

NORTHERN TERRITORY OF AUSTRALIA

ASSOCIATIONS INCORPORATION ACT

As in force at 17 September 1996

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 17 September 1996

ASSOCIATIONS INCORPORATION ACT

An Act to provide for the Incorporation of certain associations, and for matters incidental thereto

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act shall come into operation on the day on which the *Companies Ordinance 1963* comes into operation.

3 Repeal and transitional provisions

- (1) The *Associations Incorporation Ordinance 1953* is repealed.
- (2) The following Acts of the State of South Australia cease to apply to the Territory as laws of the Territory:
 - (a) *Associations Incorporation Act, 1890*.
 - (b) *Associations Incorporation Act, 1890, Amendment Act, 1897*; and
 - (c) Act number 757 of 1901.
- (3) An association incorporated under the legislation referred to in subsections (1) and (2) shall be deemed to be an association incorporated under this Act.
- (4) For the purposes of this Act, the date on which such an association shall be deemed to have been incorporated under this Act is the date of commencement of this Act.
- (5) The Registrar shall, at the request of such an association, issue to the association a certificate of incorporation under this Act but, whether such a certificate is issued or not, such an association by

virtue of this Act is a body corporate with perpetual succession and a common seal and may acquire, hold and dispose of real and personal property and is capable of suing and being sued in its corporate name.

4 Interpretation

(1) In this Act unless the contrary intention appears:

association means:

- (a) an association, society, institution or body formed or carried on for a religious, educational, benevolent or charitable purpose, for the purpose of providing medical treatment or attention or promoting or encouraging literature, science or art or for the purpose of recreation or amusement or of beautifying or improving a community centre, being an association, society, institution or body the activities of which are carried on in whole or in part in the Territory; or
- (b) any other association, society, institution or body certified in writing by the Minister to be an association for the purposes of this Act,

but does not include a trading association.

committee, in relation to an association or a trading association, means:

- (a) where there is a committee of the association – that committee; or
- (b) where there is no committee of the association – the person having the management of the affairs of the association.

Deputy Registrar means a person appointed under section 4A as a Deputy Registrar of Associations and, until the first such appointment is made, includes each person appointed as a Deputy Commissioner for Corporate Affairs or an Assistant Commissioner for Corporate Affairs under the *Companies (Administration) Act*.

incorporated association means an association incorporated under this Act.

incorporated trading association means a trading association incorporated under this Act.

prescribed property means property that was acquired:

- (a) from; or

- (b) using funds obtained under a grant from, the Territory or the Commonwealth, and includes an interest, whether legal or equitable, in such property, but does not include:
- (c) property acquired from the Territory or Commonwealth for full consideration using funds that were not, directly or indirectly, obtained under a grant from the Territory or Commonwealth; or
- (d) an item of property, being personalty, that has a total value of not more than \$2,000 or such other amount as the Minister may prescribe by notice in the *Gazette*.

public officer means, in relation to:

- (a) an incorporated association – the public officer of that association appointed under section 12; and
- (b) an incorporated trading association – the public officer of that association appointed under section 25R;

Registrar means the person appointed under section 4A as the Registrar of Associations and, until such an appointment is made, includes the Commissioner for Corporate Affairs appointed under the *Companies (Administration) Act*.

trading association means an association, society, institution or body formed or carried on for the purpose of trading or securing pecuniary profit to its members.

unauthorized name, in relation to an association or trading association, means a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that is unacceptable by virtue of the operation of section 367(1) of the Corporations Law.

- (2) In this Act a reference to an alteration of the objects, purposes or rules of an association, or of the trusts relating to an association, includes a reference to any addition to, or revocation or rescission (whether in whole or part) of those objects, purposes, rules or trusts.

Part 1A Administration

4A Registrar and Deputy Registrars

- (1) The Minister may, by instrument in writing, appoint an employee, as defined in the *Public Sector Employment and Management Act*, to be the Registrar of Associations and such other employees to be Deputy Registrars of Associations as he thinks fit.
- (2) The Registrar, in the performance of his functions and the exercise of his powers is subject to the written directions of the Minister.
- (3) A Deputy Registrar may, subject to the directions of the Registrar, perform a function and exercise a power of the Registrar.

4B Acting appointments

- (1) The Minister may, by instrument in writing, appoint a person to act as the Registrar or as a Deputy Registrar:
 - (a) during a vacancy in the office of the Registrar or in the office of a Deputy Registrar, as the case may be, whether or not an appointment has previously been made to the office; or
 - (b) during a period, or during all periods, when the Registrar or a Deputy Registrar is absent from duty or from the Territory or is, for any reason, unable to perform the functions of his office,but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) Where a person is acting as the Registrar or as a Deputy Registrar in accordance with this section and the office of the Registrar or of a Deputy Registrar becomes vacant while that person is so acting then, subject to subsection (2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (4) The Minister may, at any time, terminate the appointment of a person appointed to act in accordance with this section.
- (5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

- (6) While a person is acting as the Registrar or as a Deputy Registrar in accordance with this section, he shall perform all the functions and may exercise all the powers of the Registrar or of a Deputy Registrar, as the case requires.
- (7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

4C Judicial notice

- (1) A court shall take judicial notice of:
 - (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of the Registrar or a Deputy Registrar; and
 - (b) the fact that that person holds or has held, or is acting or has acted in, that office,

if the signature purporting to be the signature of that person appears on an official document.

- (2) In this section, a reference to a court shall be construed as including a reference to:
 - (a) a judge; and
 - (b) a person authorized by law or by consent of parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

4D Secrecy

- (1) Subject to this section, a person who is, or has at any time been:
 - (a) appointed for the purposes of this Act;
 - (b) engaged as a member of the staff of the Registrar; or
 - (c) authorized to perform a function or exercise a power of the Registrar on behalf of the Registrar,

shall not, except to the extent necessary to perform his official duties, or to perform a function or exercise a power, either directly or indirectly, make a record of, or divulge or communicate to a person, information that is or was acquired by him by reason of his being or having been so appointed, engaged or authorized, or make use of such information, for purposes other than the performance of his official duties or the performance of a function or exercise of a power.

Penalty: \$10,000 or imprisonment for 2 years.

- (2) Nothing in subsection (1) precludes a person from:
- (a) producing a document to a court in the course of criminal proceedings or in the course of proceedings under this or any other Act;
 - (b) divulging or communicating to a court in the course of proceedings referred to in paragraph (a) a matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that subsection;
 - (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Registrar, it is in the public interest that the document be produced or the information be divulged or communicated; or
 - (d) producing a document or divulging or communicating information that is required or permitted by an Act to be produced, divulged or communicated, as the case may be.

Part 2 Incorporated associations

5 Notice of intention to apply for incorporation

- (1) Where the committee of an association authorizes a person to apply for the incorporation of the association under this Part, that person may, by notice published in a newspaper circulating in the Territory, give notice that he intends to apply for the incorporation of the association under this Part.
- (2) A notice given under subsection (1) shall:
- (a) be in the prescribed form;
 - (b) specify the objects and purposes of the association in respect of which it is given; and

- (c) be approved by the Registrar before publication.

6 Restraint on incorporation

- (1) Any person may, within 3 weeks after the publication of a notice under section 5 of intention to apply for the incorporation of an association, apply to the Supreme Court for an injunction to restrain the person who gave the notice, or any other person, from applying, or proceeding with an application, for the incorporation of the association.
- (2) The Supreme Court may grant an injunction for which application is made under subsection (1):
 - (a) on the ground that:
 - (i) the association is not an association for the purposes of this Act;
 - (ii) the association was formed or is carried on, or is proposed to be incorporated, for an immoral, disloyal or illegal purpose; or
 - (iii) the incorporation of the association is against the public interest; or
 - (b) on any other ground which the Supreme Court considers just.
- (3) The Supreme Court may determine an application under this section notwithstanding that all the parties interested are not parties to the proceedings.

7 Application for incorporation

- (1) Subject to any injunction granted under section 6, a person who gives notice under section 5 of intention to apply for the incorporation of an association may, after the expiration of a period of one month, and within a period of 6 months, after the publication of the notice, apply in writing to the Registrar, in a form approved by the Registrar, for the incorporation of the association.
- (2) An application under subsection (1) shall state:
 - (a) the name of the association;
 - (b) the objects and purposes of the association;
 - (c) the place or places where the association was formed and is carried on; and

- (d) the names and addresses of the persons who constitute the committee of the association or, if there is no committee of the association, the names and addresses of the persons having the management of the affairs of the association and the means by which the management is so vested.
- (3) The application shall be accompanied by a statutory declaration made by the applicant declaring:
- (a) that he is authorized by the committee of the association to apply for the incorporation of the association under this Part;
 - (b) that, on a date and in a newspaper specified in the declaration, he gave notice under section 5 of his intention to apply for the incorporation of the association; and
 - (c) that the particulars contained in the application are true.

8 Certificates of incorporation

- (1) Upon receipt of an application under, and in accordance with, section 7 for the incorporation of an association, the Registrar may, if he is satisfied that it is proper for him so to do, issue to the association a certificate of incorporation.
- (2) Except with the consent of the Minister, the Registrar shall refuse to issue a certificate of incorporation under this Act to an association if the name of the association is an unauthorized name.
- (3) Subject to subsection (4), the Registrar may refuse to issue a certificate of incorporation to an association on any ground specified section 6(2)(a) or on any other ground which he considers just.
- (4) The Registrar shall not refuse to issue a certificate of incorporation to an association on any ground which the Supreme Court has refused to make the ground for the granting of an injunction under section 6 to restrain a person from applying, or proceeding with an application, for the incorporation of the association.

9 Incorporation of associations

- (1) Upon the issue of a certificate of incorporation to an association under section 8, the association becomes a body corporate with perpetual succession and a common seal, and may acquire and, subject to sections 22A, 25AQ and 26A, may hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

- (2) The corporate name of an incorporated association is the name of the association followed by the word ***Incorporated***.
- (3) The common seal of an incorporated association is of no effect unless the name of the association is inscribed on the seal in legible characters.
- (4) All courts, judges and persons acting judicially shall take judicial notice of the seal of an incorporated association affixed to a document and shall presume that it was duly affixed.

9A Short form of name

A description of an incorporated association is not inadequate or incorrect by reason only of the use of the abbreviation ***Inc.*** in lieu of ***Incorporated***.

10 Vesting of personal property in incorporated associations

Upon the incorporation of an association under this Act, any personal property (other than personal property consisting of an estate or interest in land) held by a person, in trust or otherwise, for or on behalf of the association shall, subject to any trust, covenant, contract or liability affecting the property, be vested in the association.

11 Power to borrow money and give securities

An incorporated association may, subject to the rules of the association:

- (a) raise or borrow money upon such terms and in such manner as it thinks fit; and
- (b) subject to section 26A, secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving mortgages, charges or securities upon or over all or any of the real or personal property of the association.

12 Appointment of public officer

- (1) The committee of an incorporated association shall, within 14 days after the incorporation of the association under this Part, appoint a person resident in the Territory to be the public officer of the association and, if that office at any time becomes vacant, shall, within 14 days after it becomes vacant, appoint a person resident in the Territory to fill that vacancy.

- (2) If the committee of an association fails to comply with subsection (1), each member of the committee is guilty of an offence punishable upon being found guilty by a fine not exceeding \$500.

13 Vacation of office of public officer

- (1) The office of public officer of an incorporated association becomes vacant if the person holding that office:
- (a) dies;
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors;
 - (c) becomes of unsound mind;
 - (d) resigns his office by writing under his hand addressed to the committee of the association; or
 - (e) ceases to be resident in the Territory.
- (2) The public officer of an incorporated association may, subject to the rules of the association, hold any other office in the association.

14 Notification of appointment, and change of address of public officers

- (1) A public officer shall, within 14 days after his appointment, give notice in writing to the Registrar of his appointment and of his full name and address.
- (2) If a public officer changes his address, he shall, within 14 days after the change, give notice in writing to the Registrar of the change.

Penalty: \$500.

15 Filing of rules and trusts

- (1) An incorporated association shall, within 3 months after its incorporation under this Part, file with the Registrar:
- (a) a copy of the rules of the association; and
 - (b) particulars of, and a copy of any instruments evidencing, the trusts, if any, relating to the association.

Penalty: \$1,000.

- (2) A copy of the rules of an incorporated association or of any other instrument filed under subsection (1) shall be accompanied by a statutory declaration made by the public officer of the association declaring that that copy is a true copy of the instrument of which it purports to be a copy.

16 Alteration of rules, &c.

- (1) The public officer of an incorporated association shall, within one month after an alteration of:
- (a) the objects or purposes of the association;
 - (b) the rules of the association; or
 - (c) any trusts relating to the association,

file with the Registrar notice of the alteration, a copy of any instrument evidencing the alteration and a statutory declaration made by the public officer declaring that that copy is a true copy of the instrument of which it purports to be a copy and, in the case of an alteration of the objects, purposes or rules of the association, that the alteration is authorized, and was made in the manner provided, by the rules of the association.

Penalty: \$1,000.

- (2) Where, under the rules of an incorporated association, the members of the association are liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding-up of the association and an alteration of the rules of the association affects that liability, the public officer of the association shall, within one month after the alteration, give notice of that alteration in a newspaper circulating in the Territory.

Penalty: \$500.

- (3) An alteration of the objects, purposes or rules of an association, or of any trusts relating to an association, is of no effect until subsections (1) and (2) have been complied with in respect of that alteration and, in the case of an alteration of the objects or purposes of the association, unless the alteration is approved by the Registrar.

17 Change of name

- (1) Where the Registrar is satisfied that the members of an incorporated association have, in accordance with the rules of the association, resolved to change the name of the association, the

Registrar may, upon the application of the public officer of the association, issue to the association a certificate of incorporation in the new name and that certificate of incorporation has effect, from the date of issue, as the certificate of incorporation of the association.

- (2) Except with the consent of the Minister, the Registrar shall refuse to issue a certificate of incorporation to an association under subsection (1) if the proposed new name of the association is an unauthorized name.
- (3) If the name of an incorporated association is (whether through inadvertence or otherwise or whether originally or by change of name) an unauthorized name, the Registrar may, by notice in writing, direct the association to change its name to a name that is not an unauthorized name.
- (4) Where an association has been incorporated under this Act under the same name since before 1 July 1963, the Registrar shall not direct the association to change that name unless he is directed to do so by the Minister.
- (5) An association to which a notice under sub-section (3) is given which does not change its name as directed by the notice within the time specified in the notice is, unless the Minister by order in writing annuls the direction, guilty of an offence, which offence shall be deemed to continue until the name of the association is so changed, and the offence is punishable by a fine not exceeding \$500 for each day during which the offence continues.

18 Alteration of rules, change of name, &c., does not affect existing rights and obligations

An alteration of the objects, purposes or rules of an incorporated association, or of any trusts relating to an incorporated association, or the issue of a certificate of incorporation under section 17 to an incorporated association in a new name, does not affect any right, liability or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect or the certificate was issued, as the case may be.

19 Name of association to appear on documents

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

Penalty: \$500.

20 Winding-up

Subject to sections 21, 22 and 22A, the provisions of the Corporations Law relating to the winding-up of Part 5.7 bodies apply, so far as applicable and with such modifications as are prescribed, to and in relation to the winding-up of incorporated associations and, in that application:

- (a) a reference in the Corporations Law to a Part 5.7 body shall be read as a reference to an incorporated association;
- (b) a reference in the Corporations Law to the directors of a company shall be read as a reference to the members of the committee of an incorporated association;
- (c) a reference in the Corporations Law to the secretary of a company shall be read as a reference to the public officer of an incorporated association; and
- (d) a reference in the Corporations Law to the principal place of business of a company shall be read as a reference to the place where the public officer of an incorporated association resides.

21 Liability of members

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

22 Distribution of surplus assets

- (1) Where, upon the winding-up of an incorporated association, a resolution relating to the distribution of the surplus assets of the association has been passed by a majority of at least two-thirds of the members of the association, the Judge shall, subject to subsection (2), make an order for the distribution of those assets in accordance with the resolution.
- (2) Where:
 - (a) the Judge considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in subsection (1) would not be just; or
 - (b) such a resolution has not been passed,

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

- (3) In this section, **surplus assets** means, in relation to an incorporated association, the assets remaining on a winding-up of the association after payment of the debts and liabilities of the association and the costs, charges and expenses of the winding-up.

22A Prescribed property in winding-up

Except with the consent in writing of the Minister or, where the prescribed property is a lease under the *Special Purposes Leases Act*, the consent required under section 6 of that Act, prescribed property is not an asset in the winding-up of an incorporated association.

22B Transfer of property

- (1) An incorporated association may, by resolution passed in accordance with the rules of the association, determine to transfer all its real and personal property, other than prescribed property, to any other body, whether corporate or unincorporate, formed for promoting objects similar to its own or charitable objects or to a municipal council or community government council within the meaning of the *Local Government Act* or other governing authority constituted pursuant to any Act, for the area within which the property is situate.
- (2) Within 14 days of the passing of a resolution mentioned in subsection (1), the incorporated association shall file a copy thereof with the Registrar and shall give notice in one daily newspaper published in the Territory and in the *Gazette* of its intention so to transfer all its property.
- (3) A member of an association, not being a member who voted in favour of the resolution, or any creditor of the association may, within 28 days of publication of the resolution under subsection (2), apply to the Supreme Court for an order prohibiting the association from transferring its property, and the Supreme Court shall have full power and authority to determine the matters in question, but the only ground on which a creditor may apply for an order shall be that his debt has not been paid.
- (4) An association shall not transfer its property until the expiration of 28 days after the publication of the last notice which it has given, nor, where an application to the Supreme Court has been made under subsection (3), until the Supreme Court so orders but, notwithstanding the foregoing provisions of this subsection, nothing

in this subsection shall affect the title of any bona fide transferee under any transfer of any such property.

- (5) When an association has completed the transfer of all its property the public officer thereof shall immediately file notice thereof with the Registrar and, on the expiration of 3 months after the filing of such notice, the association shall be deemed to be dissolved.
- (6) Nothing contained in this section shall be deemed to prevent an association making gifts which do not constitute the whole or the greater part of the property of the association.

23 Power to sell trust property

- (1) Where property is held by an incorporated association upon trust and the trust has come either wholly or partly to an end, the public officer of the association may, with the authority of the committee of the association, apply to the Judge for an order authorizing the disposal of the whole or a part of the property.
- (2) At the hearing of the application, the Judge may, if he thinks it proper so to do and notwithstanding that the provisions of the deed or other instrument creating the trust, or the rules of the association, forbid or do not authorize the disposal of the property, make an order:
 - (a) authorizing the disposal of the whole or a part of the property; and
 - (b) directing the manner in which the proceeds arising from the disposal of the property, or the part of the property, are to be disposed of or dealt with.

23A Dissolution of incorporated associations

- (1) Where the Registrar has reasonable cause to believe that an incorporated association is not carrying out its objects or is not in operation, he may send to the public officer of the incorporated association by post a letter to that effect stating that, if an answer showing cause to the contrary is not received within one month from the date thereof, a notice will be published in the *Gazette* with a view to the dissolution of the incorporated association.
- (2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the incorporated association is carrying out its objects or is in operation, he may publish in the *Gazette* and send to the public officer of the incorporated association by registered post a notice that, at the expiration of 3 months from the date of that notice, the incorporated association will, unless cause is shown to the contrary, be dissolved.

- (3) At the expiration of the time mentioned in a notice given by the Registrar under subsection (2), the Registrar may, unless cause to the contrary is previously shown, publish in the *Gazette* a notice that the incorporated association is dissolved, and, on the publication in the *Gazette* of that last-mentioned notice, the dissolution of the incorporated association takes effect, but the liability, if any, of every officer and member of the incorporated association continues and may be enforced as if the incorporated association had not been dissolved.
- (4) If a person feels aggrieved by the dissolution of the incorporated association under this section, the Supreme Court on application made by the person at any time within 15 years after the incorporated association has been dissolved may, if the court is satisfied that the incorporated association was, at the time of the dissolution, carrying out its objects or in operation or otherwise that it is just that the dissolution of the incorporated association be annulled, order that the dissolution of the incorporated association be annulled and, upon an office copy of the order being lodged with the Registrar, the incorporated association shall be deemed to have continued in existence as if it had not been dissolved and the Court may, by the order, give such directions and make such provisions as seem just for placing the incorporated association and all other persons in the same position as nearly as may be as if the incorporated association had not been dissolved.

23B Registrar may act administratively for dissolved incorporated association

- (1) Where, after an incorporated association has been dissolved under section 23A, it is proved to the satisfaction of the Registrar:
 - (a) that the incorporated association, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
 - (b) that, in order to carry out, complete or give effect thereto, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the incorporated association, or, if the incorporated association still existed, should be done by or on behalf of the incorporated association,

the Registrar may, as representing the incorporated association under the provisions of this section, do or cause to be done any such act.

- (2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in

pursuance of this section, and such execution or signature has the same force, validity and effect as if the incorporated association, if it still existed, had duly executed such instrument or document.

23C Property of dissolved incorporated association will vest in registrar

Where, after an incorporated association has been dissolved under section 23A, there remains any outstanding property, real or personal, including things in action and whether within or outside the Territory, which was vested in the incorporated association or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the incorporated association, such property shall, for the purposes of the provisions of sections 23D, 23E and 23F and, notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein legal or equitable of the incorporated association at the date the incorporated association was dissolved, together with all claims, rights and remedies which the incorporated association then had in respect thereof.

23D Registrar may sell property vested in him

- (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 23C or any corresponding previous law of the Territory, 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 Registrar may, subject to section 26A, sell or otherwise dispose of, or deal with, such estate or interest or any part thereof as he sees fit.
- (2) Subject to section 26A, the Registrar may sell or otherwise dispose of, or deal with, such property either solely or in concurrence 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 he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.
- (3) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).
- (4) The Registrar shall apply any moneys received by him in the exercise of any power conferred on him by this section in defraying the costs and expenses of and incidental to the exercise of that

power and in making payments authorized by this section 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 Northern Territory Government Account.
- (6) A person claiming to be entitled to any money paid to the Treasurer under this section may apply to the Court for an order for payment to him of a sum due to him and the Court, if satisfied that the person claiming is entitled to the payment of that sum, shall make an order for the payment accordingly.
- (7) Upon the making of an order under subsection (6) for payment of any money to a person, or where he is otherwise satisfied that a person is entitled to any money paid to the Treasurer under this section, the Treasurer shall pay an amount equal to that money to that person.
- (8) The provisions of this section do not deprive a person of another right or remedy to which he is entitled against another person.

23E Property vested in registrar subject to all charges, &c.

Property vested in the Registrar by operation of section 23C, or by operation of any corresponding previous law of the Territory, is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any law as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the incorporated association, but there shall not be imposed on the Registrar any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision 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 assets of the incorporated association so far as they are, in the opinion of the Registrar, properly available for and applicable to such payment.

23F Registrar to keep records, &c.

The Registrar shall:

- (a) record a statement of any property coming to his hand, under his control or to his knowledge vested in him by operation of section 23C, and of his dealings therewith:
- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and

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

23G Court may declare dissolution void

- (1) Where an incorporated association has been dissolved, the Supreme Court may at any time within 2 years after the date of the dissolution, on the application of any person who appears to the Court to be interested, make an order, upon such terms as to the Court seem fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the incorporated association had not been dissolved.
- (2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar an office copy of the order.

Penalty: \$500

24 Service on associations and notices and demands by associations

- (1) A notice, demand, summons, writ or other document or process may be served on an incorporated association by serving it personally on the public officer of the association or by sending it by post to him at his last-known address.
- (2) An incorporated association may give a notice or make a demand by writing under the hand of the public officer of the association.

25 Audit and balance sheet

- (1) The committee of an incorporated association shall, at least once in each period of 12 months:
 - (a) cause the financial affairs of the association to be audited by a person who either:
 - (i) is a member of the association other than the public officer of that association and who has been approved for that purpose by the Registrar; or
 - (ii) is not a member of the association; and
 - (b) prepare, or cause to be prepared, a balance sheet setting out the assets and liabilities of the association.

- (2) If the committee of an association fails to comply with subsection (1), each member of the committee is guilty of an offence punishable upon being found guilty by a fine not exceeding \$2,000.
- (3) The public officer of an incorporated association shall, within one month after the preparation of a balance sheet in respect of the association under sub-section (1), file with the Registrar a copy of that balance sheet certified to be correct by the person who audited the financial affairs of the association.

Penalty: \$2,000.

Part 3 Incorporated trading associations

25A Notice of intention to apply for incorporation

- (1) Where the committee of a trading association authorizes a person to apply for the incorporation of the association under this Part, that person may, by notice published in a newspaper circulating in the Territory, give notice that he intends to apply for the incorporation of the association under this Part.
- (2) A notice given under subsection (1) shall:
 - (a) be in the prescribed form;
 - (b) specify the objects and purposes of the association in respect of which it is given; and
 - (c) be approved by the Registrar before publication.

25B Restraint on incorporation

- (1) Any person may, within 3 weeks after the publication of a notice under section 25A, apply to the Supreme Court for an injunction to restrain the person who gave the notice, or any other person, from applying, or proceeding with an application, for the incorporation of the trading association.
- (2) The Supreme Court may grant an injunction for which application is made under subsection (1):
 - (a) on the ground that:
 - (i) the association is not a trading association;

- (ii) the association was formed or is carried on, or is proposed to be incorporated, for an immoral, disloyal or illegal purpose; or
 - (iii) the incorporation of the trading association is against the public interest, or
- (b) on any other ground which the Supreme Court considers just.
- (3) The Supreme Court may determine an application under this section notwithstanding that all the parties interested are not parties to the proceedings.

25C Application for incorporation

- (1) Subject to any injunction granted under section 25B, a person who gives notice under section 25A of intention to apply for the incorporation of a trading association may, after the expiration of a period of one month, and within a period of 6 months, after the publication of the notice, apply in writing to the Registrar for the incorporation of the association.
- (2) A company incorporated under the Corporations Law shall not make application under this section.
- (3) An application under subsection (1) shall:
 - (a) be in a form approved by the Registrar;
 - (b) state:
 - (i) the name of the trading association;
 - (ii) the objects and purposes of the association;
 - (iii) the place or places where the association was formed and is carried on;
 - (iv) the names and addresses of the persons who constitute the committee of the association;
 - (v) the ethnic community to which the members of the association belong; and
 - (vi) the means by which the management of the association is vested in those persons;
 - (c) be accompanied by the proposed rules of the trading association; and

- (d) be accompanied by a statutory declaration made by the applicant declaring:
 - (i) that he is authorized by the committee of the trading association to apply for the incorporation of the association under this Part;
 - (ii) that, on a date and in a newspaper specified in the declaration, he gave notice under section 25A(1) of his intention to apply for the incorporation of the trading association;
 - (iii) that every member of the association is a member of the ethnic community specified in the application; and
 - (iv) that the particulars contained in the application are true.

25D Certificates of incorporation

- (1) Upon receipt of an application under, and in accordance with, section 25C for the incorporation of a trading association, the Registrar may, if he is satisfied that it is proper for him so to do, issue to the association a certificate of incorporation.
- (2) The Registrar shall refuse to issue a certificate of incorporation under this Act to a trading association:
 - (a) except with the consent of the Minister - if the name of the association is an unauthorized name;
 - (b) if the association was formed or is carried on, or is proposed to be incorporated, for an immoral, disloyal or illegal purpose;
 - (c) if the incorporation of the association is against the public interest;
 - (d) if the ethnic community specified in the application under section 25C(3)(b)(v) is not a prescribed ethnic community;
 - (e) if he is satisfied that rules of the association are unreasonable or unfair; or
 - (f) on any other ground which he considers just.
- (3) The Registrar shall not refuse to issue a certificate of incorporation to a trading association on any ground which the Judge has refused to make the ground for the granting of an injunction under section 25B(2).

25E Revocation of prior incorporation

If a trading association incorporated under this Part was, immediately before that incorporation, an incorporated association, the Registrar shall, immediately upon the incorporation of the association under this Part, revoke the certificate of incorporation issued under section 8 in respect of that association.

25F Duty of Registrar

Where the Registrar refuses to issue a certificate of incorporation to a trading association, he shall:

- (a) notify the applicant, in writing, of his refusal and the reasons for his refusal;
- (b) invite the committee of the association to make such changes:
 - (i) to the application for incorporation; or
 - (ii) to the rules of the association,as will remove the grounds for refusal of the application;
- (c) invite the committee of the association to advise him, within the time specified in the notification, of any changes made in pursuance of the invitation under paragraph (b); and
- (d) invite the committee of the association to furnish him, within the time specified in the notification, with particulars of those changes accompanied by the statutory declaration referred to in section 25C(3)(d).

25G Appeal

- (1) An applicant who is aggrieved by a decision of the Registrar to refuse to issue a certificate of incorporation under this Part may, by notice in writing, require the Registrar to refer the application to the Minister.
- (2) The Registrar shall comply with any requirement given under subsection (1).

25H Power of Minister

- (1) The Minister shall consider any application referred to him under section 25G and may:
 - (a) direct the Registrar to issue a certificate of incorporation under this Part to that trading association; or

- (b) refuse to direct the Registrar to issue that certificate.
- (2) The Registrar shall comply with a direction of the Minister given under subsection (1)(a).

25J Incorporation of trading association

Upon the issue of a certificate of incorporation to a trading association under section 25D(1), the association:

- (a) becomes a body corporate with perpetual succession and a common seal;
- (b) subject to section 25K, may acquire, hold and dispose of real and personal property; and
- (c) is capable of suing and being sued in its corporate name.

25L Name

- (1) The name of an incorporated trading association is the name of the trading association followed by the word "Incorporated".
- (2) A description of an incorporated trading association is not inadequate or incorrect by reason only of the use of the abbreviation "Inc." in lieu of "Incorporated".

25M Common Seal

- (1) The common seal of an incorporated trading association is of no effect unless the name of the association is inscribed on the seal in legible characters.
- (2) All courts, Judges and persons acting judicially shall take judicial notice of the seal of an incorporated trading association affixed to a document and shall presume that it was duly affixed.

25N Power to borrow money, &c.

An incorporated trading association may, subject to the rules of the association and to this Act:

- (a) raise or borrow money upon such terms and in such manner as it thinks fit; and
- (b) secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving mortgages, charges or securities upon or over all or any of the real or personal property of the association.

25P Number of members

An incorporated trading association shall not at any time have less than 5 members.

25Q Vesting of property in incorporated trading association

- (1) Upon the incorporation of a trading association under this Part any personal property (other than personal property consisting of an estate or interest in land) held by a person, in trust or otherwise, for or on behalf of the association shall, subject to any trust, covenant, contract or liability affecting the property, be vested in the association.
- (2) A person who holds an estate or interest in any property in trust or otherwise for or on behalf of a trading association shall, upon the incorporation of the association under this Part, take all action required to vest the estate or interest in the incorporated trading association, subject to:
 - (a) any trust (other than a trust for the members of that association); or
 - (b) any covenant, contract or liability, affecting the estate or interest.

25R Appointment of public officer

- (1) The committee of an incorporated trading association shall, within 14 days after the incorporation of the association under this Part, appoint a person resident in the Territory to be the public officer of the association and, if that office at any time becomes vacant, shall, within 14 days after it becomes vacant, appoint a person resident in the Territory to fill that vacancy.
- (2) If the committee of an association fails to comply with subsection (1), each member of the committee is guilty of an offence punishable upon being found guilty by a fine not exceeding \$500.
- (3) The office of public officer of an incorporated trading association becomes vacant if the person holding that office:
 - (a) dies;
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors;

- (c) becomes of unsound mind;
 - (d) resigns his office by writing under his hand addressed to the committee of the association; or
 - (e) ceases to be resident in the Territory.
- (4) The public officer of an incorporated trading association may, subject to the rules of the association, hold any other office in the association.

25S Notifications in relation to public officer

- (1) The public officer of an incorporated trading association shall, within 14 days after his appointment, give notice in writing to the Registrar of his appointment and of his full name and address.
- (2) If a public officer changes his address, he shall, within 14 days after the change, give notice in writing to the Registrar of the change.

Penalty: \$500.

25T Rules

- (1) Subject to this Act, the rules of a trading association shall make provision for and in relation to:
- (a) the qualifications of members of the association;
 - (b) the creation of the executive offices of the association and the procedure for filling those offices;
 - (c) the procedure for the settling of disputes between the association and its members;
 - (d) the constitution of the committee of the association and the powers of that committee;
 - (e) the procedure for the conduct of meetings of the committee of the association;
 - (f) the manner in which the funds of the association are to be managed;
 - (g) the method of:
 - (i) altering;
 - (ii) adding to; or
 - (iii) rescinding,

- the rules of the association;
 - (h) the method of altering the objects of the association;
 - (i) the rights of members of the association to share in the profits of the association; and
 - (j) the rights of persons, who were members of the association at the time of winding-up, to share in the distribution of any surplus assets resulting from the winding-up.
- (2) Subject to this Act, the rules of a trading association may make provision, not contrary to law, for and in relation to any matter not referred to in subsection (1).
- (3) The rules of an incorporated trading association may be based on the customs and traditions of the ethnic community to which the members of the association belong.

25U Filing of rules, &c.

- (1) An incorporated trading association shall, within 3 months after its incorporation under this Part, file with the Registrar:
- (a) a copy of the rules of the association; and
 - (b) particulars of, and a copy of any instrument evidencing, the trusts, if any, relating to the association.

Penalty: \$1,000.

- (2) A copy of the rules of an incorporated trading association or of any other instrument filed under subsection (1) shall be accompanied by a statutory declaration made by the public officer of the association declaring that that copy is a true copy of the instrument of which it purports to be a copy.

25V Alteration of rules, &c.

- (1) The public officer of an incorporated trading association shall, within one month after an alteration of:
- (a) the objects or purposes of the association;
 - (b) the rules of the association; or
 - (c) any trusts relating to the association,
- file with the Registrar notice of the alteration.

Penalty: \$1,000.

- (2) A notice under subsection (1) shall be accompanied by:
- (a) a copy of any instrument evidencing the alteration; and
 - (b) a statutory declaration made by the public officer declaring that:
 - (i) the copy referred to in paragraph (a) is a true copy of the instrument of which it purports to be a copy; and
 - (ii) if the alteration is an alteration of the objects, purposes or rules of the trading association, that the alteration is authorized, by the rules of the incorporated trading association.
- (3) Where, under the rules of an incorporated trading association, the members of the association are liable to contribute towards:
- (a) the payment of the debts and liabilities of the association; or
 - (b) the costs, charges and expenses of a winding-up of the association.

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

Penalty: \$500.

- (4) An alteration of the objects, purposes or rules of an incorporated trading association or any trusts relating to an incorporated trading association is of no effect until:
- (a) this section has been complied with in respect of the alteration; and
 - (b) in the case of an alteration of the objects or the purpose of the trading association – the alteration is approved by the Registrar.

25W Duty of Registrar

If the Registrar refuses to approve an alteration to the objects, purposes or rules of an incorporated trading association under section 25V(4), he shall notify the association in writing of his refusal and the reasons for his refusal.

25X Appeal

- (1) An incorporated trading association which is aggrieved by a decision of the Registrar to refuse to approve an alteration under section 25V(4) may, by notice in writing, require the Registrar to refer the alteration to the Minister.
- (2) The Registrar shall comply with any requirement given under subsection (1).

25Y Power of Minister

- (1) The Minister shall consider any alteration referred to him under section 25X and may:
 - (a) direct the Registrar to approve the alteration; or
 - (b) refuse to direct the Registrar to approve the alteration.
- (2) The Registrar shall comply with a direction of the Minister given under subsection (1)(a).

25Z Change of name

- (1) If the Registrar is satisfied that the members of an incorporated trading association have, in accordance with the rules of the association, resolved to change the name of the association, the Registrar may, upon the application of the public officer of the association, issue to the association a certificate of incorporation in the new name and that certificate of incorporation has effect, from the date of issue, as the certificate of incorporation of the trading association.
- (2) Except with the consent of the Minister, the Registrar shall refuse to issue a certificate of incorporation under subsection (1) to a trading association if the proposed new name of the association is an unauthorized name.
- (3) Where the name of an incorporated trading association is (whether through inadvertence or otherwise or whether originally or by change of name) an unauthorized name, the Registrar may, by notice in writing, direct the association to change its name to a name that is not an unauthorized name.
- (4) An incorporated trading association to which a notice under subsection (3) is given which does not change its name within the time specified in the notice is, unless the Minister by order in writing annuls the direction, guilty of an offence, which offence shall be deemed to continue until the name of the association is so changed, and the offence is punishable by a fine not exceeding

\$500 for each day during which the offence continues.

25AA Duty of Registrar

If the Registrar refuses to issue a new certificate of incorporation to an incorporated trading association under section 25Z(1) he shall notify the association in writing of his refusal and his reasons for refusal.

25AB Appeal

- (1) An incorporated trading association which is aggrieved by a decision of the Registrar to refuse to issue a new certificate of incorporation under section 25Z(1) may by notice in writing require the Registrar to refer the matter to the Minister.
- (2) The Registrar shall comply with any requirement given under subsection (1).

25AC Power of Minister

- (1) The Minister shall consider any matter referred to him under section 25AB and may:
 - (a) direct the Registrar to issue a new certificate of incorporation;
or
 - (b) refuse to direct the Registrar to issue a new certificate of incorporation.
- (2) The Registrar shall comply with the direction of the Minister given under subsection (1)(a).

25AD Existing rights and obligations

An alteration of:

- (a) the objects, purposes or rules of an incorporated trading association; or
- (b) any trusts relating to an incorporated trading association,

or the issue of a certificate of incorporation under section 25Z to an incorporated trading association in a new name, does not affect any right, liability or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect or the certificate was issued, as the case may be.

25AE Name to appear on documents

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

Penalty: \$500.

25AF Register

(1) An incorporated trading association shall keep, at its registered address, a register showing:

- (a) the name and address of each member of the association;
- (b) the date upon which each member of the association became a member; and
- (c) in the case of a member of the association who ceases to be a member, the date upon which he ceased to be a member.

(2) A register under subsection (1) shall be:

- (a) in the prescribed form; and
- (b) available for inspection by the public at any time during the business hours of the incorporated trading association.

Penalty: \$1,000.

25AG Financial management

(1) An incorporated trading association shall:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the association;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the association to be prepared from time to time; and
- (c) keep its accounting records in such a manner as will enable the accounts of the association to be conveniently and properly audited in accordance with this Act.

(2) An incorporated trading association shall retain the accounting records kept under this section for a period of 7 years after the completion of the transactions to which they relate.

- (3) An incorporated trading association shall keep the accounting records at such place or places within the Territory as the committee thinks fit.
- (4) The accounting records of an incorporated trading association shall be kept in written or printed form in the English language or so as to enable the accounting records, statements and records to be readily accessible and readily convertible into written or printed form in the English language.
- (5) An incorporated trading association shall give to the Registrar notice in writing of the place where the accounting records of the association are kept.
- (6) The Court may, by order, on application by a member of an incorporated trading association, authorize an auditor acting for the member to inspect the accounting records of the association.
- (7) An incorporated trading association shall make its accounting records available in written or printed form in the English language at all reasonable times for inspection without charge by the members of the association and by other persons authorized or permitted by or under this Act to inspect the accounting records of the association.
- (8) Where an auditor inspects accounting records in pursuance of an order of the Court under subsection (6), he shall not disclose to a person other than the member on whose application the order was made any information acquired by him in the course of his inspection.

Penalty: \$500.
- (9) If default is made in complying with the provisions of this section (subsection (8) excepted) the incorporated trading association or the member who failed to take all reasonable steps to secure compliance by the association who is in default is guilty of an offence.

Penalty: \$2,000.
- (10) In any proceedings against a person for failure to take all reasonable steps to secure compliance by an incorporated trading association with a provision of this section, it is a defence to prove that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

25AH Control of money and assets

An incorporated trading association shall:

- (a) do all things necessary to ensure that all payments of moneys made by it or on its behalf are made and authorized; and
- (b) ensure that control is maintained over:
 - (i) the assets of or in the custody of the association; and
 - (ii) the incurring of liabilities by the association,

in accordance with the rules of the association.

25AI Audit

- (1) The committee of an incorporated trading association shall, at least once in each period of 12 months, cause to be prepared:
 - (a) a balance sheet setting out the assets and liabilities of the association; and
 - (b) an income and expenditure statement, giving a true and fair view of the income and expenditure of the association for the period:
 - (i) of the preceding 12 months; or
 - (ii) in the case of an association incorporated under this Part for less than 12 months – since the association was incorporated under this Part.

Penalty: \$2,000.

- (2) The committee of an incorporated trading association shall, as soon as practicable after the preparation of the balance sheet and income and expenditure statement, cause the financial affairs of the association to be audited by a person who is approved by the Registrar or:
 - (a) is not a member or the public officer of the association; and
 - (b) is registered as a company auditor under section 1280 of the Corporations Law;

Penalty: \$2,000.

- (3) The person engaged to audit the financial affairs of an incorporated trading association under subsection (2) shall report thereon to the association within one month of the completion of his audit of those affairs.
- (4) The public officer of an incorporated trading association shall, within one month after receiving the report referred to in subsection (3), file with the Registrar:
 - (a) a copy of the balance sheet certified as correct by the person engaged to audit the financial affairs of the incorporated trading association under subsection (2);
 - (b) the statement of income and expenditure certified as correct by the person engaged to audit the financial affairs of the incorporated trading association under subsection (2); and
 - (c) a copy of the report referred to in subsection (3).

Penalty: \$2,000.

25AJ Inspection and audit

- (1) The Registrar may, at any time, cause the accounts and records required to be kept by an incorporated trading association to be inspected or audited by a person who has the qualifications prescribed by section 25AI(2).
- (2) The person engaged to inspect and audit the accounts and records of an incorporated trading association under subsection (1) shall furnish to the Registrar a report on those accounts and records.

25AK Power of auditor, &c.

For the purposes of conducting an inspection or audit under section 25AI or 25AJ, the person appointed to conduct the inspection or audit may take copies of, or extracts from, the accounts, records, documents and papers of an association.

25AL Powers of registrar to wind up

- (1) If:
 - (a) a report under section 25AI(3) or 25AJ(2) draws attention to any irregularity in the financial affairs of an incorporated trading association; or
 - (b) an incorporated trading association or the committee of an incorporated trading association fails to carry out any of its obligations under this Act,

the Registrar may, by notice in writing served on the public officer of the association, require the committee to furnish to him, within the time specified in the notice:

- (c) an explanation in writing of; and
- (d) a statement of the reasons for,

the irregularity or failure by the committee or association to carry out those obligations, as the case may be.

(2) Where:

- (a) an explanation required under subsection (1) is not provided within the time specified under that subsection; or
- (b) an explanation so required is provided but the Registrar considers the explanation unsatisfactory,

the Registrar may commence proceedings in the Supreme Court for the winding-up of the incorporated trading association.

25AM Failure to comply with audit, &c., requirements

Where the committee of an incorporated trading association fails to comply with an obligation imposed on it under section 25AI or 25AL, each member of the committee shall be guilty of an offence punishable upon being found guilty by a fine not exceeding \$2,000.

25AN Appeal

- (1) An incorporated trading association which is aggrieved by a decision of the Registrar to commence proceedings for the winding-up of the association under section 25AL(2) may, by notice in writing, require the Registrar to refer the matter to the Minister.
- (2) The Registrar shall comply with any requirement given under subsection (1) and shall take no further action in relation to the winding-up proceedings unless the Minister refuses to direct him, under section 25AO(1)(b), to withdraw the proceedings.

25AO Power of Minister

- (1) The Minister shall consider any proceedings referred to him under section 25AN and may:
 - (a) direct the Registrar to withdraw the proceedings for the winding-up of the incorporated trading association; or

(b) refuse to so direct the Registrar.

- (2) The Registrar shall comply with the direction of the Minister given under subsection (1)(a).

25AP Winding-up

- (1) Subject to section 25AQ, the provisions of sections 20 to 23G inclusive apply to the winding-up of incorporated trading associations as they apply to the winding-up of incorporated associations.

- (2) For the purposes of subsection (1), a reference in sections 20 to 23G inclusive to:

(a) an incorporated association – is a reference to an incorporated trading association; and

(b) an association – is a reference to a trading association.

25AQ Prescribed property in winding-up

Except with the consent in writing of the Minister or, where the prescribed property is a lease under the *Special Purposes Leases Act*, the consent required under section 6 of that Act, prescribed property is not an asset in the winding-up of an incorporated trading association.

25AR Corporations law

- (1) If the Minister is satisfied that an incorporated trading association should be subject to the provisions of the Corporations Law, the Minister may direct the association to apply for incorporation under that Law.

- (2) An incorporated trading association shall comply with a direction under subsection (1).

- (3) The Registrar shall, upon incorporation of a trading association being effected under the Corporations Law, cancel the certificate of incorporation of the trading association under this Act.

25AS Service of documents

- (1) A notice, demand, summons, writ or other document or process may be served on an incorporated trading association by serving it personally on the public officer of the association or by sending it by post to him at the address referred to in section 25S.

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

Part 3A Investigation and judicial management of associations

25AT Interpretation

In this Part, unless the contrary intention appears:

association includes both an incorporated association and an incorporated trading association.

Court means the Supreme Court.

judicial manager, in relation to an association, means the judicial manager appointed under section 25AY(2) to manage the affairs of that association.

25AU Investigation of association's affairs

- (1) Where the Minister or the Registrar has in his possession any information that he considers calls for an investigation under this section into the affairs of an association, he may serve on the public officer of the association a notice in writing calling upon the association to show cause within such period, being not less than 6 weeks, as is specified in the notice, why the conduct of the affairs of the association should not, on the ground specified in the notice, be investigated.
- (2) If an association fails, within the period specified in a notice under subsection (1), to show cause:
- (a) to the satisfaction of the Minister, where the notice was served by the Minister; or
 - (b) to the satisfaction of the Registrar, where the notice was served by the Registrar,

the Minister may cause the Registrar to, or the Registrar himself may, as the case may be, make the investigation referred to in the notice.

- (3) For the purposes of an investigation under subsection (2), the Registrar may, by notice in writing given to a person whom the Registrar believes to have some knowledge of the affairs of the association, require that person to attend before him at the time and place specified in the notice and there to answer questions relating

to the affairs of the association.

- (4) A person is not excused from answering a question when required to do so under subsection (3) on the ground that the answer to the question might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in any proceedings, other than proceedings for an offence against section 25AV(1) or (2).

25AV Offences

- (1) A person shall not, without reasonable excuse, refuse or fail:

- (a) to attend before the Registrar; or
- (b) to answer a question put to him by the Registrar,

when so required in pursuance of section 25AU(3).

Penalty: \$2,000.

- (2) A person shall not, when appearing before the Registrar for examination in pursuance of section 25AU(3), make a statement that he knows to be false or misleading in a material particular.

Penalty: \$5,000.

25AW Entry on premises

- (1) Where the Registrar believes on reasonable grounds that it is necessary for the purposes of his investigation of the affairs of an association to enter land or premises occupied by the association, he may, at all reasonable times, enter the land or premises and may:

- (a) examine books on the land or premises that relate to the affairs of the association or that he believes, on reasonable grounds, relate to those affairs;
- (b) take possession of any of those books for such period as he thinks necessary for the purposes of the investigation; and
- (c) make copies of, or take extracts from, any of those books.

- (2) The Registrar is not entitled to refuse to permit a person to inspect books referred to in subsection (1) that are in the possession of the Registrar under that subsection if the person would be entitled to inspect those books if the Registrar had not taken possession of them.

- (3) A person shall not obstruct or hinder the Registrar in the exercise of his powers under this section.

Penalty: \$5,000.

25AX Application for judicial management of association

- (1) Where the Registrar, having regard to the results of an investigation made by him under section 25AU into the conduct of the affairs of an association, is of the opinion that it is necessary or proper to do so, he may apply to the Court for an order that the association be placed under judicial management.
- (2) An application to the Court under subsection (1) shall ask that, if the application is granted, the Registrar or a person included in a panel of 3 persons nominated by the Registrar for the purpose shall be appointed as the judicial manager of the association.
- (3) The association whose affairs have been investigated is entitled to be heard on any application made to the Court under this section.

25AY Judicial management

- (1) An order for the judicial management of an association on an application under section 25AX is subject to the provisions of this section and of sections 25AZ to 25AZD inclusive.
- (2) The Court shall, in an order for the judicial management of an association, appoint as judicial manager the Registrar or one of the panel nominated by the Registrar in the application for the order.
- (3) The Court may, at any time, cancel the appointment of a person as a judicial manager and appoint in his stead any other person.
- (4) A judicial manager shall receive such remuneration, if any, as the Court directs.
- (5) The Court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the association in such order of priority in relation to any existing charges on that property as it thinks fit.
- (6) The conduct of the affairs of an association shall, on and after a date specified in an order of the Court, vest in the judicial manager appointed by the Court and, on and after that date, no person not so appointed shall have the conduct of those affairs while the association continues to be under judicial management.

- (7) The judicial manager shall act as the public officer of the association and the person who was the public officer of the association immediately before the appointment of the judicial manager ceases to be the public officer of the association.
- (8) The Court shall issue such directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case, including directions as to the making of reports to the Court from time to time on the conduct of the affairs of the association.
- (9) The judicial manager shall act under the control of the Court and may apply to the Court at any time for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.
- (10) The judicial manager shall give to the Minister such information as the Minister from time to time requires and shall report to the Minister whenever he intends to apply to the Court for instructions and shall, at the same time, furnish to the Minister particulars of the application.
- (11) The Minister is entitled to be heard on any application under subsection (9) and may himself make application to the Court with reference to the conduct of the judicial management.

25AZ Order declaring all offices of committee vacant

At any time after the making of an order on an application under section 25AX for the judicial management of an association, the Court may declare vacant all executive offices of the association and all offices of the committee of the association.

25AZA Indemnity

The judicial manager is not subject to any action, claim or demand by, or liable to, any person in respect of anything done, or omitted to be done, in good faith in the exercise, or in connection with the exercise, of the powers conferred on the judicial manager by this Act.

25AZB Cancellation of certain contracts

The Court may, either of its own motion or on the application of the judicial manager, at any time while an order for judicial management is in force with respect to an association, after hearing all persons who, in the opinion of the Court, are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the Court thinks fit, any contract or agreement between the association and any other person, being a contract or

agreement entered into before the management of the association was vested in the judicial manager.

25AZC Order for election of committee

Before cancelling, in accordance with section 25AZD, an order for judicial management in relation to an association in respect of which a declaration has been made under section 25AZ declaring vacant all executive offices of the association and all offices of the committee of the association, the Court shall direct the Registrar to conduct an election, as specified in the direction, to fill the vacancies.

25AZD Cancellation of order for judicial management

- (1) If, at any time, on the application of the judicial manager or of any other person interested, it appears to the Court that the purpose of the order for the judicial management of an association has been fulfilled or that for any reason it is undesirable that the order should remain in force, the Court may cancel the order and, thereupon, the judicial manager shall be divested of the conduct of the affairs of the association, which shall again vest in the committee of the association.
- (2) Section 12 applies in relation to incorporated associations and section 25R applies in relation to incorporated trading associations as if the office of public officer of the association had become vacant on the date of the cancellation of the order of judicial management of the association.

Part 3B Incorporated associations performing local government functions

25AZE Definition

In this Part, ***community government council*** means a community government council within the meaning of the *Local Government Act*.

25AZF *Local Government Act* applies to incorporated associations performing local government functions

- (1) Subject to subsection (2), where an incorporated association is identified under section 25AZH(a) to be functioning as a community government council, the provisions of or under the *Local Government Act* as prescribed apply to, and must be complied with by, the incorporated association in addition to the provisions of or under this Act.

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- (2) Where a provision of or under the *Local Government Act* applies to an incorporated association, in the event of an inconsistency between that provision and a provision of or under this Act, the provision of or under this Act shall prevail to the extent of the inconsistency.

25AZH Identification of incorporated associations which must comply with *Local Government Act*

The Minister shall, by notice in the *Gazette*:

- (a) identify each incorporated association which, in his opinion, is functioning as a community government council and has been approved for receipt of funding for the purposes of local government; and
- (b) declare that each such incorporated association may exercise the functions of a community government council.

Part 4 Miscellaneous

26 Evidentiary provisions

- (1) The Registrar may, by writing under his hand, certify:
- (a) that, on a date specified in the certificate, an association so specified was, or was not, an incorporated association or incorporated trading association, as the case may be; or
- (b) that, on a date specified in the certificate, a person so specified was, or was not, the public officer of an incorporated association or incorporated trading association, as the case may be, so specified,

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

- (2) Judicial notice shall be taken of the signature of the Registrar appearing on a certificate under subsection (1) and of the fact that the person by whom the certificate purports to have been signed is the Registrar.

26A Prescribed property

- (1) Except with the consent in writing of the Minister or, where the prescribed property is a lease under the *Special Purposes Leases Act*, the consent required under section 6 of that Act, and subject in either case to such conditions as the relevant Minister may impose, an incorporated association or incorporated trading association

shall not dispose of, charge, or otherwise deal with prescribed property otherwise than being disposed of to, or being charged as security for a loan or other benefit by, the Territory.

(2) It is a condition to every consent given under subsection (1) that, except as otherwise authorized in writing by the Minister:

(a) property exchanged for prescribed property; or

(b) property acquired wholly or partly from funds realized on the sale or other disposal of prescribed property,

is prescribed property.

(3) Subject to subsection (3A) except as provided in sections 22A and 25AQ, any dealing with prescribed property in contravention of subsection (1) is void and of no effect.

(3A) Where prescribed property is land granted for the purposes of an Aboriginal community living area in pursuance of Part IV of the *Crown Lands Act* (as in force before the commencement of the *Pastoral Land Act*) or Part 8 of the *Pastoral Land Act*, nothing in subsection (1) empowers the Minister to consent to the disposal of the fee simple of any part of the land other than for the purpose of:

(a) registering under the *Real Property Act* interests (including easements and easements in gross) which, except for this subsection, would otherwise be able to be registered; or

(b) giving effect to a recommendation of the Community Living Areas Tribunal continued in existence under the *Pastoral Land Act* made pursuant to section 114 of that Act in relation to an abandoned Aboriginal community living area.

(4) Where prescribed property was acquired wholly or partly from or using funds obtained under a grant from the Commonwealth, the Minister shall not give his or her consent under subsection (1) until he or she has given the Commonwealth reasonable notice of his or her intention to give consent and has considered any submissions made by the Commonwealth within the time limited by that notice.

(5) Each incorporated association and incorporated trading association shall keep and maintain a register of prescribed property.

27 Extension of time

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

27A Regulatory offences

An offence of contravening or failing to comply with section 12, 15, 16, 17(5), 19, 23G(2), 25, 25S, 25U, 25V(1) or (3), 25AE, 25AF or 25AI(1), (2) or (3) is a regulatory offence.

28 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular:

- (a) providing for or in relation to the cancellation, and matters arising out of the cancellation, of the incorporation of incorporated associations or incorporated trading associations that have ceased to exist or to be associations or trading associations, as the case may be, for the purposes of this Act;
- (b) providing for the issue of certified copies of certificates of incorporation;
- (c) providing for the inspection of documents filed with the Registrar under this Act or the regulations;
- (d) prescribing the form in which any application, notice, declaration or certificate shall be made, given, published, issued or filed under this Act or the regulations;
- (e) providing for the form of, and the matters to be provided for in, the rules of incorporated associations or incorporated trading associations;
- (f) prescribing the fees to be paid on the making, giving, publishing, issuing, filing or inspecting of any application, notice, declaration, certificate or other document under this Act or the regulations; and
- (g) prescribing penalties, not exceeding a fine of \$10,000, for offences against the regulations.

ENDNOTES
1**KEY**

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = Gazette | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2**LIST OF LEGISLATION*****Associations Incorporation Ordinance Act (Act No. 49, 1963)***

| | |
|-------------|--------------|
| Assent date | 24 July 1963 |
| Commenced | 1 July 1963 |

Associations Incorporation Ordinance Ac (Act No. 22, 1969)

| | |
|-------------|-------------------|
| Assent date | 30 September 1969 |
| Commenced | 30 September 1969 |

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

| | |
|-------------|----------------------------|
| Assent date | 11 December 1973 |
| Commenced | 11 December 1973 (s 12(2)) |

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

| | |
|-------------|---------------------------|
| Assent date | 26 August 1974 |
| Commenced | 11 December 1973 (s 3(2)) |

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

| | |
|-------------|------------------------|
| Assent date | 24 October 1974 |
| Commenced | 11 December 1973 (s 3) |

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

| | |
|-------------|---|
| Assent date | 28 June 1976 |
| Commenced | ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974 |

Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)

| | |
|-------------|-----------------|
| Assent date | 1 July 1978 |
| Commenced | 1 July 1978 s 8 |

Statute Law Revision Act 1978 (Act No. 95, 1978)

Assent date 5 September 1978
Commenced 5 September 1978

Associations Incorporation Act 1978 (Act No. 22, 1979)

Assent date 12 March 1979
Commenced 12 March 1979

Statute Law Revision Act (No. 2) 1979 (Act No. 128, 1979)

Assent date 15 October 1979
Commenced 15 October 1979

Statute Law Revision Act 1980 (Act No. 6, 1981)

Assent date 9 January 1981
Commenced 9 January 1981

Statute Law Revision Act 1981 (Act No. 29, 1981)

Assent date 25 March 1981
Commenced 25 March 1981

Associations Incorporation Amendment Act 1981 (Act No. 75, 1981)

Assent date 21 September 1981
Commenced 21 September 1981

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date 28 November 1983
Commenced 1 January 1984 (ss 406 – 431: 1 March 1986 (*Gaz G8*, 26 February 1986, p 5; rem: 1 January 1984 (*Gaz G46*, 18 November 1983, p 11)

Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)

Assent date 30 June 1986
Commenced 1 July 1986 (s 2)

Statute Law Revision Act 1988 (Act No. 66, 1988)

Assent date 22 December 1988
Commenced 22 December 1988

Associations Incorporation Amendment Act (Act No. 46, 1989)

Assent date 20 September 1989
Commenced 15 November 1989 (*Gaz G45*, 15 November 1989, p 4)

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989 (Act No. 78, 1989)

Assent date 22 December 1989
Commenced 1 March 1990 (*Gaz S12*, 28 February 1990)

Associations Incorporation Amendment Act 1990 (Act No. 57, 1990)

Assent date 14 December 1990
Commenced 1 January 1991 (s 2, s 2 *Corporations (Northern Territory) Act 1990* (Act No. 56, 1990) and *Gaz S76*, 21 December 1990)

Pastoral Lands (Consequential Amendments) Act 1992 (Act No. 39, 1992)

Assent date 25 June 1992
Commenced 26 June 1992 (s 2, s 2 *Pastoral Land Act 1992* (Act No. 17, 1992) and *Gaz S33*, 26 June 1992)

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date 31 December 1993
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz S35*, 20 May 1994)

Associations Incorporations Amendment Act 1995 (Act No. 41, 1995)

Assent date 29 September 1995
 Commenced 22 January 1996 (*Gaz G2*, 10 January 1996, p 2)

Associations Incorporations Amendment Act (Act No. 42, 1995)

Assent date 13 October 1995
 Commenced 13 October 1995

Associations Incorporation Amendment Act 1996 (Act No. 2, 1996)

Assent date 20 March 1996
 Commenced 20 March 1996

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced s 7: 19 April 1996; rem: 1 July 1996

Statute Law Revision Act 1996 (Act No. 42, 1996)

Assent date 17 September 1996
 Commenced 17 September 1996

3 LIST OF AMENDMENTS

| | |
|------------|---|
| lt | amd No. 6, 1981, s 4 |
| pt 1 hdg | ins No. 22, 1979, s 3 |
| ss 1 – 2 | amd No. 6, 1981, s 4 |
| s 3 | amd No. 87, 1973, s 12; No. 6, 1981, s 4 |
| s 4 | amd No. 54, 1978, s 4; No. 22, 1979, s 4; No. 6, 1981, s 4; No. 18, 1986, s 3; No. 46, 1989, s 4; No. 57, 1990, s 4 |
| pt 1A hdg | ins No. 57, 1990, s 5 |
| s 4A | ins No. 57, 1990, s 5 amd No. 42, 1996, s 6 |
| ss 4B – 4D | ins No. 57, 1990, s 5 |
| pt 2 hdg | ins No. 22, 1979, s 5 |
| s 5 | amd No. 22, 1979, s 6 |
| s 6 | amd No. 6, 1981, s 4 |
| s 7 | amd No. 22, 1979, s 7 |
| s 8 | amd No. 54, 1978, s 4; No. 6, 1981, s 4; No. 29, 1981, s 2; No. 66, 1988, s 6 |
| s 9 | amd No. 22, 1979, s 8; No. 2, 1996, s 4 |
| s 9A | ins No. 22, 1979, s 9 |
| s 9B | ins No. 22, 1979, s 9 rep No. 46, 1989, s 4 |
| s 10 | amd No. 29, 1981, s 2 |
| s 11 | amd No. 46, 1989, s 6 |
| s 12 | amd No. 22, 1979, s 18; No. 2, 1996, s 4; No. 17, 1996, s 6 |
| s 13 | amd No. 11, 1997, s 5 |
| s 14 | amd No. 22, 1979, s 18; No. 2, 1996, s 4 |
| s 15 | amd No. 22, 1979, ss 11 and 18; No. 2, 1996, s 4; No. 11, 1997, s 6 |
| s 16 | amd No. 87, 1973, s 12; No. 22, 1979, s 18; No. 2, 1996, s 4 |
| s 17 | amd No. 54, 1978, s 4; No. 22, 1979, s 18; No. 29, 1981, s 2 |
| s 19 | amd No. 22, 1979, s 18; No. 2, 1996, s 4 |
| s 20 | amd No. 87, 1973, s 12; No. 22, 1979, s 12; No. 6, 1981, s 4; No. 18, 1986, s 3; No. 57, 1990, s 6 |

ENDNOTES

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|-------------------|--|
| s 22 | amd No. 46, 1989, s 7 |
| s 22A | ins No. 22, 1979, s 13 amd No. 46, 1989, s 8 |
| s 22B | ins No. 75, 1981, s 3 amd No. 84, 1993, s 6 |
| ss 23A – 23B | ins No. 22, 1969, s 2 |
| s 23C | ins No. 22, 1969, s 2 amd No. 29, 1981, s 2 |
| s 23D | ins No. 22, 1969, s 2 amd No. 54, 1978, s 4; No. 46, 1989, s 9 |
| ss 23E – 23F | ins No. 22, 1969, s 2 |
| s 23G | ins No. 22, 1969, s 2 amd No. 22, 1979, s 18; No. 2, 1996, s 4 |
| s 23H | ins No. 22, 1979, s 14 rep No. 46, 1989, s 10 |
| s 25 | amd No. 22, 1979, s 18; No. 75, 1981, s 4; No. 2, 1996, s 4; No. 17, 1996, s 6 |
| pt 3 hdg | ins No. 22, 1979, s 15 |
| s 25A | ins No. 22, 1979, s 15 |
| s 25B | ins No. 22, 1979, s 15 amd No. 6, 1981, s 4 |
| s 25C | ins No. 22, 1979, s 15 amd No. 18, 1986, s 3; No. 57, 1990, s 7 |
| ss 25D – 25J | ins No. 22, 1979, s 15 |
| s 25K | ins No. 22, 1979, s 15 rep No. 46, 1989, s 11 |
| ss 25L – 25Q | ins No. 22, 1979, s 15 |
| s 25R | ins No. 22, 1979, s 15 amd No. 2, 1996, s 4; No. 17, 1996, s 6 |
| s 25S | ins No. 22, 1979, s 15 amd No. 2, 1996, s 4 |
| s 25T | ins No. 22, 1979, s 15 |
| ss 25U – 25V | ins No. 22, 1979, s 15 amd No. 2, 1996, s 4 |
| ss 25W– 25AB | ins No. 22, 1979, s 15 |
| s 25AC | ins No. 22, 1979, s 15 amd No. 6, 1981, s 4 |
| s 25AD | ins No. 22, 1979, s 15 |
| ss 25AE – 25AG | ins No. 22, 1979, s 15 amd No. 2, 1996, s 4 |
| s 25AH | ins No. 22, 1979, s 15 |
| s 25AI | ins No. 22, 1979, s 15 amd No. 18, 1986, s 3; No. 57, 1990, s 8; No. 2, 1996, s 4 |
| ss 25AJ – 25AL | ins No. 22, 1979, s 15 |
| s 25AM | ins No. 22, 1979, s 15 amd No. 2, 1996, s 4 |
| s 25AN | ins No. 22, 1979, s 15 |
| s 25AO | ins No. 22, 1979, s 15 amd No. 6, 1981, s 4 |
| s 25AP | ins No. 22, 1979, s 15 |
| s 25AQ | ins No. 22, 1979, s 15 sub No. 46, 1989, s 12 |
| s 25AR | ins No. 22, 1979, s 15 amd No. 18, 1986, s 3; No. 57, 1990, s 9 |
| s 25AS | ins No. 22, 1979, s 15 |
| pt 3A hdg | ins No. 75, 1981, s 5 |

ENDNOTES

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|--------------------|---|
| ss 25AT – 25AU | ins No. 75, 1981, s 5 |
| ss 25AV – 25AW | ins No. 75, 1981, s 5 amd No. 2, 1996, s 4 |
| ss 25AX – 25AZD | ins No. 75, 1981, s 5 |
| pt 3B hdg | ins No. 41, 1995, s 3 |
| ss 25AZE – | ins No. 41, 1995, s 3 |
| s 25AZF | ins No. 41, 1995, s 3 |
| s 25AZG | ins No. 41, 1995, s 3 rep No. 41, 1995, s 3 as amd No. 42, 1995, s 5 |
| s 25AZH | ins No. 41, 1995, s 3 |
| pt 4 hdg | ins No. 22, 1979, s 15 |
| s 26A | ins No. 46, 1989, s 13 amd No. 39, 1992, s 3 |
| s 26 | amd No. 22, 1979, s 16 |
| s 27 | amd No. 6, 1981, s 4 |
| s 27A | ins No. 68, 1983, s 103 |
| s 28 | amd No. 95, 1978, s 14, No. 22, 1979, ss 17 and 18, No. 128, 1979, s 2; No. 6, 1981, s 4; No. 2, 1996, s 4 |