic return next lodged by that association.

(4) No fee is payable by an incorporated association in respect of the furnishing of a return under this section.

(5) A return furnished under this section shall be used by the Commission solely for purposes related to the administration of this Act and, notwithstanding any other provision of this Act, the contents of a return shall not be made available to any person who is not an officer or employee of the Commission.

(6) For the purposes of this section, the return period of an incorporated association shall be as follows:

(a) where the association was, immediately before the commencement of this Act, an association incorporated under the repealed Act—the first return period of that association shall be the first financial year of the association to commence on or after the first day of July, 1985 and each subsequent return period shall be each successive period of three financial years of the association;

and

(b) where the association was incorporated after the commencement of this Act—a return period shall be each successive period of three financial years of the association.

(7) This section shall expire on the first day of July, 1990.

Duty of association to keep proper accounts

52. An incorporated association shall take all reasonable steps to ensure that such accounting records are kept as are necessary correctly to record and explain the financial transactions and financial position of the association.

Penalty: Five hundred dollars.

Prohibition of inviting public to invest moneys with association

53. (1) Unless the Commission otherwise approves, an incorporated association shall not invite the public to invest moneys with the association.

Penalty: Three thousand dollars.

(2) Subsection (1) does not apply to an invitation by an incorporated association to members of the association, or applicants for membership of the association, to deposit moneys with, or lend moneys to, the association.

(3) Where a person invests moneys with an incorporated association in response to an invitation made in contravention of subsection (1), the transaction shall be void.

(4) A person who pays any moneys to an incorporated association pursuant to a transaction that is void by virtue of subsection (3) may recover those moneys from the association as a debt.

(5) The approval of the Commission under subsection (1) may be granted on such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

(6) This section does not apply to an invitation by an incorporated association to the public to invest moneys in a fund that was being maintained by the association on the first day of March, 1985.

Name of association to be printed, etc., on documents

54. Subject to exceptions prescribed by regulation, an incorporated association shall cause its name to be legibly printed, stamped or endorsed on every notice, advertisement, bill of exchange, receipt or other document given, published, drawn or issued by the association.

Penalty: Two hundred dollars.

Prohibition against securing profit for members

55. (1) Unless the Minister otherwise approves, an incorporated association shall not conduct its affairs in a manner calculated to secure a pecuniary profit for the members of the association or any of those members.

Penalty: One thousand dollars.

(2) The approval of the Minister under subsection (1) may be granted on such conditions as the Minister thinks fit and may, by instrument in writing, be varied or revoked by the Minister.

Public officer

56. (1) An incorporated association shall have a public officer.

(2) The public officer of an association must be a natural person of or above the age of eighteen years who is resident in the State.

(3) If the public officer of an incorporated association ceases (otherwise than temporarily) to be resident in the State, he ceases to be the public officer of the association.

(4) If for a period of more than one month an incorporated association has no public officer, it shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(5) An incorporated association shall within one month after any change in the identity or address of its public officer give notice to the Commission containing prescribed particulars of the change.

Penalty: Five hundred dollars.

(6) It is a defence to a charge of an offence against subsection (4) or (5) for the association to prove that the matters alleged against it did not arise from a failure by the association or its committee to exercise proper diligence.

Penalty for non-compliance with Act or a condition imposed under Act

57. (1) If a member of the committee of an incorporated association fails to take all reasonable steps to secure compliance by the association with its obligations under this Act, he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(2) If an incorporated association, or an officer of an incorporated association, contravenes or fails to comply with a condition imposed in relation to that association by the Commission or the Minister under this Act, the association or the officer (as the case may be) shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Improper use of position by officers

58. (1) An officer of an incorporated association shall not make improper use of his position as such an officer so as to gain directly or indirectly an advantage for himself or any other person, or so as to cause a detriment to the association.

(2) An officer who contravenes subsection (1)—

(a) shall be liable to the association for any profit made by him, and any damage suffered by the association, as a result of that contravention;

and

(b) shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Variation or revocation of trusts

59. (1) This section applies to a trust—

(a) which is referred to in the rules of the association;

or

(b) upon which any rule of the association relies for its operation.

(2) Where a trust to which this section applies is varied or revoked, the trustees of the trust shall, not later than one month after the variation or revocation (as the case may be) notify the Commission of that variation or revocation.

Penalty: Five hundred dollars.

Misrepresentation as to incorporation under this Act

60. A person shall not, in order to gain an advantage for himself or any other person, falsely represent that a body is an association incorporated under this Act.

Penalty: One thousand dollars.

Oppressive or unreasonable acts

61. (1) An application to the Supreme Court for an order under this section may be made by a member of an incorporated association who believes—

(a) that the affairs of the association are being conducted in a manner oppressive to one or more of the members (including that member);

(b) that the members of the committee of the association have acted in the affairs of the association in their own interests and not in the interests of the members as a whole or in any other manner that is oppressive or unreasonable to one or more members (including that member);

(c) that the rules of the association contain provisions that are oppressive or unreasonable.

(2) If the Court is of the opinion—

(a) that affairs of an incorporated association are being conducted in a manner oppressive to one or more of the members;

(b) that the members of the committee of an incorporated association have acted in the affairs of the association in their own interests rather than in the interests of the members as a whole or in any other manner whatsoever that is oppressive or unreasonable to other members;

or

- (c) that the rules of an incorporated association contain provisions that are oppressive or unreasonable,

the Court may, subject to subsection (3), make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (d) an order that the association be wound up;
(e) an order for regulating the conduct of the association's affairs in the future;
(f) an order for the alteration of the rules of the association.

(3) The court shall not make an order under subsection (2) for the winding up of the association if it is of the opinion that the winding up of the association would unfairly prejudice the member or members referred to in subsection (2)(a) or the other members referred to in subsection (2)(b).

(4) Where an order that the association be wound up is made pursuant to subsection (2), the provisions of this Act relating to the winding up of an incorporated association apply, with such adaptations as are necessary, as if the order had been made on an application duly filed in the Court by the association.

(5) Where an order under this section makes any alteration to the rules of an association, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the association does not have power, without the leave of the Court, to make any further alteration to the rules inconsistent with the provisions of the order but, subject to this section, the alteration has effect as if it had been duly made by resolution of the association.

(6) An office copy of any order made under this section pursuant to an application by a member of the association shall be lodged by the applicant with the Commission within fourteen days after the making of the order.

Penalty: Two hundred dollars.

(7) For the purposes of an application under this section, a breach of the rules of an incorporated association by the committee of the association may be regarded as constituting action that is unreasonable to members of the association.

Proceedings for offences

62. (1) A complaint for an offence against this Act may be made—

- (a) by the Commission;
(b) by an officer or employee of the Commission;

or

- (c) with the consent of the Minister, by any other person.

(2) Notwithstanding any other Act, proceedings for an offence against this Act may be brought within the period of three years after the date on which the offence is alleged to have been committed or, with the consent of the Minister, at any later time.

(3) Proceedings for an offence against this Act shall be disposed of summarily.

(4) In any proceedings for an offence against this Act, an allegation in the complaint—

- (a) that an association is or was at specified time incorporated under this Act;

(b) that the defendant is or was at a specified time an officer of an association named in the complaint;

(c) that any meeting of the members of an association required by a specified provision of this Act to be held has not been held as required by that provision;

or

(d) that the complainant is an officer or employee of the Commission,

shall be deemed to be proved in the absence of proof to the contrary.

(5) A document purporting to be a consent of the Minister given under this section shall, in the absence of proof to the contrary, be proof of the consent.

Evidentiary provision

63. (1) An apparently genuine document purporting to be under the seal of the Commission and to be a certificate of incorporation of an association shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the incorporation of the association on the date specified in the certificate.

(2) An apparently genuine document purporting to be a copy of a document registered by, or lodged with, the Commission under this Act or the repealed Act and to be certified by the Commission as a true copy of such a document shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of that document.

(3) The reference in subsection (2) to a document that has been certified by the Commission includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

(4) An apparently genuine document purporting to be a copy of, or extract from, a record kept by an incorporated association and to be verified by an officer of the association authorized by the committee of the association for the purpose shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of, or extract from, that record.

(5) An apparently genuine document purporting to bear the common seal of an incorporated association shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the incorporated association.

(6) In any proceedings—

(a) a certificate purporting to be under the seal of the Commission and certifying that at a date or during a period specified in the certificate an association, or no association (as the case may be), was incorporated under this Act or the repealed Act, by a name specified in the certificate, shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified;

and

(b) a certificate purporting to be under the seal of the Commission and certifying that an incorporated association has, or has not, complied with a requirement of this Act as to the filing or lodging of any document or return or the giving of any notice shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

Service upon incorporated associations

64. Service of any process, notice or other document may be effected on an incorporated association—

- (a) by serving the process, notice or other document personally on the public officer or a member of the committee of the association;
 - (b) by serving the process, notice or other document by post on the public officer;
- or
- (c) by leaving the process, notice or other document at the address of the public officer with any person apparently over the age of eighteen years.

Use of abbreviation "Inc."

65. For the purposes of this Act, the abbreviation "Inc." may be used in place of the word "Incorporated".

Fees in respect of lodging documents

66. (1) Where a fee is payable to the Commission for or in respect of the lodging of a document with the Commission under this Act and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid to the Commission.

(2) Notwithstanding subsection (1), the Commission may—

- (a) waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable under this Act;

and

- (b) refund, in whole or in part, any fee paid under this Act.

Regulations

67. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) those regulations may—

- (a) prescribe model rules with a view to their adoption by incorporated associations or associations intending to apply for incorporation under this Act;
- (b) prescribe forms for the purposes of this Act;
- (c) prescribe, and provide for the payment of, fees;
- (d) authorize the destruction of specified classes of documents lodged with the Commission under this Act or the repealed Act;

and

- (e) prescribe penalties, not exceeding five hundred dollars, for breach of, or non-compliance with, any regulation.

APPENDIX

Legislative History

Section 3(1):	definition of "special resolution" substituted by 100, 1985, s. 3
Section 24(7):	inserted by 100, 1985, s. 4
Section 46(3):	amended by 100, 1985, s. 5
Section 51(6):	amended by 100, 1985, s. 6