

Associations Incorporation Amendment Act 2009

No. 12 of 2009

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Victoria

Associations Incorporation Amendment Act 2009[†]

No. 12 of 2009

[Assented to 7 April 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to amend the **Associations Incorporation Act 1981**—

- (a) to provide for the merger of the roles of secretary and public officer of an incorporated association;
- (b) to establish the Registrar as a body corporate;

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- (c) to prohibit an incorporated association from acting in contravention of its rules or contrary to its statement of purposes;
 - (d) to provide remedies where an incorporated association engages in oppressive conduct;
 - (e) to allow for the appointment of a statutory manager to an incorporated association;
 - (f) to prohibit an incorporated association from distributing its assets to its members on winding up;
 - (g) to permit voluntary cancellation of incorporation for certain incorporated associations;
 - (h) to improve generally the operation of the **Associations Incorporation Act 1981**.

2 Commencement

- (1) This Act (except Parts 3 and 4) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Subject to subsection (4), Part 3 comes into operation on a day to be proclaimed.
- (3) Subject to subsection (4), Part 4 comes into operation on a day to be proclaimed.
- (4) If Part 3 or Part 4 does not come into operation before 1 December 2011, it comes into operation on that day.

Associations Incorporation Amendment Act 2009
No. 12 of 2009

Part 1—Preliminary

s. 3

3 Principal Act

In this Act, the **Associations Incorporation Act 1981** is called the Principal Act.

See:
Act No.
9713.
Reprint No. 7
as at
18 September
2007
and
amending
Act No.
2/2008.
LawToday:
www.
legislation.
vic.gov.au

PART 2—GENERAL AMENDMENTS

4 Definitions

In section 3(1) of the Principal Act—

(a) **insert** the following definition—

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

(b) for the definition of **Registrar substitute**—

"Registrar means the body corporate established under section 38;"

5 Rights of members under rules

(1) **Insert** the following heading to section 14A of the Principal Act—

"Enforceability of rules and purposes".

(2) After section 14A(1) of the Principal Act **insert**—

"(1A) Subject to this Act, an incorporated association must not—

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

(1B) The public officer or a member of the committee of an incorporated association must not in any way, by act or omission,

directly or indirectly, be knowingly concerned in or party to a contravention by the incorporated association of subsection (1A)."

(3) In section 14A(2) of the Principal Act for "or a member of an incorporated association" **substitute** "a member of an incorporated association or the Registrar".

(4) After section 14A(2)(a) of the Principal Act **insert**—

"(ab) restraining an incorporated association from doing an act that is outside the scope of its statement of purposes; or".

(5) After section 14A(4) of the Principal Act **insert**—

"(5) The Registrar may make an application to the Magistrates' Court under subsection (2) only if the Registrar is satisfied that it is in the public interest to do so."

6 New section 14C inserted

After section 14B of the Principal Act **insert**—

"14C Oppressive conduct

(1) A member or former member of an incorporated association may apply to the Magistrates' Court for an order under this section on the ground that the incorporated association has engaged, or proposes to engage, in oppressive conduct.

(2) Unless the Magistrates' Court grants leave to apply at a later date, an application under subsection (1) by a former member must be made within 6 months of the person ceasing to be a member of the incorporated association.

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- (3) The Magistrates' Court may only grant leave to a former member to make an application under subsection (1) later than 6 months after the person has ceased to be a member of the incorporated association if the Magistrates' Court is satisfied that there is sufficient public interest to do so.
- (4) On hearing the application, the Magistrates' Court may, if satisfied that the incorporated association has engaged, or proposes to engage, in oppressive conduct, make one or more of the following orders—
- (a) an order for regulating the conduct of the incorporated association's affairs in the future;
 - (b) an order directing the incorporated association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the incorporated association to do so on behalf of the incorporated association;
 - (c) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
 - (d) an order requiring a person to do a specified act or thing;
 - (e) an order for the alteration of the rules of the incorporated association;
 - (f) an order that a former member be reinstated as a member of the incorporated association;
 - (g) an order terminating a person's membership of the incorporated association;
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- (h) an order under section 31D(2), appointing a statutory manager of the incorporated association;
 - (i) subject to subsection (5), any other order that is, in the opinion of the Court, necessary to remedy any default or resolve any dispute.
- (5) The Magistrates' Court must not make an order that an incorporated association be wound up.
- (6) The Magistrates' Court must transfer a proceeding under this section to the Supreme Court if—
- (a) the Magistrates' Court has explored all possible avenues of achieving a negotiated settlement and a negotiated settlement has not occurred; and
 - (b) it appears to the Magistrates' Court that an order that the incorporated association be wound up may be an appropriate order in the proceeding.
- (7) If a proceeding has been transferred to the Supreme Court under subsection (6), it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Supreme Court.

Note

The same applies to a proceeding transferred to the Supreme Court under section 53B(1)(a).

- (8) In a proceeding under this section, the Supreme Court may make—
- (a) an order that the incorporated association be wound up; or
 - (b) any order the Magistrates' Court may make under subsection (4).
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- (9) The Supreme Court must not make an order under this section that an incorporated association be wound up if it is of the opinion that the winding up of the incorporated association would unfairly prejudice members affected by the conduct of the incorporated association.
- (10) If an order is made under this section that an incorporated association be wound up, the provisions of Part VIII apply as if the order had been made under Division 2 of that Part.
- (11) If an order under this section makes any alteration to the rules of an incorporated association—
- (a) the alteration has effect as if it had been duly made by a special resolution of the incorporated association; and
 - (b) the incorporated association does not have power to make further alterations to the rules inconsistent with the provisions of the order, except with the permission of the Court that made the order.
- (12) Within 14 days of the making of an order under this section, the person who applied for the order must lodge a copy of the order with the Registrar.
- Penalty: 10 penalty units.
- (13) For the purposes of this section—
- (a) ***oppressive conduct***, in relation to an incorporated association, includes conduct that is—
 - (i) unfairly prejudicial to, or unfairly discriminatory against, a member of the incorporated association
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(including in the member's capacity as a member of the committee); or

(ii) contrary to the interests of the members of the incorporated association as a whole; and

(b) a reference to engaging in conduct includes a reference to refusing or failing to take action."

7 Ultra vires transactions

(1) **Insert** the following heading to section 17 of the Principal Act—

"Ultra vires or prohibited transactions".

(2) For section 17(1) of the Principal Act **substitute**—

"(1) No act of an incorporated association (including the entering into of an agreement by the incorporated association), and no conveyance or transfer of property to or by an incorporated association is invalid by reason only of the fact that—

(a) the incorporated association was without the capacity or power to do the act or execute or take the conveyance or transfer; or

(b) doing the act, or executing or taking the conveyance or transfer, was prohibited under section 14A(1A).

(1A) No act performed by a person for or on behalf of an incorporated association (including the entering into of an agreement on behalf of the incorporated association) is invalid by reason only of the fact that doing the act was prohibited under section 14A(1B)."

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- (3) In section 17(2) of the Principal Act after "power" **insert** "or prohibition".
- (4) In section 17(2)(a) of the Principal Act—
- (a) before "to restrain" **insert** "or the Registrar";
 - (b) after "association;" **insert** "or".
- (5) For section 17(2)(c) of the Principal Act **substitute**—
- "(c) an application by a member of the incorporated association or the Registrar to wind up the incorporated association; or
 - (d) an application by the Registrar to appoint a person as the statutory manager of the incorporated association."

8 Alteration of rules

- (1) In section 22(3)(d) of the Principal Act, after "resolution" **insert** "or within a longer time allowed by the Registrar".
- (2) After section 22(4) of the Principal Act **insert**—
- "(5) If a special resolution provides for more than one alteration to the rules of an incorporated association, nothing in this section prevents the Registrar from approving one or more but not all of those alterations."

9 Special resolution

For section 29(3) of the Principal Act **substitute**—

- "(3) A resolution is not to be considered to have been passed as a special resolution under subsection (2) unless not less than 21 days notice has been given in accordance with the rules to all of the entitled members of the incorporated association—

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- (a) stating in full the proposed resolution;
and
 - (b) specifying the intention to propose the
resolution as a special resolution."

10 New section 29D inserted

After section 29C of the Principal Act **insert**—

**"29D Return of documents belonging to the
incorporated association**

- (1) This section applies if—
 - (a) a person, by virtue of the person's office
or role in or membership of an
incorporated association, has in the
person's custody documents of the
association; and
 - (b) the person ceases to hold that office or
have that role or ceases to be a member
of the association.
- (2) Within 28 days of the person ceasing to hold
that office or have that role or ceasing to be a
member, the person, or the estate of the
person, must return those documents to the
committee of the incorporated association.
- (3) If—
 - (a) a person, or a person's estate, has failed
to comply with subsection (2); and
 - (b) a written request from the public officer
or the statutory manager of the
incorporated association for the return
of the documents has been sent by
registered mail to the person, or the
person's estate; and

- (c) the documents have not been returned within 28 days of receipt of the request—

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

- (4) The Magistrates' Court may make the order applied for under subsection (3)."

11 New section 30C inserted

After section 30B of the Principal Act **insert—**

"30C Removal of auditors

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

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- (5) Within 7 days after receiving a notice under subsection (4) the auditor may—
- (a) make a written representation, not exceeding a reasonable length, to the secretary of the incorporated association; and
 - (b) request that a copy of the representation be given to the members of the incorporated association.
- (6) Unless the Registrar on the application of the incorporated association otherwise orders—
- (a) the secretary must give a copy of the written representation made by the auditor to all members of the incorporated association before the meeting at which the resolution is to be considered; and
 - (b) the auditor must be allowed to attend the meeting at which the resolution is to be considered and address the meeting prior to the vote on the resolution.
- (7) The Registrar may make an order under subsection (6) subject to any conditions the Registrar considers appropriate.
- (8) A document required to be given to a member of an incorporated association under this section may be given—
- (a) personally; or
 - (b) by post; or
 - (c) by any other means authorised under the rules of the incorporated association.
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- (9) All costs associated with giving a document to the members of the incorporated association under this section are to be borne by the incorporated association."

12 New Parts VIIAB and VIIAC inserted

After Part VIIA of the Principal Act **insert—**

**"PART VIIAB—STATUTORY MANAGEMENT
OF INCORPORATED ASSOCIATION**

31D Appointment of statutory manager

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

31E Effect of appointment of statutory manager

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

31F Powers of statutory manager

- (1) A statutory manager of an incorporated association—
 - (a) has control of, and may manage, the property and affairs of the incorporated association; and
 - (b) may dispose of all or part of the property of the incorporated association; and
 - (c) may engage or discharge employees on behalf of the incorporated association; and
 - (d) may perform any function and exercise any power that could, were the incorporated association not under statutory management, be performed or exercised by—
 - (i) the incorporated association; or
 - (ii) any officer of the incorporated association; or
 - (iii) the members of the incorporated association.
-

- (2) To avoid doubt and without limiting subsection (1)(d), the statutory manager may perform any function and exercise any power the incorporated association has as trustee.

31G Revocation of appointment

- (1) A statutory manager holds office until the statutory manager's appointment is revoked.
- (2) A statutory manager's appointment is revoked if any of the following occurs—
- (a) on application by the Registrar, the Magistrates' Court orders the revocation of the appointment of a statutory manager;
 - (b) a liquidator of the incorporated association is appointed by the Supreme Court;
 - (c) the Registrar cancels the incorporation of the incorporated association under section 36EC.
- (3) Immediately on the revocation of a statutory manager's appointment, the statutory manager must submit to the Registrar a report showing how the statutory management was carried out.
- (4) For the purposes of preparing the report the statutory manager has access to the records and documents of the incorporated association.
- (5) The Registrar may provide a copy of the report to the incorporated association.
- (6) On submitting the report under subsection (3) and accounting fully in relation to the statutory management of the incorporated association to the satisfaction of the Registrar, the statutory manager is
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- released from any further duty to account in relation to the statutory management of the incorporated association other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.
- (7) Before revoking the appointment of a statutory manager of an incorporated association, the Magistrates' Court must—
- (a) appoint another statutory manager; or
 - (b) be satisfied that the committee members of the incorporated association have been elected in accordance with the rules of the incorporated association at a meeting convened by the statutory manager in accordance with those rules; or
 - (c) be satisfied that the Registrar has appointed committee members of the incorporated association under subsection (8).
- (8) The Registrar may appoint the committee members of an incorporated association for which a statutory manager is appointed.
- (9) Committee members elected or appointed in accordance with this section—
- (a) take office on revocation of the statutory manager's appointment; and
 - (b) subject to section 31K in the case of committee members appointed by the Registrar, hold office until the next annual general meeting of the incorporated association after the revocation of that appointment.
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31H Expenses of statutory management

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

31I Liabilities arising from statutory management

- (1) If an incorporated association incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the incorporated association by a statutory manager, the statutory manager is liable for the loss.
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- (2) A statutory manager is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 31G or 31J.

31J Statutory manager to report to Registrar

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

31K Additional powers of Registrar

- (1) If the Registrar appoints committee members of an incorporated association under section 31G(8), the Registrar may, by written notice given to the incorporated association, specify—
- (a) a time during which this section is to apply in relation to the incorporated association; and
 - (b) the terms and conditions on which all or any of the committee members hold office; and
 - (c) with the consent of the Magistrates' Court, the rules that are to be the incorporated association's rules.
- (2) While this section applies to an incorporated association, the Registrar may—
- (a) from time to time remove and appoint committee members; and
 - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and
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conditions specified under
subsection (1)(b); and

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

31L Stay of proceedings

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

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

**PART VIIAC—VOLUNTARY
ADMINISTRATION OF INCORPORATED
ASSOCIATION**

**31M Declaration of applied Corporations
legislation matter**

- (1) The voluntary administration of an incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to Part 5.3A (Administration of company's affairs with a view to executing a deed of company arrangement) and Division 3 of Part 5.9 of the Corporations Act, subject to the following modifications—
 - (a) the modifications referred to in subsection (2);
 - (b) such other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) as may be prescribed by the regulations.

Note

Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by

a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

- (2) The following modifications to the text of the Corporations Act apply for the purposes of subsection (1)—
- (a) a reference to a company or body is to be read as a reference to an incorporated association;
 - (b) a reference to the directors of a company is to be read as a reference to the members of the committee of an incorporated association;
 - (c) a reference to a secretary of a company is to be read as a reference to the public officer of an incorporated association;
 - (d) a reference to a principal place of business of a company is to be read as a reference to the registered address of an incorporated association;
 - (e) a reference to a company carrying on business or having a place of business is to be read as a reference to an incorporated association pursuing its objects;
 - (f) a reference to ASIC is to be read as a reference to the Registrar;
 - (g) a reference to a document in the prescribed form is to be read as a reference to a document in the corresponding form prescribed under the Corporations Act with all necessary modification;
 - (h) a reference to the Court is to be read as a reference to the Supreme Court;
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- (i) a reference to the lodgement of a document is to be read as a reference to lodgement of that document with the Registrar;
 - (j) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;
 - (k) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;
 - (l) a reference to an officer of a company is to be read as a reference to a member of the committee of an incorporated association and, if applicable, a reference to a past officer is to be read as a reference to a past member of the committee of an incorporated association;
 - (m) a reference in section 446A to a contributory of a company is to be read as a reference to a member of an incorporated association.

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13 Repeal of sections 32 and 33A to 33E

Sections 32, 33A, 33B, 33C, 33D and 33E of the Principal Act are **repealed**.

14 Winding up by the court

- (1) In section 34(2)(c) of the Principal Act for "Registrar." **substitute** "Registrar; or".
- (2) After section 34(2)(c) of the Principal Act **insert**—
 - "(d) the statutory manager of the incorporated association."

15 New Division 3A inserted in Part VIII

After Division 3 of Part VIII of the Principal Act
insert—

"Division 3A—Distribution of surplus assets

36CA Distribution of surplus assets

- (1) In this section *surplus assets*, in relation to the winding up of an incorporated association, means those assets remaining after satisfaction of the debts and liabilities of the incorporated association and the costs, charges and expenses of the winding up.
- (2) Subject to subsections (3) and (4), an incorporated association must not distribute any surplus assets available for distribution at the completion of the winding up of the incorporated association under this Part, to—
 - (a) any member or former member of the incorporated association; or
 - (b) to any person to be held on trust for any member or former member of the incorporated association.
- (3) The surplus assets of an incorporated association that is in the process of winding up may be distributed to a member or former member if—
 - (a) the member or former member is a body corporate or an association (whether incorporated or not) and the Registrar is satisfied that—
 - (i) at the time of the distribution, the body corporate or association is prevented by its rules or otherwise from distributing the surplus assets to its members; and

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- (ii) the distribution is not contrary to this Act or the regulations; or
 - (b) the member or former member is a trustee who holds, or held, membership of the incorporated association on behalf of a trust and the Registrar is satisfied that—
 - (i) at the time of the distribution, the trustee is prevented by the terms of the trust or otherwise from distributing the surplus assets to the beneficiaries of the trust; and
 - (ii) the distribution is not contrary to this Act or the regulations.
 - (4) Despite subsections (2) and (3), an asset or part of an asset of the incorporated association that consists of property supplied by a government department, public authority or Council, including the unexpended portion of a grant, must be returned to the department, authority or Council that supplied it or to a body nominated by the department, authority or Council.
 - (5) Subject to this section and any court order, the surplus assets of an incorporated association are, on the winding up of the incorporated association, to be distributed in accordance with—
 - (a) the rules of the incorporated association; or
 - (b) if there are no valid rules of an incorporated association governing the distribution of any surplus assets, by a special resolution of the incorporated association.
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- (6) The Supreme Court may make an order relating to the distribution of the surplus assets of an incorporated association on a winding up on the application of—
- (a) the Registrar; or
 - (b) a liquidator of the incorporated association; or
 - (c) a member of an incorporated association; or
 - (d) any person aggrieved by the operation of this Division in relation to the surplus assets of an incorporated association.
- (7) The Supreme Court may make an order under subsection (6) permitting the distribution of surplus assets to its members.
- (8) The Supreme Court, in making an order under subsection (6), must have regard to any relevant rules and the purposes of the incorporated association.
- (9) This section applies subject to any trust affecting all or any of the assets of the incorporated association."

16 New Subdivision 1 heading inserted in Division 5 of Part VIII

After the heading to Division 5 of Part VIII of the Principal Act **insert**—

"Subdivision 1—Cancellation on winding up or ceasing to operate".

17 Cancellation of incorporation

For section 36E(7) of the Principal Act
substitute—

"(7) Despite the cancellation of incorporation, if immediately before the cancellation a person has a liability incurred by the person by virtue of the person's role in or membership of the incorporated association, that liability continues and may be enforced as if the incorporation had not been cancelled."

18 New Subdivision 2 inserted in Division 5 of Part VIII

After section 36E of the Principal Act **insert—**

"Subdivision 2—Voluntary cancellation

36EA Application to Registrar

- (1) An application may be made to the Registrar to cancel the incorporation of an incorporated association if the incorporated association—
- (a) has gross assets of less than \$10 000 or such other amount as is prescribed by regulation; and
 - (b) has no outstanding debts or liabilities; and
 - (c) has paid all fees and penalties under this Act; and
 - (d) is not a party to any legal proceedings.

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- (2) An application under subsection (1) may only be made by—
- (a) an incorporated association that has passed a special resolution agreeing to seek cancellation of incorporation under this section; or
 - (b) if the incorporated association is not in operation, a member or a former member of the incorporated association; or
 - (c) a statutory manager of the incorporated association appointed under section 31D; or
 - (d) an administrator of the incorporated association appointed under voluntary administration procedures under Part VIIAC.
- (3) The Registrar must not accept an application under this section by a member or former member of an incorporated association unless the Registrar is satisfied that the incorporated association is not in operation.
- (4) An application to the Registrar under subsection (1) must be made in the form approved by the Registrar and be accompanied by the prescribed fee, if any.
- (5) The application must include a declaration by the applicant—
- (a) that all of the matters prescribed in subsection (1) exist in relation to the incorporated association; and
 - (b) that the applicant is qualified under subsection (2) to make the application; and
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- (c) in the case of an application by a member or former member of the incorporated association, that the incorporated association is not in operation; and
 - (d) setting out the reasons why the applicant has formed the view that the incorporation should be cancelled.

36EB Powers of the Registrar

- (1) The Registrar may make any relevant inquiries regarding the information provided in the declaration under section 36EA(5) required to establish the validity of that information.
- (2) The Registrar may require the applicant to provide further information or copies of documents to enable the Registrar to determine the application.
- (3) The Registrar may make any further inquiries necessary to establish that a special resolution agreeing to cancellation of incorporation was validly passed.

36EC Cancellation of incorporation by the Registrar

- (1) Subject to subsection (2), if the Registrar is satisfied that the circumstances set out in section 36EA exist in respect of the incorporated association, the Registrar must cancel the incorporation of the incorporated association.
 - (2) Before cancelling the incorporation of an incorporated association under subsection (1), the Registrar must cause to be published in the Government Gazette and in a newspaper circulating generally in the State a notice stating—
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- (a) that an application for the voluntary cancellation of incorporation has been received by the Registrar; and
- (b) unless a person makes a written objection to cancellation to the Registrar within 28 days after the notice is published, the Registrar intends to cancel the incorporation of the incorporated association.
- (3) If, within 28 days of publication of a notice under subsection (2), the Registrar receives a written objection to the cancellation of incorporation, the Registrar must not cancel the incorporation under subsection (1) unless the Registrar is satisfied, after making further inquiries, of the validity of the information provided in the declaration under section 36EA.
- (4) On cancellation of incorporation of the incorporated association, the Registrar must advise the applicant in writing that the incorporation of the incorporated association has been cancelled, and the date on which cancellation took effect.
- (5) Despite the cancellation of incorporation, if immediately before the cancellation a person has a liability incurred by the person by virtue of the person's role in or membership of the incorporated association, that liability continues and may be enforced as if the incorporation had not been cancelled."

19 New Subdivision 3 heading inserted in Division 5 of Part VIII

Before section 36F of the Principal Act **insert—**

"Subdivision 3—General".

20 Vesting of property after cancellation

In section 36F(1) of the Principal Act for "this Division" **substitute** "Subdivision 1".

21 New section 37A substituted

For section 37A of the Principal Act **substitute**—

"37A Definitions

In this Part—

Director means the Director within the meaning of the **Fair Trading Act 1999**;

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

22 New section 38 substituted

For section 38 of the Principal Act **substitute**—

"38 Registrar of Incorporated Associations

- (1) Subject to the **Public Administration Act 2004** there is to be a Registrar of Incorporated Associations.
- (2) The person who is for the time being employed as the Registrar of Incorporated Associations under the **Public Administration Act 2004**, and the successors in office of that person, are a body corporate under the name "Registrar of Incorporated Associations" which, by that name—
 - (a) has perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and

- (e) may do and suffer all things that a body corporate may, by law, do and suffer.
- (3) The official seal of the Registrar must be kept as directed by the Registrar and must not be used except as authorised by the Registrar.
- (4) All courts must take judicial notice of the official seal of the Registrar on a document and, until the contrary is proved, must presume that the seal was properly affixed.
- (5) The Registrar may by instrument delegate any of the Registrar's powers and functions under this Act, other than this power of delegation, to any person employed under Part 3 of the **Public Administration Act 2004**".

23 Register

- (1) In section 39(1A)(b) of the Principal Act, for "returns" **substitute** "statements".
- (2) In section 39(1B)(l) of the Principal Act, for "return" **substitute** "statement".

24 Authority of public officer etc.

At the end of section 42 of the Principal Act **insert—**

- "(2) Subsection (1) does not apply if the person against whom the assertion is made—
 - (a) has actual knowledge of the matter asserted; or
 - (b) ought to have knowledge of the matter asserted by reason of the person's connection or relationship with the incorporated association."
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25 Incorrect etc. documents lodged with Registrar

At the end of section 46 of the Principal Act
insert—

- "(2) The Registrar may refuse to register or receive a document submitted for lodgement if the Registrar is of the opinion that the document is not a valid document of the incorporated association.
- (3) If the Registrar refuses under subsection (2) to register or receive a document, the incorporated association may request that the Registrar reconsider the refusal and may provide to the Registrar any documents in support of the request.
- (4) The Registrar must refer the question of whether or not a document is valid to the Magistrates' Court if—
- (a) the incorporated association has requested under subsection (3) that the Registrar reconsider a refusal to register or receive the document; and
 - (b) the Registrar remains of the opinion that the document is not a valid document; and
 - (c) the incorporated association requests that the Registrar refer the question of whether or not the document is valid to the Magistrates' Court.
- (5) The Magistrates' Court may—
- (a) make an order declaring a document to be a valid document of the incorporated association; or
 - (b) make an order declaring a document not to be valid document of the incorporated association.
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- (6) If the Magistrates' Court makes an order declaring a document to be a valid document of the incorporated association, the Registrar must register the document."

26 New section 49A substituted

For section 49A of the Principal Act **substitute**—

"49A Retention of documents

If a copy of a document has been lodged in accordance with an approval under section 45B, the association to which the document relates must, for not less than 7 years—

- (a) retain the original document signed by any person who is required to sign the document; and
- (b) if requested to do so by the Registrar, produce that document to the Registrar.

Penalty: 30 penalty units."

27 New sections 53B and 53C inserted

After section 53A of the Principal Act **insert**—

"53B Transfer of proceeding to Supreme Court

- (1) In any proceeding under this Act, the Magistrates' Court may, on its own initiative or on application by a party to the proceeding—
 - (a) transfer the proceeding to the Supreme Court on the ground that the proceeding raises a complex question or matter of general importance; or
 - (b) reserve a question of law for determination by the Supreme Court.

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- (2) If a proceeding has been transferred to the Supreme Court under subsection (1)(a), it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Supreme Court.

53C Qualified privilege of auditor, statutory manager and administrator

A person who is or has been the auditor, statutory manager or administrator of an incorporated association has qualified privilege in respect of a statement made by the person, whether orally or in writing, in the course of performing any functions or exercising any powers as the auditor, statutory manager or administrator, as the case may be, of the incorporated association."

28 Gender specific references substituted

- (1) In section 15(1) of the Principal Act, **omit** "his".
- (2) In section 25(2) of the Principal Act, for "he" (wherever occurring) **substitute** "the person".
- (3) In section 25(3) of the Principal Act, for "his" **substitute** "his or her".
- (4) In section 27(1) of the Principal Act, **omit** "his".
- (5) In section 27(2)(b) of the Principal Act, for "his office by writing under his hand" **substitute** "from office in writing".
- (6) In section 27(2)(d) of the Principal Act, for "his" (wherever occurring) **substitute** "his or her".
- (7) In section 28 of the Principal Act—
- (a) for "his appointment" (where first occurring) **substitute** "being appointed"; and

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- (b) for "his appointment (where secondly occurring) **substitute** "his or her appointment"; and
- (c) for "his full" **substitute** "his or her full".
- (8) In section 36F(1)(b) of the Principal Act—
- (a) in paragraph (i), for "he or she" **substitute** "the Registrar"; and
- (b) in paragraphs (iii) and (iv), for "him or her" **substitute** "the Registrar"; and
- (c) in paragraph (v), for "his or her" **substitute** "the Registrar's".
- (9) In section 38A of the Principal Act, for "his or her" **substitute** "the Registrar's".
- (10) In section 39(2) of the Principal Act for "in his opinion" **substitute** "the Registrar considers".
- (11) In sections 39A(1) and 45B(5) of the Principal Act, for "he or she" (wherever occurring) **substitute** "the Registrar".
- (12) In section 44(1) of the Principal Act, for "by writing under his hand" **substitute** "in writing".

29 Transitional provisions

Section 55(1) of the Principal Act is **repealed**.

30 New section 56 inserted

After section 55 of the Principal Act **insert**—

"56 Transitional provisions—Associations Incorporation Amendment Act 2009

- (1) In this section—

2009 Act means the **Associations Incorporation Amendment Act 2009**;

Registrar of Incorporated Associations means the Registrar of Incorporated Associations employed under the

Public Administration Act 2004 and includes any Deputy or Assistant Registrar of Incorporated Associations employed under that Act.

- (2) On the commencement of section 22 of the 2009 Act—
 - (a) the Registrar is substituted as a party in any proceedings, contract, agreement or arrangement commenced or made by or against or in relation to the Registrar of Incorporated Associations; and
 - (b) the Registrar may continue and complete any other continuing matter or thing commenced by or against or in relation to the Registrar of Incorporated Associations.
 - (3) On and from the commencement of section 22 of the 2009 Act, in any Act (other than this Act) or in any instrument made under any Act or in any other document of any kind, reference to the Registrar of Incorporated Associations is deemed to be a reference to the Registrar so far as relates to any period after the commencement, unless the context otherwise requires.
 - (4) On and from the commencement of section 22 of the 2009 Act, anything of a continuing nature commenced by the Deputy Registrar or Assistant Registrar may be continued and completed by the Registrar.
 - (5) Despite the amendments made to this Act by sections 13 and 15 of the 2009 Act—
 - (a) sections 32 and 33A to 33E as in force immediately before the commencement of section 13 of the 2009 Act, continue
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to apply to an incorporated association
if—

- (i) at the time of that commencement
the rules of the incorporated
association included a rule
permitting the distribution of
assets to its members on a
voluntary winding up; and
 - (ii) that rule was made before the date
on which the 2009 Act receives
the Royal Assent; and
- (b) section 36CA does not apply to an
incorporated association referred to in
paragraph (a)."
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PART 3—PUBLIC OFFICER

31 Definitions

In section 3(1) of the Principal Act—

- (a) for the definition of *public officer*
substitute—

"*public officer*, in relation to an incorporated association, means a person who, at a relevant time before the commencement of Part 3 of the **Associations Incorporation Amendment Act 2009**, was the public officer of the incorporated association under Part V of this Act as then in force;"

- (b) **insert** the following definition—

"*secretary*, in relation to an incorporated association, means the person who is for the time being the secretary of the incorporated association under Part V;"

32 References to public officer substituted

- (1) In sections 8(3), 9(2)(b), 9(4)(b), 10(3)(a)(iii), 10(3A), 13(2), 13A(1), 15(1), 16(4), 18(1), 19(6), 22(3)(a), 24, 25, 26, 27, 28, 29D(3)(b), 30(4), 30(5), 30C(4), 31(3)(d)(ia), 31M(2)(c), 36D(3)(c), 39(1B)(i), 45B(1)(a), 45B(2) and 45B(5) of the Principal Act, for "public officer" (wherever occurring) **substitute** "secretary".
- (2) In section 14A(1B) of the Principal Act, for "The public officer or a" **substitute** "A".
- (3) In section 15(1) of the Principal Act, for "member or officer" substitute "member or secretary".

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- (4) In section 17(2)(b) of the Principal Act, for "public officer" **substitute** "secretary or a former public officer".
 - (5) In the heading to section 24 of the Principal Act, for "**public officer**" **substitute** "**secretary**".
 - (6) **Insert** the following heading to section 25 of the Principal Act—
"**Secretary**".
 - (7) **Insert** the following heading to section 26 of the Principal Act—
"**Secretary may hold other offices**".
 - (8) **Insert** the following heading to section 27 of the Principal Act—
"**Removal of secretary and vacancy in office**".
 - (9) **Insert** the following heading to section 28 of the Principal Act—
"**Address of secretary**".
 - (10) In sections 31(3) and 39(1A) of the Principal Act, for "public officers" **substitute** "secretaries".
 - (11) In section 39(1B)(j) of the Principal Act for "previous public officer" **substitute** "each previous secretary and public officer".
 - (12) In sections 44(1)(b) and 44(1)(c) of the Principal Act before "public officer" **insert** "secretary or".

33 Authority of public officer etc.

- (1) **Insert** the following heading to section 42 of the Principal Act—
"**Compliance with rules and authority of secretary**".

(2) For section 42(1)(b) of the Principal Act **substitute—**

- "(b) a person whose name was last notified to the Registrar as the secretary of the incorporated association is not the secretary; or
- (c) a person whose name was last notified to the Registrar as the public officer of the incorporated association was not the public officer."

**34 Transitional provisions—Associations
Incorporation Amendment Act 2009**

After section 56(5) of the Principal Act **insert—**

- "(6) Despite the amendments made to this Act by Part 3 of the 2009 Act—
 - (a) a person who was the public officer of an incorporated association immediately before the commencement of Part 3 of the 2009 Act is deemed until the next annual general meeting of the incorporated association to be the secretary of the incorporated association but only for the purposes of this Act; and
 - (b) section 17(2)(b) of this Act only applies to a secretary (other than a person who is deemed to be the secretary under paragraph (a)) of an incorporated association appointed after the commencement of Part 3 of the 2009 Act; and
 - (c) the authenticity of a document authenticated by the public officer of an incorporated association under section 19(6) before the commencement of Part 3 of the 2009 Act is not affected.

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- (7) On and from the commencement of Part 3 of the 2009 Act, the secretary of an incorporated association may continue and complete any continuing act or thing commenced by or against the public officer of the incorporated association."
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PART 4—RULES OF INCORPORATED ASSOCIATION

35 Matters to be provided for in rules

In the Schedule to the Principal Act, after item 17
insert—

- "18. The preparation and retention of accurate minutes of—
- (a) general meetings of the incorporated association; and
 - (b) meetings of the committee or other body having the management of the incorporated association.
19. Provision for members to have access to, and to be able to obtain copies of minutes of general meetings (including accounting records and financial statements) of the incorporated association.
20. Right of access (if any) by members to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted."
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PART 5—REPEAL OF AMENDING ACT

36 Repeal of amending Act

This Act is **repealed** on 1 December 2012.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 4 December 2008

Legislative Council: 12 March 2009

The long title for the Bill for this Act was "A Bill for an Act to amend the **Associations Incorporation Act 1981** in relation to regulatory requirements for incorporated associations and for other purposes."