NORTHERN TERRITORY OF AUSTRALIA

ASSOCIATIONS ACT 2003

As in force at 1 February 2023

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 February 2023

ASSOCIATIONS ACT 2003

An Act to provide for the incorporation of associations and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Associations Act 2003*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Excluded matter for Corporations Act 2001

(1) The following matters are declared to be excluded matters for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies, other than the provisions specified in subsections (2) and (2A):

(a) an incorporated association;

(b) any act or omission of any person, body or other entity in relation to an incorporated association.

(2) The following provisions are not excluded matters for section 5F of the Corporations Act 2001:

(a) provisions that relate to any matter that the Regulations provide is not to be excluded from the operation of the Corporations legislation;

(b) provisions that relate to the role of an incorporated association in the formation of a company;

(c) provisions that relate to substantial holdings, by or involving an incorporated association, in a company;

(d) provisions that confer or impose functions on an incorporated association as a member, or former member, of a corporation;

(e) provisions that relate to dealings by an incorporated association in securities of a body corporate, other than securities of the association;

(f) provisions that confer or impose functions on an incorporated association in its dealings with a corporation, not being dealings in securities of the association;

(g) provisions that relate to securities of an incorporated association, other than debentures of or deposits with an incorporated association;

(h) provisions relating to derivatives;

(i) provisions relating to:

(i) financial services licensees whose licences cover dealing in, or providing advice about, securities; or

(ii) regulated principals when dealing in, or providing advice about, securities as authorised by Part 10.2, Division 1, Subdivision D of the Corporations Act 2001;

(j) provisions relating to the carrying on of a financial services business relating to securities;

(k) provisions relating to financial statements, and audits of financial statements, of:

(i) financial services licensees whose licences cover dealing in, or providing advice about, securities; or

(ii) regulated principals when dealing in, or providing advice about, securities as authorised by Part 10.2, Division 1, Subdivision D of the Corporations Act 2001;

(l) provisions relating to money and scrip of clients of:

(i) financial services licensees whose licences cover dealing in, or providing advice about, securities; or

(ii) regulated principals when dealing in, or providing advice about, securities as authorised by Part 10.2, Division 1, Subdivision D of the Corporations Act 2001;

(m) provisions relating to registers of interests in securities.

(2A) If consent under section 56(2), or a direction under section 63(1)(b), is given to an association to apply to become incorporated under the Corporations Act 2001, that Act applies to the extent necessary for the association to make the application and to become incorporated under Chapter 5B of that Act.

(3) The provisions specified in subsection (2) only apply to an incorporated association to the extent to which the association may engage in the activities covered by the provisions.

4 Definitions

In this Act:

accountants body means CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants.

accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, books and records which record the documents necessary to explain the methods and calculations by which accounts are made up.

accounts, in relation to an incorporated association, means:

(a) a combination of:

(i) an account of receipts and payments recording the total receipts and payments based on the cash method of accounting; and

(ii) a statement of assets and liabilities; or

(b) a combination of:

(i) an account of income and expenditure recording the total income and expenditure based on the accrual method of accounting; and

(ii) a balance sheet;

together with the statements, reports and notes, other than an auditor's report, attached to and intended to be read with the account, statement or balance sheet.

affairs, of an incorporated association, include a trust relating to the association.

approved form means a form approved under section 4C.

association means:

(a) an association, society, institution or body formed or carried on for:

(i) a religious, educational, benevolent or charitable purpose; or

(ii) the purpose of providing medical treatment or attention; or

(iii) the purpose of promoting or encouraging literature, science, art or a cultural activity; or

(iv) the purpose of recreation or amusement; or

(v) the purpose 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) another association, society, institution or body certified in writing by the Minister to be an association for this Act; or

(c) a trading association.

books includes a register or other record of information and accounts or accounting records, however compiled, recorded or stored and any other document.

CEO means the Chief Executive Officer.

committee, for an association, means:

(a) the committee (however described or comprised) established under the constitution of the association; or

(b) the person having the management of the affairs of the association.

contravene includes fail to comply with.

Director means the person holding or occupying the office of Director mentioned in section 4A.

disqualified person means a person for whom a declaration under section 40 is in force.

financial year, in relation to an incorporated association, means:

(a) in the case of an incorporated association whose constitution fixes a period ending on a specified day as the association's financial year:

(i) if the period is fixed or varied at incorporation or during the first financial year of the association – the period not exceeding 18 months commencing on the date of incorporation and ending on the day specified; or

(ii) if the period is fixed or varied during a subsequent financial year – the period not exceeding 12 months commencing at the end of the last preceding financial year and ending on the day specified; or

(iii) each succeeding period of 12 months ending on the day specified; or

(b) in the case of an incorporated association whose constitution does not fix a period as the association's financial year:

(i) the period commencing on the date of incorporation and ending on the next succeeding 30 June; and

(ii) each succeeding period of 12 months ending on 30 June.

gross receipts, in relation to an incorporated association, means the total amount of the receipts of the association including a grant or subsidy paid to or on behalf of the association by or on behalf of the Commonwealth or the Territory, or a local government council, but does not include money received by the association:

(a) by way of a membership fee, subscription, levy or other fee, if any, paid by a member; or

(b) as a bequest; or

(c) from the sale of any of the association's assets that had not been originally purchased by the association for the purpose of resale.

incorporated association means an association incorporated under this Act.

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

member, in relation to an incorporated association, means a person who or body that, under the association's constitution, is a member of the association.

officer, in relation to an incorporated association, means:

(a) a person who:

(i) occupies or acts in a position of:

(A) a member of the committee of the association; or

(B) the secretary, treasurer or public officer of the association; or

(ii) is concerned, or takes part, in the management of the affairs of the association;

by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; or

(b) the holder of another office established by the constitution of the association (except a patron or the holder of some other honorary office that confers no right to participate in the management of the affairs of the association); or

(c) a person in accordance with whose directions or instructions the committee is accustomed to act.

prescribed property means property that was acquired from, or 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:

(a) 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

(b) an item of personal property that has a total value of not more than the prescribed amount.

public officer, in relation to an incorporated association, means the public officer of the association holding office under section 27.

statutory manager means a statutory manager appointed under section 78 to administer the affairs of an incorporated association.

tier 1 incorporated association means an incorporated association other than a tier 2 or tier 3 incorporated association.

tier 2 incorporated association has the meaning given by section 47.

tier 3 incorporated association has the meaning given by section 48.

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.

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

Part 2 Administration

4A Director

(1) The Minister must, in writing, appoint a public sector employee to be the Director.

(2) The Minister may, in writing, determine that the Director be known by another name.

(3) If the Minister determines under subsection (2) that the Director be known by another name, a reference in this Act to the Director is taken to be a reference to that name.

(4) For subsection (1), the Minister may appoint:

(a) a public sector employee by name; or

(b) a public sector employee by reference to the office, position or designation held or occupied by the employee; or

(c) a public sector employee from time to time holding, acting in or performing the duties of a named office, position or designation.

4B Delegation

(1) The Director may, in writing, delegate any of the Director's powers and functions under this Act:

(a) to another public sector employee; or

(b) with the consent of the Minister, to any other person.

(2) The CEO may, in writing, delegate any of the CEO's powers and functions under this Act:

(a) to a public sector employee; or

(b) with the consent of the Minister, to any other person.

4C Approved forms

The Director may approve forms for this Act.

5 Director may exempt etc.

(1) The Director may:

(a) extend a limitation of time prescribed by or under this Act, whether or not the prescribed period has expired; or

(b) exempt an incorporated association or an officer of an incorporated association from the obligation to comply with a provision of this Act or the Regulations.

(1A) The power under subsection (1) may be exercised:

(a) on the Director's own initiative; or

(b) on the application of an incorporated association, an officer of an incorporated association or a person authorised by an incorporated association to make an application under this section.

(2) The Director may grant an extension or exemption under subsection (1) on the conditions the Director considers appropriate.

(3) The Director may, in writing, revoke or vary an extension or exemption granted under subsection (1).

6 Secrecy

(1) This section applies to a person who is, or has at any time been:

(a) appointed for the purposes of this Act; or

(c) authorised to perform a function or exercise a power of the Director on behalf of the Director ; or

(d) an auditor of an incorporated association.

(2) The person must not:

(a) except to the extent necessary to perform his or her official duties, or to perform a function or exercise a power, directly or indirectly make a record of, or divulge or communicate to a person, information that is or was acquired by him or her by reason of his or her being or having been so appointed, engaged or authorised, or being or having been the association's auditor; or

(b) make use of information that is or was acquired by him or her by reason of his or her being or having been so appointed, engaged or authorised, or being or having been the association's auditor, for purposes other than the performance of his or her official duties or the performance of a function or exercise of a power.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not prevent a person from:

(a) producing a document to a court in the course of criminal proceedings or proceedings under this or another Act; or

(b) divulging or communicating to a court in the course of proceedings referred to in paragraph (a) a matter or thing coming to his or her notice in the performance of his or her official duties or in the performance of a function or the exercise of a power referred to in that subsection; or

(c) producing a document or divulging or communicating information to:

(i) the Minister; or

(ii) the Treasurer; or

(iii) the Minister administering the *Local Government Act 2019*; or

(iv) the Commissioner of Police; or

(v) the Commissioner of Territory Revenue; or

(vi) the Liquor Commission established by section 5 of the *Liquor Commission Act 2018*; or

(vii) the Racing Commission established by section 6 of the *Racing and Betting Act 1983*; or

(viii) the Office of Indigenous Policy Coordination; or

(ix) an auditor or former auditor of an incorporated association; or

(d) producing a document or divulging or communicating information to a person to whom, in the opinion of the Director, it is in the public interest that the document be produced or the information be divulged or communicated; or

(da) producing a document or divulging or communicating information to a person who, in the opinion of the Director, requires the document or information to enable the investigation or the enforcement of a law of the Territory, the Commonwealth, any State or another Territory; or

(e) producing a document or divulging or communicating information that is required or permitted by an Act to be produced, divulged or communicated.

7 Protection from liability

(1) This section applies to a person who is or has been the Director or a person administering or enforcing this Act.

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

Part 3 Incorporation

Division 1 Incorporation process

8 Application for incorporation of association

(1) Application for the incorporation of an association may be made to the Director.

(2) The application must be:

(a) in the approved form; and

(b) made by a person who is:

(i) a resident of the Territory; and

(ii) authorised by the committee of the association to apply for the incorporation of the association.

(3) The application must state:

(a) the name of the association; and

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

(c) the place or places where the association was formed and is carried on; and

(d) the names and addresses of the persons who make up the committee of the association; and

(e) in the case of a trading association – the ethnic community to which the members of the association belong and how the persons came to have management of the committee.

(4) The application must:

(a) state if the association's proposed constitution is the model constitution prescribed by regulation for the association; and

(b) if the association's proposed constitution is not the model constitution prescribed by regulation for the association – be accompanied by the proposed constitution of the association and a statutory declaration made by the applicant declaring the constitution complies with section 21.

(5) The application must be accompanied by a statutory declaration made by the applicant declaring:

(a) the applicant is authorised by the committee of the association to apply for the incorporation of the association; and

(b) the particulars contained in the application are true.

(6) A company incorporated under the Corporations Act 2001 is not entitled to make an application under this section.

9 Certificate of incorporation

(1) If the Director receives an application under section 8, the Director may, if the Director considers it appropriate, issue to the association a certificate of incorporation.

(2) If the association is a trading association, the certificate of incorporation must state that fact.

(3) The Director must refuse to issue a certificate of incorporation:

(a) to an association if its name is a prescribed unauthorised name unless the Minister consents to its incorporation under that name; and

(b) in the case of a trading association if:

(i) the ethnic community specified in the application is not a prescribed ethnic community; or

(ii) satisfied the constitution of the association is unreasonable or unfair.

(4) The Director may refuse to issue a certificate of incorporation on another ground the Director considers appropriate.

10 Director to notify refusal to incorporate association

(1) If the Director refuses to issue a certificate of incorporation to an association, the Director must:

(a) give written notice to the applicant of the refusal and the reasons for it; and

(b) include in the notice an invitation to the committee of the association to make changes to:

(i) the application for incorporation; or

(ii) the constitution of the association; and

(c) include in the notice an invitation to the applicant to advise the Director, within the time specified in the notice, of a change made in pursuance of the invitation under paragraph (b); and

(d) include in the notice an invitation to the applicant to provide to the Director, within the time specified in the notice, particulars of the changes accompanied by a statutory declaration made by the applicant for incorporation declaring that:

(i) the committee has made the changes identified in the declaration; and

(ii) the applicant is authorised by the committee to provide the Director with those changes.

(2) If the Director receives the documents referred to in subsection (1)(d), the Director must, under section 9, issue or refuse to issue to the association a certificate of incorporation.

Division 2 Effect of incorporation

11 Incorporation of association

On the issue of a certificate of incorporation to an association under section 9, the association:

(a) becomes a body corporate with perpetual succession and a common seal; and

(b) may acquire and, subject to section 110, may hold and dispose of, real and personal property; and

(c) is capable of suing and being sued in its name.

12 Vesting of property in incorporated association

(1) If an association is incorporated under this Act, property held by a person (whether in trust or otherwise) for or on behalf of the association vests in the association, subject to any trust, covenant, contract or liability affecting the property.

(2) A person who holds property (whether in trust or otherwise) for or on behalf of an incorporated association must, as soon as practicable after the association is incorporated under this Act, take all action required to deliver or transfer the property to the association subject to:

(a) any trust (other than a trust for the members of the association) affecting the property; or

(b) any covenant, contract or liability affecting the property.

13 Power to borrow money and give securities

An incorporated association may, subject to its constitution and to this Act:

(a) raise or borrow money on the terms and in the manner it considers appropriate; and

(b) subject to section 110, secure the repayment of money raised or borrowed, or the payment of a debt or liability of the association, by giving mortgages, charges or securities on or over part or all of the real or personal property of the association.

13A Prohibition on disbursing profits or assets to members

(1) This section does not apply to an incorporated trading association.

(2) An incorporated association must not distribute profits, or dispose of assets, of the association to its members.

(3) Subsection (2) does not apply to:

(a) reasonable remuneration of a member of the association for work done by the member:

(i) for or on behalf of the association; and

(ii) at the request of the association; or

(b) any payments or dispositions incidental to activities carried on by the association in accordance or consistently with its objects.

(4) In this section:

member, of an association, includes:

(a) a former member of the association; and

(b) an associate of a member of the association; and

(c) an associate of a former member of the association.

14 Liability of members

A member of an incorporated association is not liable, except as provided in the constitution of the association, to contribute towards the payment of the debts or liabilities of the association.

Division 3 Name and common seal of incorporated association

15 Name

(1) The name of an incorporated association is the name of the association followed by the word "Incorporated".

(2) A description of an incorporated association is not inadequate or incorrect by reason only that the abbreviation "Inc." is used instead of "Incorporated".

16 Name to appear on documents

An incorporated association must cause each 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.

Maximum penalty: 20 penalty units.

17 Change of name

(1) If the Director is satisfied the members of an incorporated association have, in accordance with its constitution, resolved to change the association's name, the Director may, on 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) The Director must refuse to issue a certificate of incorporation to an incorporated association under subsection (1) if its proposed new name is a prescribed unauthorised name.

(3) If the name of an incorporated association is (whether through inadvertence or otherwise or whether originally or by change of name) a prescribed unauthorised name, the Director may, by written notice, direct the association to change its name.

(4) An incorporated association to which a notice under subsection (3) is given that does not change its name as directed by the notice within the time specified in the notice is guilty of an offence.

(5) An offence under subsection (4):

(a) is taken to continue until the name of the association is changed in accordance with the direction; and

(b) is punishable by a fine not exceeding 20 penalty units for each day during which the offence continues.

18 Director to notify association of refusal to issue new certificate

If the Director refuses to issue a new certificate of incorporation to an incorporated association under section 17, the Director must give written notice to the association of the refusal and the reasons for it.

19 Change of name does not affect existing rights and obligations

The issue of a certificate of incorporation under section 17 to an incorporated association in a new name does not affect:

(a) a right, liability or obligation of the association or of another person; or

(b) any legal proceedings;

existing or pending immediately before the certificate was issued.

20 Common seal

(1) 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.

(2) A court, judge or person acting judicially must take judicial notice of the seal of an incorporated association affixed to a document and must presume that it was duly affixed.

Division 4 Constitution and trusts

21 Constitution

(1) The constitution of an incorporated association must provide for the following:

(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 altering, adding to or rescinding the constitution of the association;

(h) the method of altering the objects or purposes of the association;

(i) in the case of an incorporated trading association:

(i) the rights of members of the association to share in its profits; and

(ii) the rights of persons who were members of the association at the time of winding up to share in the distribution of surplus assets, if any, resulting from the winding up.

(2) The constitution of an incorporated association may make provision, not contrary to law, in relation to a matter not referred to in subsection (1).

(3) The constitution of an incorporated association may be based on the customs and traditions of the ethnic community to which the members of the association belong.

22 Filing of trusts

(1) An incorporated association must, within 3 months after its incorporation under this Act, file with the Director particulars of, and a copy of any instruments evidencing, each trust relating to the association on the day on which the association is incorporated.

Maximum penalty: 20 penalty units.

(2) If, after the incorporation of an association under this Act, a trust relating to the association is created, the association must, within one month after the trust's creation, file with the Director particulars of, and a copy of all instruments evidencing, the trust.

Maximum penalty: 20 penalty units.

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

23 Alteration of constitution etc.

(1) The public officer of an incorporated association must, within one month after an alteration of any of the following, file the documents specified in subsection (2) with the Director:

(a) the objects or purposes of the association;

(b) the constitution of the association;

(c) a trust relating to the association.

Maximum penalty: 20 penalty units.

(2) For subsection (1), the documents are:

(a) notice of the alteration; and

(b) a copy of each instrument evidencing the alteration; and

(c) a statutory declaration made by the public officer declaring:

(i) that the copy is a true copy of the instrument of which it purports to be a copy; and

(ii) in the case of an alteration of the objects, purposes or constitution of the association – that the alteration is authorised, and was made in the manner provided, by the constitution of the association.

(3) Subsection (4) applies if:

(a) under the constitution 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

(b) an alteration of the constitution of the association affects that liability.

(4) The public officer of the association must, within one month after the alteration, give notice of that alteration in:

(a) a newspaper circulating in the part of the Territory where the association carries on its activities; and

(b) any other publication circulating in that part of the Territory that the Director considers appropriate.

Maximum penalty: 20 penalty units.

(5) An alteration of the objects or purposes of an incorporated association is of no effect until the alteration is approved by the Director.

(6) Also, an alteration of the objects, purposes or constitution of an incorporated association, or an alteration of a trust relating to an incorporated association, is of no effect until the following documents are filed with the Director:

(a) the notice of the alteration;

(b) the copy of each instrument evidencing the alteration;

(c) the statutory declaration;

(d) if notice of the alteration is required to be published in accordance with subsection (4) – a copy of the notice.

(7) The Director may, by written notice given to an incorporated association, require the association to file a consolidated copy of its constitution with the Director within the time specified in the notice.

(8) In this section, a reference to an alteration of objects, purposes or constitution or a trust includes a reference to an addition to, or the revocation or rescission (whether in whole or part) of, those objects, purposes or constitution or that trust.

24 Director to notify incorporated association of refusal

If the Director refuses to approve an alteration of the objects or purposes of an incorporated association under section 23(5), the Director must give written notice to the association of the refusal and the reasons for it.

25 Alteration of object etc. does not affect existing rights and obligations

An alteration of the objects, purposes or constitution of an incorporated association, or of a trust relating to an incorporated association, does not affect:

(a) any right, liability or obligation of the association or another person; or

(b) any legal proceedings;

existing or pending immediately before the alteration took effect.

Division 5 Miscellaneous provision

26 Minimum number of members of association

An incorporated association must not have less than 5 members.

Part 4 Management of internal affairs

Division 1 Officers and committee

27 Public officer

(1) On the issue of a certificate of incorporation to an association under section 9, the applicant is the public officer of the association.

(2) The public officer of an incorporated association must be a person who is resident in the Territory.

(3) The public officer of an incorporated association may, subject to the constitution of the association, hold any other office in the association.

(4) The office of public officer of an incorporated association becomes vacant if the person holding the office:

(a) dies; or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his or her creditors; or

(c) becomes of unsound mind; or

(d) resigns office by signed notice to the committee of the association; or

(e) is removed by resolution of the members of the association passed in accordance with its constitution; or

(f) ceases to be resident in the Territory.

(5) In addition, if, under the constitution of an incorporated association, the public officer of the association is required to be an employee of the association or to hold another office specified in the constitution, the office of public officer of the association becomes vacant if the public officer ceases to satisfy the requirement.

(6) If the office of public officer of an incorporated association becomes vacant, the committee of the association must, within 14 days after the vacancy arises, appoint a person to be the public officer.

(7) If the committee of an incorporated association fails to comply with subsection (6), each member of the committee is guilty of an offence punishable, on being found guilty, by a fine not exceeding 20 penalty units.

28 Notification of appointment and change of address of public officer

(1) The public officer of an incorporated association must, within 14 days after appointment, give written notice to the Director of the officer's appointment and the officer's full name and address.

Maximum penalty: 20 penalty units.

(2) Subsection (1) does not apply to the public officer on the incorporation of the association.

(3) If the public officer of an incorporated association changes address, the officer must, within 14 days after the change, give written notice to the Director of the change.

Maximum penalty: 20 penalty units.

29 Management committee

(1) A person is not precluded from being appointed as a member of the committee of an incorporated association because the person is a member of a class of persons for whose benefit the association is established.

(2) Subject to the constitution of an incorporated association, an employee of the association is not precluded by reason of that employment from being appointed as a member of the committee of the association.

30 Certain persons not to be members of committee etc.

(1) A person who is an insolvent under administration or a disqualified person must not, without leave of the Director, be an officer of an incorporated association.

Maximum penalty: 200 penalty units.

(2) A person who has been convicted within or outside the Territory:

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

(b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months; or

(c) of an indictable offence; or

(d) of an offence against this Act; or

(e) a prescribed offence;

must not, within 5 years after the conviction or, if the person was sentenced to imprisonment in relation to the offence, within 5 years after release from custody, without leave of the Director, be an officer of an incorporated association.

Maximum penalty: 200 penalty units.

(3) Subsection (2) applies even if the conviction or release from custody occurred before the commencement of this Act.

(4) When granting leave under this section, the Director may impose the conditions the Director considers appropriate.

(5) The Director may revoke leave granted under this section.

(6) In this section:

insolvent under administration means a person who:

(a) under the *Bankruptcy Act 1966* (Cth), is a bankrupt in relation to a bankruptcy from which the person is not discharged; or

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

and includes:

(c) a person who has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth) or the corresponding provisions of the law of another country, in either case if the terms of the deed have not been fully complied with; and

(d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* (Cth) or the corresponding provisions of the law of a another country, in either case if a final payment has not been made under that composition.

31 Disclosure of interest

(1) A member of the committee of an incorporated association who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the association:

(a) must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the committee; and

(b) must disclose the nature and extent of the interest at the next annual general meeting of the association required to be held by the association.

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply in relation to a pecuniary interest that exists only because:

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

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

(c) the member of the committee has the pecuniary interest in common with all or a substantial proportion of the members of the association.

(3) If a member of the committee of an incorporated association discloses a pecuniary interest in a contract, or proposed contract, in accordance with this section, or his or her interest is not required under this section to be disclosed:

(a) the contract is not liable to be avoided by the association on a ground arising from the fiduciary relationship between the member and the association; and

(b) the member is not liable to account for profits derived from the contract.

32 Voting on contract in which committee member has interest

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

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply in relation to a pecuniary interest:

(a) that exists only because the member of the committee is a member of a class of persons for whose benefit the association is established; or

(b) that the member of the committee has in common with all or a substantial proportion of the members of the association.

33 Duties of officers etc.

(1) An officer of an incorporated association must not, in the exercise of his or her powers or the discharge of the duties of his or her office, commit an act with intent to deceive or defraud the association, members or creditors of the association or creditors of

another person or for any fraudulent purpose.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) An officer or employee of an incorporated association, or former officer or employee of an incorporated association, must not make improper use of information acquired by virtue of his or her position in the association so as to gain, directly or indirectly, a pecuniary benefit or material advantage for himself or herself or another person or so as to cause a detriment to the association.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(3) An officer or employee of an incorporated association must not make improper use of his or her position as an officer or employee of the association so as to gain, directly or indirectly, a pecuniary benefit or material advantage for himself or herself or another person or so as to cause a detriment to the association.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(4) A person who contravenes a provision of this section is liable to the association for all profit made by him or her and for all damage suffered by the association as a result of the contravention.

Division 2 Meetings etc.

34 Register of members

(1) An incorporated association must establish and maintain a register of its members and enter in the register:

(a) the date on which each member of the association became a member; and

(b) if a person ceases to be a member of the association – the date of ceasing to be a member; and

(c) the prescribed particulars, if any.

Maximum penalty: 20 penalty units.

(2) An incorporated association must make the register of members available for inspection by members at reasonable times, or at the times specified in the constitution of the association, at:

(a) the address of the public officer of the association; or

(b) the place, if any, at which the association is situated or located; or

(c) another place in the Territory nominated by the committee.

Maximum penalty: 20 penalty units.

35 First annual general meeting

An incorporated association must hold its first annual general meeting within 18 months after its incorporation.

36 Annual general meetings

An incorporated association must, in addition to any other meeting it holds, hold an annual general meeting, once in each calendar year, within 5 months after the end of the association's last financial year.

37 Special resolutions

A resolution of an incorporated association must be taken to be a special resolution if:

(a) it is passed at a general meeting of the association, being a meeting of which at least 21 days notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the members of the association; and

(b) it is passed by at least three-quarters of the votes of those members of the association who, being entitled to vote, vote in person or, if the constitution of the association permit voting by proxy, vote by proxy at the meeting.

Note for paragraph (b)

A special resolution must be passed by three-quarters of the votes actually cast (whether directly or by proxy) at the meeting. A special resolution is not required to be passed by three-quarters of all members eligible to vote.

38 Minutes

(1) An incorporated association must:

(a) ensure minutes of all proceedings of general meetings and of meetings of the committee are entered in books kept for that purpose; and

(b) ensure the minutes are:

(i) confirmed by the members of the association present at a subsequent meeting; and

(ii) signed by a member who presided at the meeting at which the proceeding took place or by the member presiding at the meeting at which the minutes are confirmed.

Maximum penalty: 100 penalty units.

(2) A minute that is entered, confirmed and signed in accordance with subsection (1) is, in the absence of proof to the contrary, to be accepted as proof of the proceedings to which the minute relates.

(3) If minutes have been entered, confirmed and signed in accordance with subsection (1), in the absence of proof to the contrary, it is taken that:

(a) the meeting to which the minutes relate was held; and

(b) the proceedings that are recorded in the minutes as having occurred during the meeting occurred; and

(c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting were validly made.

(4) The books containing the minutes of proceedings of a general meeting or of a meeting of the committee of an incorporated association must be kept:

(a) by the association at the place at which the association is situated or established; or

(b) in the custody of an officer of the association in accordance with its constitution or a resolution of the committee of the association.

(5) The books containing the minutes of proceedings of general meetings of an incorporated association must be made available for inspection by a member without charge.

(6) The books containing the minutes of proceedings of committee meetings of an incorporated association must be made available for inspection by an officer without charge.

(7) If subsection (4), (5) or (6) is not complied with, the association and each officer of the association who failed to comply with the subsection are guilty of an offence.

Maximum penalty: 100 penalty units.

39 Natural justice applies in adjudication of disputes

If the committee of an incorporated association exercises a power of adjudication that it has in relation to a dispute between members of the association, or a dispute between itself and members of the association, the rules of natural justice must be observed.

Division 3 Miscellaneous matters

40 Disqualified person

(1) The Director must, in writing, declare a person to be disqualified from being an officer of an incorporated association if the Commissioner of Police states in a certificate given to the Director that the person:

(a) is unfit to be an officer of an incorporated association; or

(b) has in any way (whether directly or indirectly) been concerned in or taken part in the management of at least 2 bodies corporate (whether or not incorporated associations) that have ceased to exist because of financial mismanagement; or

(c) is an associate of a disqualified person.

(2) The Commissioner of Police may give the certificate only on the basis of a criminal intelligence report or other criminal information held by the Commissioner of Police.

(3) The Director must give the person written notice of the declaration.

(4) The notice must:

(a) state the following:

(i) in general terms, the effect of the declaration;

(ii) the person may, within 21 days after the date of the notice, appeal to the Local Court against the decision;

(iii) how to appeal; and

(b) be accompanied by a copy of the certificate.

(5) The declaration is in force for 5 years from the date it is made.

(5A) The Commissioner of Police's power of delegation under section 14(4) of the *Police Administration Act 1978* does not apply to a power or function under this section.

(6) In this section:

associate, of a disqualified person, means the spouse, de facto partner, business partner or business associate of the person.

Part 5 Accounts and audit

Division 1 Accounts

41 Accounting records

An incorporated association must:

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

(b) keep its accounting records in such a way that:

(i) true and fair accounts of the association can be prepared from time to time; and

(ii) a statement of the accounts of the association can conveniently and properly be audited in accordance with this Part; and

(c) retain its accounting records for at least 7 years after the transactions to which they relate were completed.

Maximum penalty: 100 penalty units.

42 Annual statement of accounts

(1) The committee of an incorporated association must ensure a statement of the association's accounts are prepared:

(a) before the end of the period within which an annual general meeting of the association is required to be held under section 35 or 36; or

(b) if the association is exempt under section 5 from the requirement to hold an annual general meeting:

(i) as soon as practicable after 30 June; or

(ii) if under the constitution of the association the financial year of the association ends on another date – as soon as practicable after that date.

(2) The statement of accounts must not be misleading and must give a true and fair account of:

(a) the income and expenditure of the association during the last financial year of the association; and

(b) the assets and liabilities of the association at the end of that financial year; and

(c) mortgages, charges or other securities of any description affecting property of the association at the end of that financial year; and

(d) in relation to each trust of which the association was the trustee for any period during that financial year:

(i) the income and expenditure of the trust during that period; and

(ii) the assets and liabilities of the trust at the end of that period; and

(iii) all mortgages, charges or other securities of any description affecting the property of the trust during that period; and

(e) any prescribed matters.

Maximum penalty: 100 penalty units.

43 Presentation of statement at AGM

(1) At each annual general meeting of an incorporated association, the committee must present the following documents for the consideration of the meeting:

(a) the audited statement of the association's accounts in relation to the last financial year of the association;

(b) a copy of the auditor's report to the association in relation to the association's accounts for that financial year;

(c) a report signed by 2 members of the committee stating:

(i) the name of each member of the committee of the association during the last financial year of the association and, if different, at the date of the report; and

(ii) the principal activities of the association during the last financial year and any significant change in the nature of those activities that occurred during that financial year; and

(iii) the net profit or loss of the association for the last financial year.

Maximum penalty: 100 penalty units.

(2) The committee of an incorporated association must ensure the prescribed number of copies of the documents referred to in subsection (1)(a) and (b) are available for perusal by members of the association immediately before and during the annual general meeting.

Maximum penalty: 100 penalty units.

44 Inspection of audited accounts by members

The committee of an incorporated association must take reasonable steps to ensure that, at least 14 days before it is required to be presented at the annual general meeting of the association under section 43:

(a) the audited statement of accounts of the association is available for inspection by members; and

(b) in the case of a tier 3 association – members are informed of the availability by notice:

(i) published in a newspaper circulating in the part of the Territory where the association carries on its activities; or

(ii) published in any other publication circulating in the part of the Territory the Director considers appropriate; or

(iii) sent to each member; or

(iv) in any other manner approved by the Director.

Maximum penalty: 100 penalty units.

45 Filing of audited accounts with Director

(1) An incorporated association must file a copy of each of the documents referred to in section 43(1) with the Director:

(a) within 28 days after the documents have been presented at the annual general meeting; or

(b) if the association is exempt under section 5 from the requirement to hold an annual general meeting – within 28 days after the documents are prepared.

Maximum penalty: 100 penalty units.

(2) If an incorporated association contravenes subsection (1), the public officer commits the same offence.

Division 2 Audits

46 Audits of tier 1 incorporated association

(1) A tier 1 incorporated association must ensure its accounts are audited by a person who:

(a) is not a member of the association; or

(b) is not the spouse or de facto partner or a business partner, employer or employee of a member of the association; or

(c) is not the spouse or de facto partner or a business partner of an employee of a member of the association.

Maximum penalty: 100 penalty units.

(2) If an incorporated association contravenes subsection (1), each member of the committee of the association commits the same offence.

47 Audits of tier 2 incorporated association

(1) This section applies to an incorporated association (a ***tier 2 incorporated association***) that is not a tier 3 incorporated association and the association:

(a) has gross receipts, at the end of a financial year of the association, exceeding the prescribed amount for the year; or

(b) has gross assets, at the end of a financial year of the association, exceeding the prescribed amount; or

(c) holds a licence under the *Gaming Machine Act 1995*; or

(d) is a prescribed incorporated association or a member of a class of prescribed incorporated associations.

(2) The association must ensure its accounts are audited by:

(a) a person who is a member of an accountants body; or

(b) a person who holds qualifications in a prescribed class of qualifications; or

(c) a person who is, or is a member of a class of persons, approved by the Director.

Maximum penalty: 100 penalty units.

(3) If an incorporated association contravenes subsection (2), each member of the committee of the association commits the same offence.

48 Audits of tier 3 incorporated association

(1) This section applies to an incorporated association (a ***tier 3 incorporated association***) that:

(a) is an incorporated trading association; or

(b) has gross receipts, at the end of a financial year of the association, exceeding the prescribed amount; or

(c) has gross assets, at the end of a financial year of the association, exceeding the prescribed amount; or

(d) is an incorporated association for which a declaration under section 101 has been made.

(2) The association must ensure its accounts are audited by:

(a) for an incorporated association described in subsection (1)(a), (b) or (c) – a person who holds a public practice certificate issued by an accountants body; or

(b) for an incorporated association described in subsection (1)(a), (b) or (c) – a person who is, or is a member of a class of persons, approved by the Director; or

(c) for an incorporated association described in subsection (1)(d) – a person who is registered as an auditor under the Corporations Act 2001.

Maximum penalty: 100 penalty units.

(3) If an incorporated association contravenes subsection (2), each member of the committee of the association commits the same offence.

(4) The auditor must report to the association on:

(a) the statement of accounts required to be laid before the association at the annual general meeting; and

(b) the association's accounting records; and

(c) other records relating to the accounts or accounting records.

(5) The auditor must state in the report:

(a) whether the accounts are in the auditor's opinion properly drawn up:

(i) so as to give a true and fair view of matters required by section 42(2) to be dealt with in the accounts;

(ii) in accordance with this Act; and

(iii) in accordance with applicable Australian accounting standards;

(b) if, in the auditor's opinion, the accounts have not been drawn up in accordance with the applicable accounting standards:

(i) whether, in the auditor's opinion, the accounts would, if drawn up in accordance with the applicable accounting standards, have given a true and fair view of the matters required by section 42(2) to be dealt with in the accounts;

(ii) if, in the auditor's opinion, the accounts would not, if so drawn up, have given a true and fair view of those matters – the auditor's reasons for being of that opinion; and

(iii) if subparagraph (ii) does not apply – particulars of the quantified financial effect on the accounts of the failure to so draw up the accounts;

(c) if, in the auditor's opinion, there are reasonable grounds to believe the association will be able to pay its debts when they fall due;

(d) the defects or irregularities in the accounts identified during the audit;

(e) the matters that, because they are not set out in the accounts, prevent a true and fair view of the accounts being obtained; and

(f) if the auditor is not so satisfied about a matter referred to in paragraphs (a) to (c), the auditor's reasons for not being so satisfied.

(6) The auditor must:

(a) form an opinion as to whether:

(i) the auditor has obtained all the information and explanations the auditor required; and

(ii) proper accounting records and other records have been kept by the association as required by this Act; and

(b) state in the auditor's report particulars of a deficiency, failure or shortcoming in relation to a matter referred to in paragraph (a).

(7) The auditor's report:

(a) must be attached to or endorsed on the accounts; and

(b) must, if a member so requires, be read before the association at the annual general meeting; and

(c) may be inspected by a member at any reasonable time.

(8) The auditor, or an agent of the auditor authorised by the auditor in writing for the purpose, is entitled:

(a) to attend a general meeting of the association and to receive all notices of and other communications relating to a general meeting that a member is entitled to receive; and

(b) to be heard at a general meeting that the auditor attends on a part of the business of the meeting that concerns the auditor in the capacity of auditor and is entitled so to be heard even if the auditor retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.

(9) If the auditor becomes aware that the committee has not complied with section 43 relating to the presenting of accounts before the annual general meeting of the association, the auditor must immediately:

(a) inform the Director by written notice; and

(b) if accounts have been prepared and audited – send to the Director a copy of the accounts and the auditor's report on the accounts.

(10) Except in a case to which subsection (9) applies, if the auditor, in the course of the performance of duties as auditor, is satisfied:

(a) there has been a contravention of this Act; and

(b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the committee of the association;

the auditor must as soon as practicable report the matter to the Director by written notice.

49 Auditor's powers and duties

(1) An auditor of an incorporated association has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from an officer of the association the information and explanations the auditor requires for the purpose of auditing the association's accounts.

(2) If an auditor, in the course of the performance of duties as auditor of an incorporated association, is satisfied there has been a failure to comply with this Act or with a rule of the association, the auditor must note the matter in the auditor's report to the association in relation to the association's accounts.

50 Auditor's liability

An auditor of an incorporated association is not, in the absence of malice on the auditor's part, liable for defamation in relation to a statement that the auditor makes, orally or in writing, in the course of the performance of duties as auditor of the association.

51 Obstruction of auditor

(1) An officer of an incorporated association must not, without lawful excuse:

(a) refuse or fail to allow an auditor of the association access, for the purpose of auditing the accounts of the association, to accounting or other records of the association in the officer's custody or control; or

(b) refuse or fail to give the auditor, within a reasonable time, information or an explanation required by the auditor that is within the knowledge of the officer; or

(c) obstruct an auditor in the performance of duties or exercise of powers as auditor of the association.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) In this section:

obstruct includes hinder, resist and attempt to obstruct.

52 Removal of auditors

(1) The auditor of a tier 2 incorporated association or tier 3 incorporated association may only be removed:

(a) by a resolution at an annual general meeting or special general meeting of the association; or

(b) on the application of the auditor, with the approval of the Director.

(2) If an auditor is removed under subsection (1), the committee of the association must, within 14 days after the removal, notify the Director in the approved form of the appointment of another auditor.

Part 6 Disposal of property

53 Application of Part 6

This Part does not apply to an incorporated trading association.

54 Transfer of property

(1) Subject to this section and section 110, an incorporated association may, by resolution passed in accordance with its constitution, determine to transfer all its real and personal property to:

(a) another body, whether incorporated or unincorporated, formed for promoting objects similar to its own or charitable objects; or

(b) a local government council for the area in which the property is situated.

(2) The resolution is of no effect if the association does not, within 14 days after the passing of a resolution referred to in subsection (1):

(a) file a copy of the resolution with the Director; and

(b) give notice of its intention to transfer all its property in accordance with the resolution published in:

(i) a newspaper circulating in the part of the Territory where the association carries on its activities; and

(ii) any other publication circulating in that part of the Territory that the Director considers appropriate; and

(iii) the *Gazette*.

(3) A member of the association who did not vote in favour of the resolution may, within 28 days after publication of the resolution under subsection (2), apply to the Supreme Court for an order prohibiting the association from transferring its property.

(4) A creditor of the association may, within 28 days after publication of the resolution under subsection (2), apply to the Supreme Court for an order prohibiting the association from transferring its property on the ground that the creditor's debt has not been paid.

(5) The Court may determine the matters in question as it considers appropriate.

(6) The association must not transfer its property:

(a) until 28 days after the publication of the last notice given under subsection (2)(b); or

(b) if an application to the Court has been made under subsection (3), unless the Court permits the transfer; or

(c) after a letter has been sent to the association under section 65(1), or a notice is issued under section 65(4), unless the Director has, in writing, informed the association that the Director is satisfied the association is carrying out its functions or is in operation; or

(d) if Part 9 applies to the association, other than in accordance with that Part;

but this subsection does not affect the title of a bona fide transferee under a transfer of a kind to which this subsection applies.

(7) When the association has completed the transfer of all its property under this section:

(a) the public officer of the association must immediately file notice of its completion with the Director; and

(b) after 3 months after the filing of the notice under paragraph (a), the association is taken to be dissolved.

(8) This section, other than subsection (6), does not prevent an association making gifts that do not constitute the whole or the greater part of its property or the disposal of property under section 55.

55 Power of incorporated association to sell trust property

(1) If property is held by an incorporated association on trust and the trust has come either wholly or partly to an end, the public officer of the association may, with the authority of its committee, apply to the Supreme Court for an order authorising the disposal of the whole or a part of the property.

(2) At the hearing of the application the Court may, despite the deed or other instrument creating the trust or the constitution of the association, make an order:

(a) authorising the disposal of the whole or a part of the property; and

(b) directing the manner in which the proceeds from the disposal of the property, or the part of the property, are to be disposed of or dealt with.

Part 7 Transfer of incorporation

56 Application for transfer

(1) An incorporated association may apply to become incorporated under the Corporations Act 2001 or another Act.

(2) However, an incorporated association holding prescribed property is not entitled to make an application under subsection (1) unless the Director gives written consent to the application.

57 Requirements before application can be made

(1) Before an application is made under section 56, the incorporated association must by special resolution:

(a) approve the proposed application; and

(b) determine under what name the association is to apply to be incorporated; and

(c) adopt a constitution that may be necessary or considered desirable.

(2) The name applied for need not be the same as that of the association and must not include the word "association" or any other word importing a similar meaning.

58 Meaning of *transfer* and *new body*

The incorporation of an incorporated association as a body corporate as a result of an application under this Part is referred to in this Part as its ***transfer*** and the body corporate concerned is referred to in this Part as ***the new body***.

59 New body ceases to be incorporated association

On the transfer of an incorporated association under this Part, it ceases to be an incorporated association.

60 Transfer not to impose greater liability etc.

(1) The constitution adopted for the transfer must not impose on the members of the new body who were members of the incorporated association at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the association.

(2) The transfer must result in all persons who were members of the association at the date of transfer becoming members of the new body.

61 Effect of new certificate of incorporation

A certificate of incorporation as the new body issued by the appropriate officer under the law applicable to the new body is conclusive evidence that all the requirements of this Part in relation to that incorporation have been complied with.

62 New body is continuation of incorporated association

(1) When an incorporated association transfers to a new body, the body corporate constituted by the new body must be considered to be the same entity as the body corporate constituted by the incorporated association.

(2) Without limiting subsection (1), on the transfer:

(a) the assets of the incorporated association vest in the new body without the need for any conveyance, transfer, assignment or assurance; and

(b) the rights and liabilities of the incorporated association become the rights and liabilities of the new body; and

(c) all proceedings by or against the incorporated association that are pending immediately before the transfer are taken to be proceedings pending by or against the new body; and

(d) any act, matter or thing done or omitted to be done by or in relation to the incorporated association before the transfer is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by or in relation to the new body; and

(e) a reference in an instrument or in any document of any kind to the incorporated association includes a reference to the new body.

(3) The operation of this section must not be regarded:

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) Despite the *Stamp Duty Act 1978*, a document or instrument executed or registered for or with respect to a transfer of any property to give effect to this section is exempt from stamp duty.

(5) In this section:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes any securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

63 Director may direct incorporated association to change its incorporation

(1) The Director may, by written notice given to an incorporated association direct the association, within the reasonable time stated in the notice, as follows:

(a) if:

(i) the association is an incorporated trading association – to return the association's certificate of incorporation for the Director to amend it to omit the statement referred to in section 9(2); or

(ii) if subparagraph (i) does not apply – to return the association's certificate of incorporation for the Director to amend it to include the statement referred to in section 9(2);

(b) to apply for incorporation under the Corporations Act 2001 or another Act.

(2) The Director may give the direction only if satisfied it is appropriate to do so having regard to the prescribed matters.

(3) The Director must give written notice to the association:

(a) specifying the reasons for proposing to give the direction; and

(b) inviting the association to show cause, in writing and within a specified period, why the direction should not be given.

(4) Before giving the direction, the Director must consider any representations properly made by the association.

(5) The association must comply with the direction within the time specified in it.

(6) The amendment of the association's certificate of incorporation under a direction under subsection (1)(a) takes effect on the date the amendment is made and this Act applies to the association accordingly.

Part 8 Dissolution of certain associations

64 Application of Part 8

This Part does not apply to an incorporated trading association.

65 Dissolution

(1) If the Director has reasonable cause to believe that an incorporated association is not carrying out its objects or is not in operation, the Director may send by post to the public officer of the association or, if there is no public officer, to a person who is apparently a member of the committee of the association, a letter to the effect that:

(a) the Director is of the opinion that the association is not carrying out its objects or is not in operation; and

(b) if an answer showing cause to the contrary is not received by the Director within one month after the date of the letter, a notice will be published in the *Gazette* under subsection (4) for dissolving the association.

(2) The public officer of an incorporated association may apply to the Director for dissolution of the association under this section.

(3) The application must:

(a) be in the approved form; and

(b) be accompanied by a statutory declaration specifying that the public officer has reasonable cause to believe the association is not carrying out its objects or is not in operation.

(4) If the Director:

(a) has not received, within one month after the date of the letter sent under subsection (1), an answer showing cause to the contrary; or

(b) has received an application under subsection (2);

the Director may:

(c) publish in the *Gazette*; and

(d) send to the public officer of the association or, if there is no public officer, to a person who is apparently a member of the committee of the incorporated association;

a notice stating that, after 3 months after the date of that notice, the association will, unless cause is shown to the contrary, be dissolved.

(5) After 3 months from the date of the notice under subsection (4), the Director may, unless cause to the contrary is previously shown, publish in the *Gazette* a notice that the association is dissolved.

(6) If a notice is published under subsection (5):

(a) the association is dissolved; and

(b) the liability, if any, of each officer and member of the association continues and may be enforced as if it had not been dissolved.

(7) If the Director is satisfied the dissolution of an incorporated association was the result of an error on his or her part, the Director must, by *Gazette* notice, reinstate the association and the association is taken to have continued in existence as if it had not been dissolved.

66 Director may act administratively for dissolved incorporated association

(1) If, after an incorporated association has been dissolved under section 65, it is proved to the satisfaction of the Director:

(a) that the 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 to the dealing, transaction or matter, a purely administrative act (other than of a discretionary kind) should have been done by or on behalf of the association or, if it still existed, should be done by or on its behalf;

the Director may do the act or cause the act to be done.

(2) The Director may execute or sign a relevant instrument or document and, if the Director does so, the Director must add a memorandum stating that it has been done under this section.

(3) An execution or signature by the Director under subsection (2) has the same force, validity and effect as if the association, if it still existed, had duly executed the instrument or document.

67 Property of dissolved incorporated association vests in CEO

(1) If, after an incorporated association has been dissolved under section 65, there remains outstanding property:

(a) that was vested in the association; or

(b) to which the association was entitled; or

(c) over which the association had a power of disposal at the time it was dissolved;

but which was not got in, realised or otherwise disposed of or dealt with by the association, the property is, for sections 68, 69 and 70, and despite any other law of the Territory, vested in the CEO for all the legal and equitable estate and interest of the association at the date it was dissolved, together with all claims, rights and remedies that it then had in relation to the estate or interest.

(2) In this section:

property includes both real and personal property, including things in action, whether the property is within or outside the Territory.

68 CEO may sell vested property

(1) If the CEO is satisfied an estate or interest in property of any description (whether held solely or together with another person) of a beneficial nature and not merely held in trust, is vested in him or her under section 67 or a corresponding previous law of the Territory, the CEO may sell or otherwise dispose of or deal with the estate or interest or all or part of it as the CEO considers appropriate.

(2) The CEO may sell or otherwise dispose of or deal with the property either solely or in concurrence with another person by public auction, public tender or private contract.

(3) The CEO may:

(a) sell or otherwise dispose of or deal with the property in the manner, for the consideration and on the terms and conditions the CEO considers appropriate; and

(b) rescind a contract and resell or otherwise dispose of or deal with the property as the CEO considers appropriate; and

(c) for paragraphs (a) and (b), make, execute, sign and give a contract, instrument or document, as the CEO considers appropriate.

(4) The CEO must be remunerated by the prescribed commission, which may be prescribed as a percentage or otherwise, in relation to the exercise of the powers conferred by subsection (1).

(5) The CEO must:

(a) pay the costs and expenses of and incidental to the exercise of a power under this section; and

(b) make payments authorised by this section;

out of money received by the CEO in the exercise of a power under this section and must pay the remainder of the money (if any) to the Treasurer.

(6) The Treasurer must pay all money paid to him or her under this section into the Northern Territory Government Account.

(7) A person claiming to be entitled to an amount paid to the Treasurer under this section may apply to the Supreme Court for an order for payment to him or her of that amount and the Court, if satisfied the person is entitled to the amount, must make an order for payment accordingly.

(8) If:

(a) an order is made under subsection (7) for payment of money to a person; or

(b) the Treasurer is otherwise satisfied a person is entitled to money paid to the Treasurer under this section;

the Treasurer must pay the money to the person.

(9) This section does not deprive a person of another right or remedy to which the person is entitled against another person.

69 Property vested in CEO subject to all charges etc.

(1) Property vested in the CEO under section 67 or a corresponding previous law of the Territory is liable and subject to all charges, claims and liabilities imposed on or affecting the property by reason of a law as to rates, taxes, charges or another matter or thing, to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the incorporated association.

(2) Subsection (1) does not impose on the CEO a duty, obligation or liability to do, or to permit to be done, an act or thing required by a law referred to in subsection (1) to be done or permitted by the owner or occupier of the property to be done, other than the satisfaction or payment of a charge, claim or liability out of the assets of the incorporated association so far as they are, in the opinion of the CEO, properly available for and applicable to such payment.

70 CEO to keep records etc.

The CEO must:

(a) record a statement of property under his or her control or to his or her knowledge vested in him or her by operation of section 67 and of his or her dealings with it; and

(b) keep accounts of all money arising from property referred to in paragraph (a) and of how the money has been disposed of; and

(c) keep all accounts, vouchers, receipts and papers relating to property referred to in paragraph (a) and money arising from the property.

71 Court may declare dissolution of association void

(1) If an incorporated association has been dissolved under section 65, the Supreme Court may, on the application of a person who appears to the Court to be interested, make an order declaring the dissolution void.

(2) The Court may make the declaration only if:

(a) the application is made within 5 years after the dissolution; and

(b) the Court is satisfied the association was, at the time of the dissolution, carrying out its objects or in operation.

(3) The order may contain any direction the Court considers appropriate for placing the association and all other persons as far as possible in the same position as if the association had not been dissolved, but a direction is of no effect until an office copy of the order is filed with the CEO.

(4) The applicant must, within 7 days after the order is made or the longer time specified in the order, file with the CEO an office copy of the order.

Maximum penalty: 20 penalty units.

(5) On filing of an office copy of the order with the CEO, the association is taken to have continued in existence as if it had not been dissolved.

(6) Without limiting subsection (5), proceedings that might have been taken if the association had not been dissolved may be taken.

Part 9 External administration

Division 1 Winding up and other matters relating to external administration

72 Application of Corporations Act 2001 to external administration

The external administration of an incorporated association is declared to be an applied Corporations legislation matter for Part 4 of the *Corporations Reform (Northern Territory) Act 2001* in relation to the following provisions of the Corporations legislation, subject to any modifications (within the meaning of the *Corporations Reform (Northern Territory) Act 2001*) prescribed by the Regulations:

(a) Chapter 5 of the Corporations Act 2001 other than:

(i) Part 5.7; and

(ii) Part 5.7B, Divisions 4 to 7; and

(iii) Part 5.8;

(b) the prescribed provisions of the *Corporations Regulations 2001* (Cth);

(c) the *Corporations Law Rules 2000*.

73 Winding up by Supreme Court on certificate of Director

(1) An incorporated association may be wound up by the Supreme Court on the certificate of the Director issued under this section.

(2) The Director may issue a certificate for the winding up of an incorporated association on the following grounds:

(a) that the association has contravened a condition imposed in relation to the association by the Director under this Act;

(b) that the incorporation of the association has been obtained by mistake or fraud;

(c) that the association has, after notice by the Director of a breach of this Act or the constitution of the association, failed, within the time specified in the notice, to remedy the breach;

(d) that the association has not complied with a direction given by the Director under section 63;

(e) that the association is defunct.

(3) For this Act, the winding up of an incorporated association on the certificate of the Director:

(a) commences on application to the Supreme Court by the Director and filing with the Court of a copy of the certificate; and

(b) must proceed as if the association had by special resolution resolved that it be wound up by the Court.

74 Court may appoint unregistered company liquidator

(1) The Supreme Court may, on an order being made for the winding up of an incorporated association by the Court (including a winding up on the certificate of the Director), if the Director nominates a

person who is not a registered company liquidator for appointment as the liquidator of the association, appoint the person as the liquidator of the association.

(2) In this section:

registered company liquidator means a liquidator registered under the Corporations Act 2001.

75 Penalty for contravention of applied provisions

A person must not contravene a provision of the Corporations Act 2001 as it applies to an incorporated association under this Division.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

76 Distribution of assets on winding up

(1) Subject to subsections (2) and (3), it is not lawful to distribute among members, former members or associates of members or former members of an incorporated association, other than an incorporated trading association, surplus assets available for distribution at the completion of the winding up of the association under this Division.

(2) The surplus assets of an incorporated association may, with the consent of the Director, be distributed to a member of the association if the member is also an incorporated association that has identical or similar aims and objects.

(3) Subject to any order of the Supreme Court, the surplus assets of an incorporated association are, on a winding up of the association, to be distributed in accordance with:

(a) the constitution of the association; or

(b) if there is no valid constitution of the association governing distribution of the surplus assets – a special resolution of the association.

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

(5) The Court must, in determining how the surplus assets of an incorporated association are to be distributed, have regard to the objects of the association and the provisions of the constitution of the association governing distribution of surplus assets.

(6) In this section:

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

77 Prescribed property in winding up

(1) Prescribed property, or a part of prescribed property, is not an asset in the winding up of an incorporated association unless consent in writing has been given by:

(a) in the case of a lease under the *Special Purposes Leases Act 1953* – the Minister administering that Act; or

(b) in the case of a lease under the *Crown Lands Act 1992* – the Minister administering that Act; or

(c) in any other case – the Minister.

(2) If consent required under subsection (1) is refused, the prescribed property or part thereof vests in the Territory.

(3) Property vested in the Territory under subsection (2) is liable and subject to all charges, claims and liabilities imposed on or affecting the property by reason of a law as to rates, taxes, charges or another matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the association.

(4) If there is an acquisition of property by the Territory as a result of property vesting in the Territory under subsection (2), the Territory is liable to pay just compensation to the person from whom the property was acquired.

(5) If there is no acquisition of property by the Territory as a result of property vesting in the Territory under subsection (2), the Minister may pay an amount in relation to any claim for improvements made to the property before the property vested in the Territory.

(6) If:

(a) a secured creditor sells prescribed property or part thereof after the commencement of the winding up of an incorporated association; and

(b) consent required under subsection (1) is subsequently refused;

any surplus after all secured debts and any allowable costs and expenses have been deducted from the proceeds of the sale vests in the Territory.

Division 2 Appointment of statutory manager

78 Appointment

(1) The Director may, by written notice to an incorporated association, appoint a statutory manager to administer the affairs of the association if the Director is satisfied:

(a) the number of members of the association is less than the minimum number required by section 26 or the association's constitution; or

(b) the association's incorporation has been obtained by fraud or mistake; or

(c) the association exists for an illegal purpose; or

(d) the association has wilfully contravened a provision of this Act, the Regulations or the association's constitution, notice of which was given by the Director; or

(e) following an investigation under this Act into the affairs of the association, the appointment is in the interests of members or creditors of the association or in the public interest, whether because of the financial condition of the association or otherwise.

(2) The notice of appointment must specify:

(a) the date of appointment; and

(b) the appointee's name; and

(c) the appointee's business address.

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Director.

79 Effect of appointment

(1) On the appointment of a statutory manager of an incorporated association:

(a) the members of the committee of the association cease to hold office; and

(b) the statutory manager may terminate a contract of employment with the association; and

(c) the statutory manager may terminate a contract for the provision of secretarial or administrative services for the association; and

(d) the statutory manager may terminate a contract for the provision of other services to the association.

(2) The statutory manager of the association has the functions of the committee of the association, including the committee's powers of delegation.

(3) An officer of the association must not be appointed or elected while the statutory manager is in office except as provided by this Division.

80 Revocation of appointment

(1) A statutory manager holds office until his or her appointment is revoked.

(2) The Director may, by written notice, revoke the appointment of a statutory manager.

(3) If a liquidator of an incorporated association is appointed, the appointment of a statutory manager of the association is automatically revoked.

(4) As soon as practicable after the revocation of a statutory manager's appointment, the statutory manager must prepare and submit a report to the Director showing how the administration was carried out and, for that purpose, a statutory manager has access to the incorporated association's records and documents.

(5) On providing the report under subsection (4) and accounting fully in relation to the administration of the association to the satisfaction of the Director, the statutory manager is released from further duty to account in relation to the administration of the association other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the Regulations.

(6) Before revoking the appointment of a statutory manager of an incorporated association, the Director must:

(a) appoint another statutory manager; or

(b) ensure that members of the committee of the association have been elected in accordance with the constitution of the association at a meeting convened by the statutory manager in accordance with the constitution; or

(c) appoint members to the committee of the association.

(7) Elected members of the committee or members of the committee appointed under subsection (6):

(a) take office on revocation of the statutory manager's appointment; and

(b) in the case of members appointed under subsection (6)(c), hold office, subject to this Act, until the next annual general meeting of the association after the revocation of that appointment.

81 Expenses of administration

(1) The expenses of and incidental to the conduct of the affairs of an incorporated association by a statutory manager are payable from the association's funds.

(2) Those expenses include:

(a) if the statutory manager is not a public sector employee, remuneration of the administrator at a rate approved by the Director; or

(b) if the statutory manager is a public sector employee, the amount that the Director certifies is to be paid to the Territory as repayment of the statutory manager's remuneration.

(3) An amount certified under subsection (2)(b) is a debt due to the Territory.

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

82 Liabilities arising from administration

(1) If an incorporated association incurs a loss because of fraud, dishonesty, negligence or wilful failure to comply with this Act or the Regulations or the constitution of the association by a statutory manager, the statutory manager is liable for the loss.

(2) A statutory manager is not liable for a loss that is not a loss to which subsection (1) applies but must account for the loss in the report under section 80(4).

83 Additional powers of Director

(1) If the Director appoints members of the committee of an incorporated association under section 80, the Director may, by written notice to the association, specify:

(a) this section applies to the association for the period specified in the notice; and

(b) the terms and conditions on which all or any of the members of the committee hold office; and

(c) the association's constitution.

(2) While this section applies to the association, the Director may do any of the following:

(a) remove or appoint members of the committee;

(b) vary, revoke or substitute a term or condition specified under subsection (1);

(c) amend a provision of the constitution specified under subsection (1).

(3) The Director may, by written notice to the association, extend the time for which this section is to apply to the association.

(4) The constitution specified by the Director under subsection (1):

(a) is not to be altered except under this section; and

(b) has the same evidentiary value accorded by this Act to the association's constitution and to copies of them.

84 Stay of proceedings

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

(2) A person intending to apply for leave of the Court under subsection (1) must give the Director not less than 10 days notice of that intention.

(3) On the hearing of an application under subsection (1), the Director may be represented and may oppose the granting of the application.

85 Statutory Manager to report to Director

On the receipt of a request from the Director, the statutory manager of an incorporated association must, without delay, prepare and give to the Director a report showing how the administration is being carried out.

Division 3 Offences

86 Interpretation

(1) For this Division, an incorporated association is taken to be unable to pay its debts only if execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the association is returned unsatisfied in whole or in part.

(2) In this Division:

appropriate officer means, in relation to an incorporated association:

(a) that is being or has been wound up – the liquidator; or

(b) for which a provisional liquidator has been appointed – the provisional liquidator; or

(c) that is or has been under administration – the administrator or statutory manager; or

(d) that has executed a deed of arrangement – the deed's administrator; or

(e) that is defunct or is unable to pay its debts – the Director.

relevant day means, in relation to an incorporated association:

(a) that is being or has been wound up:

(i) if, because of the application of Part 5.6, Division 1A of the Corporations Act 2001, the winding up is taken to have begun on the day when an order that the association be wound up was made – the day on which

the application for the order was filed; or

(ii) in any other case – the day on which the winding up is taken, because of Part 5.6, Division 1A of the Corporations Act 2001, to have begun; or

(b) for which a provisional liquidator has been appointed – the day on which the provisional liquidator was appointed; or

(c) that is or has been under administration – the day on which the administration began; or

(d) that has executed a deed of arrangement – the day on which the deed was executed; or

(e) that is unable to pay its debts – the day on which execution or other process was first returned unsatisfied in whole or in part.

87 Application of Division

This Division applies to an incorporated association:

(a) that is being or has been wound up; or

(b) the winding up of which has been stayed or terminated; or

(c) for which a provisional liquidator has been appointed; or

(d) that is or has been under administration; or

(e) that has executed a deed of arrangement (including a deed that has since been terminated); or

(f) that is defunct or is unable to pay its debts.

88 Non-disclosure

(1) An officer or former officer of an incorporated association to which this Division applies:

(a) must, to the best of the person's knowledge and belief, fully and truly disclose to the appropriate officer:

(i) all the property of the association; and

(ii) how, to whom, for what consideration and when the association disposed of a part of its property, except a part disposed of in accordance with the constitution of the association; and

(b) must deliver to the appropriate officer or as the appropriate officer directs:

(i) all the property of the association in the person's custody or under the person's control and that the person is required by law to deliver up; or

(ii) all documents in the person's custody or under the person's control belonging to the association and that the person is required by law to deliver up; and

(c) must not, within 5 years before the relevant day or on or after that day:

(i) fraudulently conceal or remove a part of the association's property to the value of $100 or more; or

(ii) conceal a debt due to or payable by the association; or

(iii) fraudulently part with, alter or make an omission in, or be privy to fraudulently parting with, altering or making an omission in, a document affecting or relating to the affairs of the association; or

(iv) by a false representation or other fraud, obtain on credit for or on behalf of the association, property that the association has not subsequently paid for; or

(v) fraudulently pawn, pledge or dispose of property of the association that has been obtained on credit and has not been paid for; and

(d) must not fraudulently make a material omission in a statement relating to the affairs of the association; and

(e) must not, knowing or believing that a false debt has been proved by a person, fail for a period of one month or more to inform the appropriate officer of the knowledge or belief; and

(f) must not prevent the production of a document affecting or relating to the affairs of the association; and

(g) must not, within 5 years before the relevant day or on or after that day, attempt to account for a part of the association's property by making entries in the association's documents showing fictitious transactions, losses or expenses; and

(h) must not, within 5 years before the relevant day or on or after that day, make a false representation for the purpose of obtaining the consent of a creditor of the association to an agreement relating to the affairs of the association or to the winding up.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person must not take in pawn or pledge or otherwise receive property from a person knowing it to be pawned, pledged or disposed of in circumstances that amount to an offence against subsection (1)(c)(v) by the other person.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

89 Failure to keep proper records

(1) If:

(a) section 41 was not complied with in relation to an incorporated association to which this Division applies at any time during the 2 years immediately before the relevant day or the period between the incorporation of the association and the relevant day, whichever is the shorter; and

(b) the association was at a time during that period, or became at a later time, an incorporated association to which this Division applies;

an officer of the association who failed to take all reasonable steps to secure compliance by the association with that section throughout that period is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he or she believed on reasonable grounds that a competent and reliable person was charged with the duty of seeing that the requirements of section 41 were complied with and was in a position to discharge that duty.

90 Incurring debts not likely to be paid

(1) If:

(a) an incorporated association has incurred a debt; and

(b) immediately before the debt was incurred:

(i) there were reasonable grounds to expect that the association would not be able to pay all its debts as and when they became due; or

(ii) there were reasonable grounds to expect that, if the association incurred the debt, it would not be able to pay all its debts as and when they became due; and

(c) the association was at the time when the debt was incurred, or became at a later time, an incorporated association to which this Division applies;

a person who was an officer of the association, or who took part in the management of the association, when the debt was incurred is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves:

(a) that the debt was incurred without the defendant's express or implied authority or consent; or

(b) that when the debt was incurred the defendant did not have reasonable cause to expect:

(i) that the association would not be able to pay all its debts as and when they became due; or

(ii) that, if the association incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) If:

(a) an incorporated association has done an act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the association or of another person or for another fraudulent purpose; and

(b) the association was at the time when it did the act, or becomes at a later time, an incorporated association to which this Division applies;

a person who was concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(4) A certificate issued by a court stating that a person specified in the certificate:

(a) was convicted of an offence against subsection (1) in relation to the debt specified in the certificate incurred by the association specified in the certificate; or

(b) was convicted of an offence against subsection (3) in relation to the association specified in the certificate;

is, in any proceedings, prima facie evidence of the matters stated in the certificate.

(5) A document purporting to be a certificate issued under subsection (4) is, unless the contrary is established, taken to be a certificate issued under subsection (4) and to have been duly issued.

91 Powers of court if debts unlikely to be paid

(1) A court that convicts a person of an offence against section 90(1) may, on application by the Director or the liquidator of the incorporated association, declare that the person is personally responsible without limitation of liability for the payment to the association of an amount equal to the whole of the debt to which the conviction relates or so much of the debt as the court considers appropriate.

(2) A court that makes a declaration under this section may make consequential and ancillary orders and directions as it considers appropriate.

(3) This section has effect even though the person convicted of the offence is criminally liable in relation to the matters on the ground on which the declaration is made.

(4) On the hearing of an application under this section, the applicant may give evidence or call witnesses.

92 Frauds by officers

(1) An officer of an incorporated association must not:

(a) by false pretences, or by means of another fraud, induce a person to give credit to the association or to a related body corporate; or

(b) with intent to defraud the association or a related body corporate, or members or creditors of the association or a related body corporate, make or purport to make, or cause to be made or to be purported to be made, a gift or transfer of, or charge on, or cause or connive at the levying of an execution against, property of the association or of a related body corporate; or

(c) with intent to defraud the association or a related body corporate, or members or creditors of the association or a related body corporate, conceal or remove a part of the property of the association or of a related body corporate within 2 months before or on or after the date of an unsatisfied judgment or order for payment of money obtained against the association or a related body corporate.

Maximum penalty: 400 penalty units or imprisonment for 12 months.

(2) In this section:

related body corporate has the same meaning as in the Corporations Act 2001.

Part 10 Investigation of incorporated associations

93 Investigation of incorporated association's affairs

(1) The Director may, under this Part, conduct an investigation into the affairs of an incorporated association if the Director is satisfied it is appropriate having regard to information in the Director's possession.

(2) The Director must give written notice of the investigation to the association.

(3) The notice must specify the grounds for conducting the investigation.

94 Director may require production of books

For conducting an investigation of the affairs of an incorporated association, the Director may, by written notice, require:

(a) the association to produce to the Director immediately, or at the time and place specified in the notice, the books relating to the affairs of the association specified in the notice; or

(b) a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of the association (even if the association is being wound up or has been dissolved) to produce to the Director immediately the books relating to the affairs of the association specified in the notice; or

(c) a person to produce to the Director immediately all books relating to the affairs of the association (even if the association is being wound up or has been dissolved) that are in the custody or under the control of the person.

95 Director may carry out investigations in relation to books

(1) If the Director exercises a power under this Part to require another person to produce books, the Director may:

(a) if the books are produced:

(i) take possession of the books and may make copies of, or take extracts from, the books; and

(ii) require the other person, or a person who was party to the compilation of the books, to make a statement providing an explanation that the person concerned is able to provide as to a matter relating to the compilation of the books or as to a matter to which the books relate; and

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

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

(b) if the books are not produced, require the other person:

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

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

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

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

96 Examination of persons concerned with incorporated association

(1) For conducting an investigation of the affairs of an incorporated association, the Director may, by written notice, require a person whom the Director reasonably believes to have some knowledge of the affairs of the association, require the person to attend before the Director at the time and place specified in the notice to answer questions relating to the investigation.

(2) The person must not, without reasonable excuse, refuse or fail:

(a) to attend before the Director; or

(b) to answer a question put to the person by the Director.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) The person must not, when appearing before the Director, make a statement the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(4) The person is not excused from answering a question when required to do so by the Director on the ground that the answer to the question might tend to incriminate the person or make the person liable to a penalty, but the answer to the question is not admissible in evidence against the person in any proceedings, other than proceedings for an offence against subsection (2) or (3).

97 Power of entry

(1) If the Director believes on reasonable grounds that it is necessary for an investigation of the affairs of an incorporated association to enter land or premises occupied by the association, the Director may, at any reasonable time, enter the land or premises and exercise any of the following powers:

(a) examine books on the land or premises that relate to the affairs of the association or that the Director believes, on reasonable grounds, relate to those affairs;

(b) take possession of any of those books for such period as the Director thinks necessary for the investigation;

(c) require the other person, or a person who was party to the compilation of the books, to make a statement providing an explanation that the person concerned is able to provide as to a matter relating to the compilation of the books or as to a matter to which the books relate;

(d) make copies of, or take extracts from, any of those books.

(2) A person must not obstruct the Director in the exercise of powers under this section.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) If the Director has possession of books seized under this section, the Director must permit a person who would be entitled to inspect one or more of the books if they were not in the possession of the Director to inspect that book or those books at a reasonable time.

(4) In this section:

obstruct includes hinder, resist and attempt to obstruct.

98 Immunity from liability for complying with direction or requirement

A person is not subject to a liability by reason of compliance with a direction or requirement given or made under this Part.

99 Privileged communications

(1) If:

(a) the Director makes a requirement under this Part of a legal practitioner in relation to a book; and

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

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement but, if the legal practitioner refuses under this section to comply with a requirement, the legal practitioner must immediately provide in writing to the Director:

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

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

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) If:

(a) the Director, acting in pursuance of this Part, requires a legal practitioner to make a statement providing an explanation as to a matter relating to the compilation of books or as to a matter to which books relate; and

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

the legal practitioner is entitled to refuse to comply with the requirement, except to the extent that he or she is able to comply with the requirement without disclosing a privileged communication referred to in paragraph (b), unless the person to whom, or by or on behalf of whom, the communication was made agrees to the legal practitioner complying with the requirement.

(3) If the legal practitioner refuses to comply with a requirement under subsection (2), the legal practitioner must immediately provide in writing to the Director:

(a) if the legal practitioner knows the name and address of the person to whom, or by or on behalf of whom, the communication was made – that name and address; and

(b) if the communication was made in writing – sufficient particulars to identify the document containing the communication.

Maximum penalty: 100 penalty units.

100 Orders against persons concerned with incorporated associations

(1) In this section, a reference to a prescribed person is, in relation to an incorporated association, read as a reference to:

(a) a liquidator or provisional liquidator of the association; or

(b) a person authorised by the Director to make an application under this section in relation to the association.

(2) Subject to subsection (3), if, on application by the Director or a prescribed person, the Supreme Court is satisfied:

(a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to an incorporated association; and

(b) the association has suffered, or is likely to suffer loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty;

the Court may make an order or orders as it considers appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person even though the person may have committed an offence in relation to the matter to which the order relates.

(3) The Court may not make an order against a person under subsection (2) unless the Court has given the person the opportunity:

(a) to give evidence himself or herself; or

(b) to call witnesses to give evidence; or

(c) to adduce other evidence in relation to the matters to which the application relates; or

(d) to employ, at his or her own expense, a legal practitioner to put to him or her or to another witness the questions the Court considers appropriate for the purpose of enabling him or her to explain or qualify an answer or evidence given by him or her.

(4) The orders that may be made under subsection (2) against a person include:

(a) an order directing the person to pay money or transfer property to the association; and

(b) an order directing the person to pay to the association the amount of the loss or damage.

(5) This section does not prevent a person from instituting other proceedings in relation to matters for which an application may be made under this section.

Part 12 Miscellaneous provisions

103 Civil proceedings not to be stayed

A civil proceeding under this Act may not be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

104 Form and evidentiary value of books

(1) A book required by this Act to be kept or prepared may be kept or prepared:

(a) by making entries in a bound or looseleaf book; or

(b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in another manner approved by the Director.

(2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:

(a) the matters recorded or stored will be capable of being reproduced in written form; or

(b) a reproduction of those matters is kept in a written form approved by the Director.

(3) An incorporated association must take all reasonable precautions, including any prescribed precautions for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, a book or part of a book required by this Act to be kept or prepared by the association.

(4) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, to be taken to be a reproduction of those matters.

105 Provisions indemnifying officers or auditors

(1) A provision (whether contained in the constitution of an incorporated association, in a contract with the association or otherwise) exempting an officer or auditor of the association from, or indemnifying him or her against, a liability to the association that by law would otherwise attach to him or her in relation to negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association, is void.

(2) Subsection (1) does not apply in relation to a contract of insurance.

(3) Despite anything in this section, an incorporated association may, in accordance with its constitution or otherwise, indemnify an officer or auditor against a liability incurred by him or her in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted.

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

(1) An officer of an incorporated association must take all reasonable steps to secure compliance by the association with its obligations under this Act.

Maximum penalty: 100 penalty units.

(2) An incorporated association or officer of an incorporated association must not contravene a condition imposed under this Act by the Director in relation to the association.

Maximum penalty: 100 penalty units.

107 Falsification of books

(1) An officer, former officer, member or former member of an incorporated association must not conceal, destroy, mutilate or falsify books relating to or affecting affairs of the association.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) If matter used or intended to be used in connection with the keeping of books relating to or affecting affairs of an incorporated association is recorded or stored in an illegible form by means of a mechanical device, an electronic device or another device, a person:

(a) must not record or store, by means of that device, matter that the person knows to be false or misleading in a material particular; or

(b) must not destroy, remove or falsify matter that is recorded or stored by means of that device, or that has been prepared for the purpose of being recorded or stored or for use in compiling or recovering other matter to be recorded or stored by means of that device; or

(c) if the person has a duty to record or store matter by means of that device, must not fail to record or store the matter by means of that device:

(i) with intent to falsify an entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

(ii) knowing that the failure to so record or store the matter will render false or misleading in a material particular other matter so recorded or stored.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that he or she acted honestly and that, in all the circumstances, the act or omission constituting the offence should be excused.

108 Misrepresentation as to incorporation under this Act

A person must not, in order to gain an advantage for himself or herself or another person, falsely represent that a body is an incorporated association.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

109 Oppressive or unreasonable acts

(1) An application to the Local Court or Supreme Court for a particular order or orders specified in subsection (2) may be made by a member of an incorporated association or former member expelled from the association (provided the application is made within 6 months after the expulsion) who believes that:

(a) the affairs of the association are being conducted in a way that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (***the oppressed member***) or in a way that is contrary to the interests of the members as a whole; or

(b) an act or omission, or a proposed act or omission, by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (also ***the oppressed member***) or was or would be contrary to the interests of the members as a whole; or

(c) the constitution of the association contains provisions that are oppressive or unreasonable; or

(d) the expulsion of the member was oppressive or unreasonable.

(2) For subsection (1), the orders are as follows:

(a) an order that the association be wound up;

(b) an order regulating the future conduct of the association's affairs;

(c) an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the association to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the association;

(d) an order appointing a receiver or a receiver and manager of the property of the incorporated association;

(e) an order restraining a person from engaging in specified conduct or from doing a specified act;

(f) an order requiring a person to do a specified act;

(g) an order altering the constitution of the association;

(h) an order that the member expelled be reinstated as a member of the association;

(i) an order consequential on or ancillary to an order mentioned in paragraphs (a) to (h).

(3) Subject to subsections (4) and (5), the Court may make the orders the Court considers appropriate if, on the hearing of the application, it is satisfied in relation to a matter specified in subsection (1).

(4) The Court must not make an order for the winding up of the association if it is satisfied the winding up of the association would unfairly prejudice the oppressed member.

(5) The Local Court may only make an order referred to in subsection (2)(b), (c), (e), (f), (g), (h) or (i).

(6) If an order that the association be wound up is made, the provisions of this Act relating to the winding up of an association apply, with the necessary modifications for this Act, as if the order had been made on an application filed in the Court by the association.

(7) If an order makes an alteration to the constitution of the association, then, despite any other provision of this Act but subject to the order, the association does not have power, without the leave of the Court, to make a further alteration to the constitution inconsistent with the order but, subject to this section, the alteration made by the order has effect as if it had been properly made by resolution of the association.

(8) A copy of an order must be filed by the applicant with the Director within 14 days after it is made.

Maximum penalty: 100 penalty units.

(9) For this section, a breach of the constitution of an incorporated association by the committee of the association may be regarded as constituting action that is oppressive to members of the association.

(10) The Director may intervene in proceedings before the Court arising under this section.

(11) If the Director intervenes in proceedings, the Director becomes a party to the proceedings and has all the rights, including rights of appeal, of a party to the proceedings.

110 Disposing, charging or dealing with prescribed property

(1) An incorporated association must not dispose of, charge or otherwise deal with any prescribed property contrary to this section.

(2) An Aboriginal or Torres Strait Islander corporation must not dispose of, charge or otherwise deal with prescribed property that is community land contrary to this section.

(3) Subject to subsections (13) and (14) and section 77, any disposal, charge or dealing of the prescribed property contrary to this section is void.

(4) The disposal, charge or other dealing of the prescribed property requires the consent of the Minister and must be conducted in accordance with any conditions the Minister imposes on that consent.

(5) The Minister may consent to the disposal, charge or dealing of the prescribed property in accordance with this section.

(6) Despite subsections (4) and (8), the following transactions do not require consent of the Minister under this section:

(a) a disposal of prescribed property to the Territory;

(b) a charge on prescribed property as security for a loan or other benefit by the Territory;

(c) a lease or sublease of prescribed property for a term of 12 months or less;

(d) a disposal of, charge on or other dealing with a lease referred to in:

(i) section 6 of the *Special Purposes Leases Act 1953*; or

(ii) section 46 of the *Crown Lands Act 1992*.

Note for subsection (6)(d)

These transactions already require the consent of the Minister responsible for those Acts.

(7) A copy of any consent given by a Minister under section 6 of the *Special Purposes Leases Act 1953* or section 46 of the *Crown Lands Act 1992* must be given by the Agency responsible for that Act to the Director as soon as practicable.

(8) The Minister must not consent to the disposal, charge or dealing of prescribed property that is community land, unless it is for one of the following purposes:

(a) to register an easement or easement in gross under the *Land Title Act 2000*;

(b) to give effect to a recommendation under section 114 of the *Pastoral Land Act 1992* in relation to an abandoned Aboriginal community living area;

(c) to transfer an estate in fee simple in the land to an incorporated association, an incorporated trading association or an Aboriginal or Torres Strait Islander corporation, formed for objects similar to the objects of, and having substantially the same members as, the association or corporation from which the estate is to be transferred;

(d) to grant a lease of or licence to part of the land to enable the provision of health, education or housing services or the offering of financial services by an ADI to a class of persons that includes the members of the incorporated association or Aboriginal or Torres Strait Islander corporation seeking to grant the lease or licence;

(e) to grant a lease of or licence to part of the land for any use or development allowed for the land under the *Planning Act 1999*.

(9) Despite subsections (4) and (8), the consent of the Minister is not required for a lease or licence referred to in subsection (8)(d) or (e) with a term of 10 years or less.

(10) If the prescribed property to be disposed of, charged or otherwise dealt with was acquired wholly or partly from or using funds obtained under a grant from the Commonwealth, the Minister must not give consent under this section unless the Minister:

(a) gives the Commonwealth reasonable notice of the Minister's intention to give consent with an invitation to submit comments within a specified period; and

(b) considers any submissions made by the Commonwealth within the specified period.

(11) Unless otherwise provided by the Minister in a consent, the following are taken to be prescribed property:

(a) any property exchanged for the prescribed property disposed, charged or otherwise dealt with;

(b) any funds realised on the disposal of prescribed property;

(c) any property acquired wholly or partly from funds referred to in paragraph (b).

(12) An incorporated association must keep and maintain a register of its prescribed property in accordance with the Regulations.

Maximum penalty: 100 penalty units.

(13) The Minister may consent to a purported disposal, charge or dealing of prescribed property after it occurs if the Minister is of the opinion that refusing consent would, in the circumstances, be unjust to all parties to the purported disposal, charge or dealing.

(14) Any disposal, charge or dealing consented to by the Minister under subsection (13) is taken to be valid and effective on and from the day on which the purported disposal, charge or dealing occurred.

(15) To avoid doubt, any disposal, charge or dealing of prescribed property validly made in accordance with this section as in force before 17 July 2022 remains valid.

(16) In this section:

Aboriginal or Torres Strait Islander corporation, see section 16-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

community land means land granted for an Aboriginal community living area under:

(a) Part IV of the *Crown Lands Act 1931* before the commencement of the *Pastoral Land Act 1992*; or

(b) Part 8 of the *Pastoral Land Act 1992*.

111 Regulatory offences

An offence of contravening section 16, 17(4), 22, 23, 27(7), 34 or 71(4) is a regulatory offence.

112 Proceedings for offences

(1) A prosecution for an offence against this Act may only be commenced by:

(a) the Director; or

(b) a person authorised by the Minister or Director.

(2) A document apparently signed by the Director or the Minister authorising a person to commence a particular prosecution is, in the absence of proof to the contrary, proof of the fact so stated.

113 Evidentiary provisions

(1) For this Act and in proceedings under or arising out of this Act:

(a) a document purporting to be signed by the Director and purporting to be a certificate of incorporation of an association is, unless the contrary is proved, to be taken to be proof of the incorporation of the association on the date specified in the instrument; and

(b) a document purporting to be a copy of a document registered by or filed with the Director under this Act and certified by the Director to be a true copy of a document of that type is, unless the contrary is proved, to be taken to be a true copy of the document; and

(c) a document purporting to be a copy of, or extract from, a record kept by an incorporated association and purporting to be verified by an officer of the association authorised by the committee of the association for the purpose is, unless the contrary is proved, to be taken to be a true copy of, or extract from, the document; and

(d) a document purporting to bear the common seal of an incorporated association is, unless the contrary is proved, to be taken to have been properly executed by the association.

(2) For this Act and in proceedings under or arising out of this Act, a certificate purporting to be signed by the Director and certifying any of the following is, unless the contrary is proved, to be taken to be proof of the matter certified:

(a) at a date or during a period specified in the certificate an association was or was not incorporated under this Act by a name specified in the certificate;

(b) an incorporated association has or has not complied with a requirement of this Act as to the filing of a document or return or the giving of notice;

(c) an incorporated association has altered its name in the manner specified in the certificate, including the dates on which the alteration was registered by the Director;

(d) an incorporated association has been or is being wound up, including the date on which the winding up commenced and (if applicable) the date on which the association was dissolved;

(e) associations amalgamated to form an incorporated association specified in the certificate, including the date of the incorporation of the amalgamated association.

(3) In proceedings for an offence against this Act, an allegation in the complaint or information as follows is, in the absence of proof to the contrary, to be accepted as proved:

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

(b) an association is or was at a specified time a prescribed association;

(c) the defendant is or was at a specified time an officer of an incorporated association named in the complaint or information;

(d) a meeting of the members required by a specified provision of this Act to be held has not been held as required by that provision.

(4) Judicial notice must be taken of the signature of the Director 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 Director.

114 Right of appeal – disqualified person

(1) A disqualified person may appeal to the Local Court against the making of the declaration under section 40(1).

(2) The appeal must be filed with the Court within 21 days after the date of notice of the declaration given to the person.

(3) The Court may, at any time, extend the period for filing the appeal.

(4) The Commissioner of Police is a party to the appeal.

(5) On the hearing of the appeal, the Court must decide whether the person is a fit and proper person to be an officer of an incorporated association.

(6) The Court may make its decision only on the evidence given by a party to the appeal.

(7) The Commissioner of Police cannot be compelled to give evidence relating to the issue of the certificate or the basis on which the certificate was given.

(8) If the Court is satisfied the appellant is a fit and proper person to be an officer of an incorporated association, the Court must, by order, revoke the declaration.

(9) If the Court is satisfied the appellant is not a fit and proper person to be an officer of an incorporated association, the Court must dismiss the appeal.

(10) The Court may make any consequential or ancillary orders it considers appropriate in the circumstances.

115 Right of appeal – general

(1) A person aggrieved by a decision of the Director under this Act may appeal to the Local Court against the decision.

(2) The appeal must be filed with the Court within 21 days after the making of the decision being appealed against.

(3) The Court may, at any time, extend the period for filing the appeal.

(4) On the hearing of the appeal, the Court may:

(a) vary or reverse the decision of the Director and make any consequential or ancillary orders it considers appropriate in the circumstances; or

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

116 Director may require production of document

(1) The Director may, by written notice, require a person to give the Director any document an incorporated association is required to keep under this Act in the reasonable time stated in the notice.

(2) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty: 20 penalty units.

117 Fax or electronic transmission of documents

(1) If, under a provision of this Act or the Regulations, a person is required to give a document to the Director, it is sufficient compliance with the requirement if the Director receives a copy of the document by facsimile or electronic transmission.

(2) The person must ensure the original of the document signed by any person who is required to sign it is kept so that it is able to be produced readily to the Director for at least 7 years after the copy of it was given to the Director.

Maximum penalty: 20 penalty units.

(3) The Director may, by written notice, require the person to give the Director the original document in the reasonable time stated in the notice.

(4) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty: 20 penalty units.

118 Service of documents

(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 the public officer at the address referred to in section 28 or, by registered post, at the public officer's last known address.

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

(3) A notice, demand, summons, writ or other document or process may be served on a member of a committee of an incorporated association by sending it by post to the member's last known address.

119 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may provide for any of the following matters:

(a) the cancellation, and matters arising out of the cancellation, of the incorporation of incorporated associations that have ceased to exist or to be associations, for this Act;

(b) the issue of certified copies of certificates of incorporation;

(c) the inspection of documents filed with the Director under this Act or the Regulations;

(d) the form of, and the matters to be provided for in, the constitution of incorporated associations;

(e) matters relating to the accounts of incorporated associations and the auditing of those accounts;

(f) 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;

(g) penalties for offences against the Regulations not exceeding 100 penalty units;

(h) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations and for the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice.

(3) The Regulations may:

(a) make different provision in relation to:

(i) different persons or matters; or

(ii) different classes of persons or matters; or

(b) apply differently by reference to specified exceptions or factors.

Part 13 Repeal and transitional provisions

120 Definitions

In this Part:

repealed Act means the *Associations Incorporation Act 1963* as in force immediately before the commencement of this Act.

121 Repeal

The Acts specified in the Schedule are repealed.

122 Applications

(1) Subsection (2) applies if:

(a) before the commencement of this Act, an application was made for incorporation under section 7 or 25C of the repealed Act; and

(b) on the commencement, the application had not been finally decided.

(2) The application is taken to be an application under section 8 of this Act.

123 Certificates of incorporation, officers etc.

(1) If a certificate of incorporation for an association or trading association under the repealed Act was in force immediately before the commencement of this Act:

(a) the certificate is taken to be a certificate of incorporation of the association under this Act; and

(b) if the association was an incorporated trading association under the repealed Act – the association is taken to be an incorporated trading association under this Act.

(2) A reference in this Act to an incorporated association's constitution includes a reference to the rules of an association that is taken to be an incorporated association under this Act.

(3) The public officer of an incorporated association holding office immediately before the commencement of this Act is the public officer of the association under this Act.

124 Notices for associations performing local government functions

A notice under section 25AZH of the repealed Act is taken to be a notice under section 101 of this Act.

125 Investigations

An investigation commenced under section 25AU of the repealed Act but not completed immediately before the commencement of this Act may be conducted under Part 10 of this Act.

126 Consents in relation to prescribed property

(1) A consent of the Minister under section 26A of the repealed Act, or section 6 of the *Special Purposes Leases Act 1953*, that is in force immediately before the commencement of this Act is taken to be a consent for section 77 of this Act.

(2) A disposal, charge or dealing with property that is valid and of effect under the *Associations Incorporation Amendment Act 1997* is taken to have effect for the purposes of this Act.

127 If constitution not in accordance with Act on commencement

If the constitution of an association incorporated under the repealed Act does not comply with section 21 of this Act, the association must, within 2 years after the commencement of this Act, alter its constitution to comply.

Maximum penalty: 100 penalty units.

128 Audits

(1) An association taken to be an incorporated association under this Act (an ***existing association***) may elect to continue to comply with the auditing requirements that applied to the existing association immediately before this Act commenced during the period commencing on the day on which this Act commences and ending on 30 June of the financial year in which that day occurs.

(2) If, during the period mentioned in subsection (1), an existing association makes an election under that subsection, despite the repeal of the repealed Act:

(a) sections 25, 25AG, 25AH, 25AI, 25AJ, 25AK and 25AM of the repealed Act continue to apply to the existing association; and

(b) Part 5 of this Act does not apply to the existing association.

(3) If, during the period mentioned in subsection (1), an existing association does not make an election under that subsection, Part 5 of this Act applies to the existing association.

(4) If the first financial year of a tier 2 incorporated association ends after the date on which this Act commences, the committee is taken to have complied with section 47(2) in relation to that financial year if the association's accounts for the year have been audited by a person who is not a member of the association.

Part 14 Transitional matters for Justice and Licensing Legislation Further Amendment Act 2022

129 Definitions

In this Part:

amending Act means Part 3, Division 1 of the *Justice and Licensing Legislation Further Amendment Act 2022*.

commencement means the commencement of the amending Act.

Commissioner means the Commissioner as defined in section 4 of this Act as in force immediately before the commencement.

130 Delegation

(1) A delegation by the Commissioner of any of the Commissioner's powers or functions under this Act, other than a power or function under sections 67 to 70, that is in force immediately before the commencement is taken to be a delegation by the Director made under section 4B(1).

(2) A delegation by the Commissioner of any of the Commissioner's powers or functions under sections 67 to 70 of this Act that is in force immediately before the commencement is taken to be a delegation by the CEO made under section 4B(2).

131 Secrecy

Despite the amendments to section 6 made by the amending Act, section 6, as in force immediately before the commencement, continues to apply to a person who was, at any time before the commencement:

(a) engaged as a member of the staff of the Commissioner; or

(b) authorised to perform a function or exercise a power of the Commissioner on behalf of the Commissioner.

132 Protection from liability

Despite the amendments to section 7 made by the amending Act, section 7, as in force immediately before the commencement, continues to apply to a person who was the Commissioner at any time before the commencement.

133 Property vested in Commissioner

If, immediately before the commencement, property is vested in the Commissioner under section 67 or a corresponding previous law of the Territory, on commencement the property is taken to vest in the CEO under section 67.

134 Pending applications

(1) Subsection (2) applies in relation to an application if, before the commencement:

(a) the application had been made to the Commissioner under this Act; and

(b) the Commissioner had not made a decision on the application.

(2) The application must be dealt with and decided in accordance with this Act as in force immediately before the commencement.

(3) The decision made by the Commissioner on the application is taken to be a decision made by the Director under this Act.

135 Pending appeals

(1) Subsection (2) applies in relation to an appeal if, before the commencement:

(a) the appeal had been commenced under this Act; and

(b) a decision on the appeal had not been made.

(2) The appeal must be dealt with in accordance with this Act as in force immediately before the commencement.

136 Appeals not yet commenced

(1) Subsection (2) applies in relation to a decision if, before the commencement:

(a) the decision had been made by the Commissioner and the period for appealing the decision had not expired; and

(b) an appeal had not been commenced.

(2) A person who would have been entitled to appeal against the decision under this Act as in force immediately before the commencement may do so under this Act as in force after the commencement as if the decision had been made by the Director.

137 Continuation of ongoing documents and actions

(1) On the commencement, an ongoing Director document continues with the same force and effect as if it had been issued by, or given to, the Director.

(2) On the commencement, an ongoing Director action continues with the same force and effect as if it had been done by, or in relation to, the Director.

(3) On the commencement, an ongoing CEO document continues with the same force and effect as if it had been issued by, or given to, the CEO.

(4) On the commencement, an ongoing CEO action continues with the same force and effect as if it had been done by, or in relation to, the CEO.

(5) This section applies subject to the other provisions of this Part.

(6) In this section, a reference to something done before the commencement includes a reference to something done after the commencement in accordance with this Part as if it had been done before the commencement.

(7) In this section:

ongoing CEO action means an action or thing that:

(a) was done by, or in relation to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the CEO; and

(b) immediately before the commencement, had ongoing effect.

ongoing CEO document means a document that:

(a) was issued by, or given to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the CEO; and

(b) immediately before the commencement, had ongoing effect.

ongoing Director action means an action or thing that:

(a) was done by, or in relation to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and

(b) immediately before the commencement, had ongoing effect.

ongoing Director document means a document that:

(a) was issued by, or given to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and

(b) immediately before the commencement, had ongoing effect.

138 Offence provisions – before and after commencement

(1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.

(2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.

(3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(4) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

Schedule Repealed Acts

section 121

Associations Incorporation Ordinance 1963	No. 49, 1963
Associations Incorporation Ordinance 1969	No. 22, 1969
Associations Incorporation Act 1978	No. 22, 1979
Associations Incorporation Amendment Act 1981	No. 75, 1981
Associations Incorporation Amendment Act 1989	No. 46, 1989
Associations Incorporation Amendment Act 1990	No. 57, 1990
Associations Incorporation Amendment Act 1995	No. 41, 1995
Associations Incorporation Amendment Act 1996	No. 2, 1996
Associations Incorporation Amendment Act 1997	No. 11, 1997
Associations Incorporation Amendment Act 2002	No. 70, 2002

ENDNOTES

1 KEY

Key to abbreviations

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

2 LIST OF LEGISLATION

***Associations Act 2003* (Act No. 56, 2003)**
Assent date 22 October 2003
Commenced 5 May 2004 (*Gaz* G18, 5 May 2004, p 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)**
Assent date 7 January 2004
Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

***Police Administration Amendment (Powers and Liability) Act 2005* (Act No. 11, 2005)**
Assent date 17 March 2005
Commenced 20 April 2005 (*Gaz* G16, 20 April 2005, p 5)

***Statute Law Revision Act 2005* (Act No. 44, 2005)**
Assent date 14 December 2005
Commenced 14 December 2005

***Justice Legislation Amendment Act 2006* (Act No. 13, 2006)**
Assent date 18 May 2006
Commenced 1 July 2006 (*Gaz* G26, 28 June 2006, p 7)

***Justice Legislation Amendment Act (No. 2) 2006* (Act No. 35, 2006)**
Assent date 3 November 2006
Commenced 3 November 2006

***Legal Profession (Consequential Amendments) Act 2007* (Act No. 7, 2007)**
Assent date 17 May 2007
Commenced s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3);
rem: 17 May 2007

***Local Government Amendment Act 2007* (Act No. 15, 2007)**

Assent date	4 September 2007
Commenced	pt 1: 4 September 2007; pt 2: 11 September 2007 (*Gaz* S26, 11 September 2007; pt 3: 17 October 2007 (*Gaz* G31, 17 October 2007, p 2)

***Revenue Law Reform (Budget Initiatives) Act 2008* (Act No. 23, 2008)**

Assent date	30 June 2008
Commenced	pt 1, ss 3, 12(1), 18 and 19: 1 January 2008; ss 7, 10 and 11(1): 6 May 2008; rem: 1 July 2008 (s 2)

***Local Government (Consequential Amendments) Act 2008* (Act No. 28, 2008)**

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

***Justice Legislation Amendment (Penalties) Act 2010* (Act No. 12, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (*Gaz* G24, 16 June 2010, p 3)

***Statute Law (Miscellaneous Provisions) Act 2011* (Act No. 44, 2011)**

Assent date	21 December 2011
Commenced	27 January 2012 ((other than amdts to *Darwin Port Corporation Act* and *Marine Act* listed in the Sch to Act) *Gaz* S3, 27 January 2012))

***Local Government Amendment Act 2014* (Act No. 19, 2014)**

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014, (s 2)

***Correctional Services (Related and Consequential Amendments) Act 2014* (Act No. 27, 2014)**

Assent date	4 September 2014
Commenced	9 September 2014 (*Gaz* S80, 9 September 2014, p 2)

***Statute Law Revision Act 2014* (Act No. 38, 2014)**

Assent date	13 November 2014
Commenced	13 November 2014

***Licensing (Repeals and Consequential Amendments) Act 2014* (Act No. 44, 2014)**

Assent date	5 December 2014
Commenced	1 January 2015 (*Gaz* S130, 19 December 2014, p 2)

***Statute Law Revision Act 2017* (Act No. 4, 2017)**

Assent date	10 March 2017
Commenced	12 April 2017 (*Gaz* G15, 12 April 2017, p 3)

***Local Government Act 2019* (Act No. 39, 2019)**

Assent date	13 December 2019
Commenced	pt 8.6: 1 July 2022; rem: 1 July 2021 (*Gaz* S27, 30 June 2021)

Amending Legislation

***Statute Law Revision Act 2020* (Act No. 26, 2020)**

Assent date	19 November 2020
Commenced	20 November 2020 (s 2)

Local Government Amendment Act 2021 **(Act No. 15, 2021)**

Assent date	25 May 2021
Commenced	26 May 2021 (s 2)

Licensing (Director-General) Repeal Act 2020 **(Act No. 4, 2020)**

Assent date	9 March 2020
Commenced	14 April 2020 (*Gaz* G13, 1 April 2020, p 2)

Statute Law Amendment (Territory Economic Reconstruction) Act 2021 **(Act No. 19, 2021)**

Assent date	31 August 2021
Commenced	pt 6: 2 October 2021; rem: 29 September 2021 (*Gaz* G39, 29 September 2021, p 1)

Statute Law Amendment (Territory Economic Reconstruction) Act 2022 **(Act No. 5, 2022)**

Assent date	14 April 2022
Commenced	pt 7: nc; rem: 25 May 2022 (*Gaz* G21, 25 May 2022, p 1)

Associations and Liquor Amendment Act 2022 **(Act No. 12, 2022)**

Assent date	2 June2022
Commenced	17 July 2022 (s 2)

Justice and Licensing Legislation Further Amendment Act 2022 **(Act No. 21, 2022)**

Assent date	31 October 2022
Commenced	pt 3: 1 February 2023; rem: 21 December 2022 (*Gaz* G50, 21 December 2022, p 1)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 6, 40, 47, 62, 72, 77, 110, 120 and 126.

4 LIST OF AMENDMENTS

s 3	amd No. 13, 2006, s 8
s 4	amd No. 13, 2006, s 9; No. 28, 2008, s 3; No. 44, 2011, ss 12 and 27; No. 19, 2014, s 26; No. 19, 2021, s 4; No. 21, 2022, s 15
ss 4A – 4C	ins No. 21, 2022, s 16
s 5	amd No. 19, 2021, s 5; No. 21, 2022, s 18
s 6	amd No. 44, 2005, s 35; No. 23, 2008, s 21; No. 12, 2010, s 3; No. 44, 2011, s 27; No. 44, 2014, s 145; No. 4, 2020, s 77; No. 39, 2019, s 370; No. 5, 2022, s 35; No. 21, 2022, s 18
s 7	amd No. 21, 2022, s 18
s 8	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 9	amd No. 21, 2022, s 18
s 10	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 11	amd No. 44, 2011, s 27
s 13A	ins No. 35, 2006, s 3
s 16	amd No. 12, 2010, s 3
ss 17 – 18	amd No. 21, 2022, s 18
s 19	amd No. 44, 2011, s 27
s 22	amd No. 12, 2010, s 3; No. 21, 2022, s 18

s 23	amd No. 12, 2010, s 3; No. 44, 2011, s 27; No. 21, 2022, s 18
s 24	amd No. 21, 2022, s 18
s 25	amd No. 44, 2011, s 27
s 27	amd No. 44, 2011, s 27
s 28	amd No. 12, 2010, s 3; No. 21, 2022, s 18
s 30	amd No. 44, 2005, s 35; No. 12, 2010, s 3; No. 44, 2011, s 27; No. 27, 2014, s 57; No. 21, 2022, s 18
s 31	amd No. 12, 2010, s 3; No. 44, 2011, s 27
ss 32 – 33	amd No. 12, 2010, s 3
s 34	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 37	amd No. 35, 2006, s 4
s 38	amd No. 12, 2010, s 3; No. 44, 2011, s 27
pt 4	
div 3 hdg	amd No. 44, 2011, s 27
s 40	amd No. 1, 2004, s 62; No. 11, 2005, s 16; No. 44, 2011, s 27; No. 21, 2022, s 18
ss 41 – 43	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 44	amd No. 12, 2010, s 3; No. 44, 2011, s 27; No. 21, 2022, s 18
s 45	amd No. 12, 2010, s 3; No. 21, 2022, s 18
s 46	amd No. 13, 2006, s 10; No. 12, 2010, s 3; No. 44, 2011, s 27
ss 47 – 48	amd No. 12, 2010, s 3; No. 44, 2011, s 27; No. 21, 2022, s 18
s 51	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 52	amd No. 21, 2022, s 18
s 54	amd No. 28, 2008, s 3; No. 44, 2011, s 27; No. 38, 2014, s 26; No. 21, 2022, s 18
s 56	amd No. 21, 2022, s 18
s 57	amd No. 44, 2011, s 27
s 62	amd No. 44, 2011, s 27
s 63	amd No. 38, 2014, s 2; No. 21, 2022, s 18
s 65	amd No. 44, 2005, s 35; No. 44, 2011, s 27; No. 21, 2022, s 18
ss 66 – 68	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 69	amd No. 21, 2022, s 18
s 70	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 71	amd No. 12, 2010, s 3; No. 21, 2022, s 18
s 72	amd No. 35, 2006, s 5; No. 44, 2011, s 27
ss 73 – 74	amd No. 21, 2022, s 18
s 75	amd No. 12, 2010, s 3
s 76	amd No. 21, 2022, s 18
ss 77 – 81	amd No. 44, 2011, s 27
s 78	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 79	amd No. 44, 2011, s 27
ss 80 – 81	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 83	amd No. 44, 2011, s 27; No. 21, 2022, s 18
ss 84 – 85	amd No. 21, 2022, s 18
s 86	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 87	amd No. 44, 2011, s 27
ss 88 – 90	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 91	amd No. 21, 2022, s 18
s 92	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 93	amd No. 21, 2022, s 18
ss 94 – 95	amd No. 44, 2011, s 27; No. 21, 2022, s 18
ss 96 – 97	amd No. 12, 2010, s 3; No. 21, 2022, s 18
s 99	amd No. 12, 2010, s 3; No. 44, 2011, s 27; No. 21, 2022, s 18
s 100	amd No. 7, 2007, s 16; No. 44, 2011, s 27; No. 21, 2022, s 18
pt 11 hdg	rep No. 15, 2007, s 9
ss 101 – 102	rep No. 15, 2007, s 9
s 104	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 106	amd No. 12, 2010, s 3; No. 21, 2022, s 18

s 107	amd No. 12, 2010, s 3; No. 44, 2011, s 27
s 108	amd No. 12, 2010, s 3
s 109	amd No. 12, 2010, s 3; No. 44, 2011, s 27; No. 21, 2022, s 18
s 110	amd No. 12, 2010, s 3; No. 44, 2011, ss 13 and 27; No. 4, 2017, s 34 sub No. 12, 2022, s 4 amd No. 21, 2022, s 18
s 112	amd No. 21, 2022, s 18
s 113	amd No. 44, 2011, s 27; No. 21, 2022, s 18
s 115	amd No. 21, 2022, s 18
ss 116 – 117	amd No. 12, 2010, s 3; No. 21, 2022, s 18
s 119	amd No. 21, 2022, s 18
s 127	amd No. 12, 2010, s 3
pt 14 hdg	ins No. 21, 2022, s 17
ss 129 – 138	ins No. 21, 2022, s 17