
exposure draft



New South Wales

Associations Incorporation Bill 2008

Explanatory note

Overview of Bill

The object of this Bill txt

Outline of provisions

txt

exposure draft

Associations Incorporation Bill 2008

Explanatory note



New South Wales

Associations Incorporation Bill 2008

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Definitions 2
4	Definition of "pecuniary gain" 4
Part 2	Registration of associations
	Division 1 Registration
5	Applications for registration 5
6	Decision on application 6
7	Effect of registration 7
8	Continuity of former entities 7

exposure draft

Associations Incorporation Bill 2008

Contents

	Page	
Division 2	Changing association's name, objects, constitution or official address	
9	Application for change of particulars	7
10	Director-General may order association to change its name	8
11	Decision on application	8
12	Notification of change of official address	8
13	Effect of registration of change of name, objects, constitution or official address	9
Division 3	Reservation of names	
14	Application for reservation of name	9
15	Decision on application	9
16	Effect of reservation of name	10
17	Unacceptable names	10
Part 3	Basic features of associations	
Division 1	Association powers	
18	Legal capacity and powers	11
19	Constitution may limit powers	11
20	Agent exercising association's power to make contracts	11
21	Execution of documents (including deeds) by an association	11
Division 2	Assumptions people dealing with associations are entitled to make	
22	Entitlement to make assumptions	12
23	Assumptions that may be made	12
Division 3	General	
24	Provisions of model constitution to apply if appropriate provision not otherwise made	13
25	Nature of association	14
26	Pre-registration contracts	14
Part 4	Management of associations	
Division 1	Committee members	
27	Committee of association	15
28	Committee meetings	15
29	Disclosure of interests	15
30	Dishonesty	17
31	Improper use of information	17
32	Improper use of position	17
33	Negligence	18

exposure draft

Associations Incorporation Bill 2008

Contents

	Page
Division 2 Secretary and authorised signatories	
34 Secretary	18
35 Vacation of office of secretary	19
36 Authorised signatories	19
Division 3 General administration	
37 General meetings	20
38 Postal ballots	20
39 Voting generally	20
40 Voting on special resolutions	21
41 Register of committee members	21
42 Association not to provide pecuniary gain for its members	22
43 Where name must appear	22
Part 5 Financial reporting	
Division 1 Large associations	
44 Application of Division	23
45 Financial statements	23
46 Submission of financial statements to AGM	23
47 Lodgment of documents with Director-General	23
Division 2 Small associations	
48 Application of Division	24
49 Financial statements	24
50 Submission of reports and statements to AGM	24
51 Lodgment of documents with Director-General	25
Division 3 General	
52 Keeping of accounts and minutes of proceedings	25
53 Audit at the Director-General's direction	26
54 Auditor to be qualified and independent	26
Part 6 External administration and winding up	
Division 1 External administration on grounds of insolvency	
55 Appointment of administrator	27
Division 2 External administration on grounds other than insolvency	
56 Appointment of administrator	28
57 Effect of appointment of administrator	28
58 Revocation of appointment	28
59 Expenses of administration	29

exposure draft

Associations Incorporation Bill 2008

Contents

	Page
60 Liabilities arising from administration	29
61 Stay of proceedings	30
62 Administrator to report to Director-General	30
Division 3 Winding up	
63 Voluntary winding up	30
64 Winding up by the Supreme Court	30
65 Modifications to text of applied Corporations Act 2001 of the Commonwealth	32
66 Distribution of surplus property	32
67 Appeal	33
Division 4 Offences relating to incurring of debts or fraudulent conduct	
68 Definitions	33
69 Incurring of debts in respect of association to which this Division applies	33
70 Fraudulent conduct in respect of association to which this Division applies	34
71 Powers of Court	35
72 Certain rights not affected	36
Part 7 Cancellation of registration	
Division 1 Voluntary cancellation	
73 Application for cancellation	37
74 Director-General may order association to apply for cancellation of registration	37
75 Decision on application	37
76 Distribution of assets	38
77 Cancellation of registration following amalgamation	38
Division 2 Involuntary cancellation	
78 Director-General may cancel registration	38
79 Distribution of assets	40
Division 3 Transfer of incorporation	
80 Applications for transfer of registration declaration	40
81 Decision on application	41
Division 4 General	
82 Loss of corporate status	41
83 Notice of cancellation to be sent to association	41
84 Certain liabilities not affected by cancellation	42
85 Restitution of registration	42

exposure draft

Associations Incorporation Bill 2008

Contents

	Page
Part 8	Administrative provisions
Division 1	Power to require information and documents
86	Power to require information and documents 43
87	Power to enter land 43
88	Search warrants 43
89	Manner in which power of entry to be exercised 44
90	Damage to be minimised 44
Division 2	Offences
91	Offence of using certain names 45
92	Offences by committee members 45
93	Obstruction of authorised officers 45
94	Penalty notices 46
Division 3	General
95	Register 46
96	Authorised officers 47
97	Exclusion of personal liability 47
98	Review of decisions of Director-General 47
99	Evidentiary provision 47
100	Service of documents 48
101	Waiver, remittal and postponement of fees 48
102	Delegation by Director-General 48
Part 9	Miscellaneous
103	Commonwealth Corporations legislation excluded from applying to associations 49
104	Incorporation of company 49
105	Applying the Corporations legislation to associations 49
106	Modifications to applied provisions 50
107	Regulations 51
108	Repeals 51
109	Amendment of other Acts 51
110	Savings, transitional and other provisions 52
111	Review of Act 52
Schedule 1	Matters to be addressed in association's constitution 53
Schedule 2	Provisions relating to assets and liabilities of associations 55

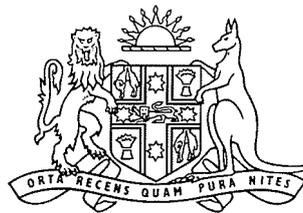
exposure draft

Associations Incorporation Bill 2008

Contents

Page

exposure draft



New South Wales

Associations Incorporation Bill 2008

No. , 2008

A Bill for

An Act to provide for the registration of clubs, societies and other non-profit associations, for the regulation of those associations after registration; and for other purposes.

exposure draft

Clause 1 Associations Incorporation Bill 2008

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Associations Incorporation Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

approved, in relation to a form, means approved by the Director-General.

ASIC means the Australian Securities and Investments Commission.

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 securities, choses in action and documents.

association means an association registered under this Act.

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations.

Australian Auditing Standards means the standards issued by the Auditing and Assurance Standards Board, as in force for the time being, and including any modifications prescribed by the regulations.

authorised officer means a person who is appointed as an authorised officer under section *96.

authorised signatory, in relation to an association, means a person who is for the time being appointed under section *36 as an authorised signatory for the association, and includes the association's secretary.

committee, in relation to an association, means the governing body of the association, however described.

committee member, in relation to an association, means a person who is for the time being elected or appointed under the association's constitution as a committee member of the association.

constitution, in relation to an association, means the constitution that is for the time being recorded in the Register of Incorporated Associations in relation to the association.

exposure draft

Associations Incorporation Bill 2008

Clause 3

Preliminary

Part 1

corresponding law means a law of this or any other State or Territory, or a law of the Commonwealth, that is declared by the regulations to be a corresponding law for the purposes of this Act.

Department means the Department of Commerce.

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department, the Director-General of the Department.

exercise a function includes perform a duty.

financial year, in relation to an association, means:

- (a) the year ending 30 June, or the year ending 31 December, as specified in the association's constitution, or
- (b) if the association's constitution does not specify a financial year or specifies a financial year other than a year ending 30 June or 31 December, the year ending 30 June.

function includes a power, authority or duty.

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

model constitution means the model constitution prescribed by the regulations.

objects, in relation to an association, means the objects that are for the time being recorded in the Register of Incorporated Associations in relation to the association.

official address, in relation to an association, means the address that is for the time being recorded in the Register of Incorporated Associations as the association's official address.

pecuniary gain—see section *4.

register of committee members, in relation to an association, means the register of committee members kept by the association for the purposes of section *41.

Register of Incorporated Associations means the Register of Incorporated Associations kept by the Director-General for the purposes of section *95.

registrable corporation means an entity that is constituted as body corporate under a corresponding law.

secretary, in relation to an association, means the person who is for the time being elected or appointed under the association's constitution as the association's secretary, and, until he or she is replaced by a person so elected or appointed, includes the person who is nominated as the association's secretary in the association's application for registration.

exposure draft

Clause 4 Associations Incorporation Bill 2008

Part 1 Preliminary

special resolution—see section *40.

unacceptable name—see section *17.

(2) Notes included in this Act do not form part of this Act.

4 Definition of “pecuniary gain”

- (1) An organisation provides *pecuniary gain* for its members if:
- (a) it carries on any activity for the purpose of securing pecuniary gain for its members, or
 - (b) it has capital that is divided into shares or stock held by the organisation’s members, or
 - (c) it holds property in which the organisation’s members have a disposable interest, whether directly or in the form of shares or stock in the capital of the organisation, or otherwise, or
 - (d) it is an organisation which is, or is included in a class of organisations which is, prescribed for the purposes of this subsection.
- (2) For the purposes of subsection (1) (a), an organisation does not provide pecuniary gain for its members merely because of any of the following:
- (a) the organisation itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the organisation’s members or any of them,
 - (b) the organisation is established for the protection of a trade, business, industry or calling in which the organisation’s members are engaged or interested, and the organisation itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling,
 - (c) the organisation’s members derive pecuniary gain through the enjoyment of facilities or services provided by the organisation for social, recreational, educational or other like purposes,
 - (d) members of the organisation derive pecuniary gain from the organisation by way of bona fide payment of remuneration,
 - (e) members of the organisation derive pecuniary gain from the organisation of a kind which they could also derive if they were not members of the organisation,
 - (f) members of the organisation compete for trophies or prizes in contests directly related to the objects of the organisation,
 - (g) the organisation provides pecuniary gain of a class prescribed for the purposes of this section.

exposure draft

Associations Incorporation Bill 2008

Clause 5

Registration of associations

Part 2

Part 2 Registration of associations

Division 1 Registration

5 Applications for registration

- (1) An application for registration of an association may be made to the Director-General on behalf of:
 - (a) 5 or more individuals, or
 - (b) an unincorporated body having 5 or more members, or
 - (c) a registrable corporation having 5 or more members or shareholders, or
 - (d) 2 or more existing associations together having 5 or more members.
- (2) Such an application must be authorised:
 - (a) in the case of an application made on behalf of 5 or more individuals, by each of the individuals, and
 - (b) in the case of an application made on behalf of an unincorporated body, by a special resolution passed by the members of the body, and
 - (c) in the case of an application made on behalf of a registrable corporation, by a special resolution passed by the members of the corporation, and
 - (d) in the case of an application made on behalf of 2 or more associations proposing to amalgamate, by special resolutions passed by the members of each association.
- (3) An application:
 - (a) must be in the approved form, and
 - (b) must specify the association's proposed name and the address that is to be the association's first official address, and
 - (c) must include a statement of the association's objects, and
 - (d) must annex a copy of the association's proposed constitution, and
 - (e) must identify the person who is to be the association's first secretary, and
 - (f) must include copies of any relevant special resolution referred to in subsection (2) (b), (c) or (d), and
 - (g) in the case of an application made on behalf of a registrable corporation, a certificate, issued by the relevant regulatory authority under the law under which it is currently incorporated, to the effect that the corporation has complied with all of the

exposure draft

Clause 6 Associations Incorporation Bill 2008

Part 2 Registration of associations

requirements of that law in relation to the making of such an application, and

- (h) must include any information required by the regulations, and
 - (i) must be accompanied by the prescribed fee.
- (4) An association's proposed official address must be an address, within New South Wales:
- (a) at which any premises used by the association are located, or
 - (b) at which the proposed secretary resides, is employed or carries on business.
- (5) An association's proposed constitution must address each of the matters referred to in Schedule *1.
- (6) An application need not annex a copy of an association's proposed constitution if the application indicates that the association is to be governed solely by the model constitution.

6 Decision on application

- (1) The Director-General may determine an application for registration of an association by registering the association or by refusing the application.
- (2) An application for registration may be refused if:
- (a) the application does not comply with section *5, or
 - (b) the name of the association has not been reserved or is unacceptable, or
 - (c) the Director-General is satisfied that it is inappropriate for the association to be registered under this Act:
 - (i) by reason of the association's objects or the Director-General's assessment of the likely nature or extent of the association's proposed activities, or
 - (ii) by reason of the likely nature or extent of the association's dealings with the public, or
 - (iii) for any other reason that appears sufficient to the Director-General.
- (3) The Director-General registers an association by recording its name, objects, constitution and official address in the Register of Incorporated Associations.
- (4) On registering an association, the Director-General is to cause a certificate of registration to be given to the applicant.

exposure draft

Associations Incorporation Bill 2008

Clause 7

Registration of associations

Part 2

7 Effect of registration

- (1) An association becomes a body corporate at the beginning of the day on which it is registered under this Act.
- (2) Schedule *2 has effect in relation to an association that arises from the registration of an association formed from an unincorporated body or from the amalgamation of 2 or more associations.

8 Continuity of former entities

- (1) An association that arises from an application for registration made on behalf of a registrable corporation is a continuation of, and the same legal entity as, the registrable corporation.
- (2) Without limiting subsection (1):
 - (a) the assets and liabilities of the registrable corporation become the assets and liabilities of the association, and
 - (b) proceedings that have been commenced by or against the registrable corporation may be continued by or against the association in the name of the association.

Division 2 Changing association's name, objects, constitution or official address

9 Application for change of particulars

- (1) An association may apply to the Director-General for registration of a change in the association's name, objects or constitution.
- (2) An application may only be made pursuant to a special resolution passed by the association.
- (3) An application:
 - (a) must be in the approved form, and
 - (b) must include details of the proposed change, and
 - (c) must include a copy of the special resolution by which the association has approved the change, and
 - (d) must be accompanied by the prescribed fee.
- (4) An association's constitution, as proposed to be changed, must address each of the matters referred to in Schedule *1.

Note. A change in an association's name, objects or constitution does not take effect until it is registered: see section 13.

exposure draft

Clause 10 Associations Incorporation Bill 2008

Part 2 Registration of associations

10 Director-General may order association to change its name

- (1) The Director-General may, by order in writing served on an association that has an unacceptable name, direct the association to adopt a new name.
- (2) Such a direction may be given whether or not the association's name was acceptable when it was reserved or when the association was registered.

Note. For example, a name that includes the word "police" or "sheriff" will become unacceptable if the Director-General receives notice that consent to the use of that name has been revoked under section 204B of the *Police Act 1990* or section 12 of the *Sheriff Act 2005*.

- (3) A direction:
 - (a) must specify the grounds on which the association's current name is unacceptable, and
 - (b) must specify a date by which an application for registration of a change of name must be made (being a date no less than 2 months after the date on which the direction is given), and
 - (c) must state that the association's registration may be cancelled if such an application is not made on or before that date.

11 Decision on application

- (1) The Director-General may determine an application for registration of a change of name, objects or constitution by registering the change or by refusing the application.
- (2) An application for registration of a change of name, objects or constitution may be refused if:
 - (a) the application does not comply with section *9, or
 - (b) in the case of an application for a change of name, the new name has not been reserved or is unacceptable.
- (3) On registering a change of name for an association, the Director-General is to cause a replacement certificate of registration, under the association's new name, to be given to the applicant.

12 Notification of change of official address

- (1) Within 28 days after an association's official address becomes unusable for any reason (for example, because mail can no longer be delivered to that address), the association's secretary must notify the Director-General, in the approved form, of a proposed change in that address.

Maximum penalty: 5 penalty units.

exposure draft

Associations Incorporation Bill 2008

Clause 13

Registration of associations

Part 2

- (2) Without limiting subsection (1), an association's secretary may at any time notify the Director-General, in the approved form, of a proposed change in the association's official address.
- (3) An association's official address must be an address, within New South Wales:
 - (a) at which any premises used by the association are located, or
 - (b) at which the proposed secretary resides, is employed or carries on business.
- (4) On receiving a notification under this section, the Director-General must register the association's new official address.

Note. A change of official address does not take effect until it is registered: see section 13.

13 Effect of registration of change of name, objects, constitution or official address

- (1) A change of name, objects, constitution or official address that is registered under this Division takes effect when it is registered.
- (2) Section 53 of the *Interpretation Act 1987* applies to an association in respect of which a change of name, objects or constitution has been registered under this Division in the same way as it would apply to the association had the change been made by an Act or statutory rule.

Division 3 Reservation of names

14 Application for reservation of name

- (1) An application for reservation of a name may be made to the Director-General by an association or by an applicant for registration as an association.
- (2) An application for reservation of a name:
 - (a) must be in the approved form, and
 - (b) must specify the name to be reserved, and
 - (c) must be accompanied by the prescribed fee.
- (3) The application may nominate alternative names (not exceeding the maximum number prescribed by the regulations) for consideration.

15 Decision on application

- (1) The Director-General may determine an application for reservation of a name by reserving the name or by refusing the application.
- (2) An application for reservation of a name may be refused:

exposure draft

Clause 16 Associations Incorporation Bill 2008

Part 2 Registration of associations

- (a) if each of the names nominated is unacceptable, or
 - (b) if the Director-General is satisfied that the application has been made for an improper purpose.
- (3) If a proposed name is unacceptable, the Director-General is to consider the next alternative name in the application (if any).

16 Effect of reservation of name

- (1) Reservation of a name expires at the end of the period of 3 months after the name is reserved or, if an application for registration of an association or for a change in an association's name is made within that period, when the application is determined.
- (2) The reservation of a name under this section does not of itself entitle an association or proposed association to be registered by that name, either originally or on a change of name.

17 Unacceptable names

- (1) For the purposes of this Act, a name is unacceptable if:
 - (a) it does not include, at the end of the name, the word "Incorporated" or the abbreviation "Inc", or
 - (b) it contains foreign language characters, or
 - (c) it includes the word "police" or "sheriff", unless its use is the subject of a consent in force under section 204B of the *Police Act 1990* or section 12 of the *Sheriff Act 2005*, or
 - (d) the Director-General is of the opinion:
 - (i) that it is identical to, or closely resembles, some other name that is registered, that is reserved or that is the subject of an earlier application for reservation, and
 - (ii) that the public would be likely to be misled if associations operated under both names, or
 - (e) the Director-General is of the opinion that it suggests a connection with the Crown or the State, or
 - (f) the Director-General is of the opinion that it is offensive or undesirable, or
 - (g) it is declared by the regulations to be unacceptable.
- (2) A name is not unacceptable on a ground referred to in subsection (1) (e) or (f) if, in a particular case, the Minister directs that the name is acceptable.

Part 3 Basic features of associations

Division 1 Association powers

- 18 Legal capacity and powers** (cf Corporations Act 2001 of the Commonwealth, section 124)
- (1) An association has the legal capacity and powers of an individual both in and outside New South Wales.
 - (2) An association's legal capacity to do something is not affected by the fact that the association's interests are not, or would not be, served by doing it.
- 19 Constitution may limit powers** (cf Corporations Act 2001 of the Commonwealth, section 125)
- (1) An association's constitution may contain an express restriction on, or a prohibition of, the association's exercise of any of its powers, but the exercise of a power by the association is not invalid merely because it is contrary to such a restriction or prohibition.
 - (2) An act of an association is not invalid merely because it is contrary to or beyond the association's objects.
- 20 Agent exercising association's power to make contracts** (cf Corporations Act 2001 of the Commonwealth, section 126)
- (1) An association's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the association's express or implied authority and on behalf of the association.
 - (2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.
- 21 Execution of documents (including deeds) by an association** (cf Corporations Act 2001 of the Commonwealth, section 127)
- (1) An association may execute a document without using a common seal if the document is signed by 2 of its authorised signatories.
 - (2) An association with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by 2 of its authorised signatories.
 - (3) An association may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).
 - (4) This section does not limit the ways in which an association may execute a document (including a deed).

exposure draft

Clause 22 Associations Incorporation Bill 2008

Part 3 Basic features of associations

- (5) This section does not authorise an association to execute a document contrary to the provisions of its constitution.

Division 2 Assumptions people dealing with associations are entitled to make

22 Entitlement to make assumptions (cf Corporations Act 2001 of the Commonwealth, section 128)

- (1) A person is entitled to make the assumptions in section *23 in relation to dealings with an association, and the association is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section *23 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired property from an association, and the association and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (3) The assumptions may be made even if anyone purporting to act on behalf of the association acts fraudulently, or forges a document, in connection with the dealings.
- (4) A person is not entitled to make an assumption in section *23 if at the time of the dealings they knew or suspected that the assumption was incorrect.

23 Assumptions that may be made (cf Corporations Act 2001 of the Commonwealth, section 129)

- (1) A person may assume that the association's constitution has been complied with.
- (2) A person may assume that anyone who appears, from information provided by the association that is available to the public from the Register of Incorporated Associations, to be the association's secretary:
 - (a) has been duly appointed, and
 - (b) has authority to exercise the functions customarily exercised by the secretary of a similar association.
- (3) A person may assume that anyone who appears, from information provided by the association, to be a committee member of the association:
 - (a) has been duly appointed, and
 - (b) has authority to exercise the functions customarily exercised by a committee member of a similar association.

exposure draft

Associations Incorporation Bill 2008

Clause 24

Basic features of associations

Part 3

- (4) A person may assume that anyone who is held out by the association to be an agent of the association:
 - (a) has been duly appointed, and
 - (b) has authority to exercise the functions customarily exercised or performed by an agent of a similar association.
- (5) A person may assume that persons acting on behalf of the association properly perform their duties to the association.
- (6) A person may assume that a document has been duly executed by the association if the document appears to have been signed in accordance with section *21 (1).
- (7) A person may assume that a document has been duly executed by the association if:
 - (a) the association's common seal appears to have been fixed to the document in accordance with section *21 (2), and
 - (b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.
- (8) A person may assume that anyone who has, or may be assumed to have, the authority to issue a document or a certified copy of a document on behalf of the association also has authority to warrant that the document is genuine or is a true copy.
- (9) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

Division 3 General

24 Provisions of model constitution to apply if appropriate provision not otherwise made

- (1) If an association's constitution fails to address a matter referred to in Schedule *1, the provisions of the model constitution with respect to the matter are taken to form part of the association's constitution.
- (2) For avoidance of doubt, an association's constitution may address a matter referred to in Schedule *1:
 - (a) by adopting the provisions of the model constitution with respect to the matter, or
 - (b) by adopting a modified version of the provisions of the model constitution with respect to the matter.
- (3) Subsection (2) does not limit the way in which an association's constitution may otherwise address a matter referred to in Schedule *1.

exposure draft

Clause 25 Associations Incorporation Bill 2008

Part 3 Basic features of associations

- (4) A provision of an association's constitution is of no effect to the extent to which it is contrary to this or any other Act or law.

25 Nature of association

- (1) Subject to this Act, an association's constitution binds the association and its members to the same extent as if it were a deed, duly executed by each of them, containing covenants on the part of each of them to observe all of its provisions.
- (2) Subject to this Act, a member of an association (including a committee member and the secretary) is not, by reason only of being such a member, liable in relation to the association's liabilities or the costs, charges and expenses of the winding up of the association.
- (3) Subject to this Act, membership of an association does not confer on a member any right, title or interest, whether legal or equitable, in the association's assets.

26 Pre-registration contracts

Part 2B.3 of the *Corporations Act 2001* of the Commonwealth applies to and in respect of an association in relation to contracts entered into before the association is registered under this Act in the same way as it applies to and in respect of a company in relation to contracts entered into before the company is registered under that Act.

exposure draft

Associations Incorporation Bill 2008

Clause 27

Management of associations

Part 4

Part 4 Management of associations

Division 1 Committee members

27 Committee of association

- (1) An association must have a committee to manage its affairs.
- (2) The committee must include 3 or more members each of whom is aged 18 years or more and at least 3 of whom are ordinarily resident in Australia.
Note. An association's registration is liable to be cancelled if its committee does not comply with this subsection.
- (3) The committee may exercise such of the association's powers as are not required by this Act or its constitution to be exercised by the association in general meeting.
- (4) A committee member's acts are valid despite any defect in his or her appointment.
- (5) Any act done by a former committee member purporting to act as a committee member is valid, in relation to a person dealing with the association in good faith and not knowing that the former committee member is no longer a committee member, as if the former committee member were still a committee member.

28 Committee meetings

- (1) Committee meetings of an association may be held as the association's constitution requires.
- (2) If the association's constitution so provides, a committee meeting may be held at 2 or more venues using any technology that gives each of the committee members a reasonable opportunity to participate.
- (3) In any proceedings before a court, a meeting held at 2 or more venues, or part of such a meeting, is not to be declared invalid on the ground that one or more committee members did not have a reasonable opportunity to participate in the meeting or part unless the court is satisfied that:
 - (a) substantial injustice has been, or may be, caused, and
 - (b) the injustice cannot be remedied by any other order available to the court.

29 Disclosure of interests

- (1) If:

exposure draft

Clause 29 Associations Incorporation Bill 2008

Part 4 Management of associations

- (a) a committee member has a direct or indirect interest in a matter being considered or about to be considered at a meeting of the committee, and
- (b) the interest appears to raise a conflict with the proper performance of the committee member's duties in relation to the consideration of the matter,

the committee member must, as soon as possible after the relevant facts have come to the committee member's knowledge, disclose the nature of the interest at a meeting of the committee.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (2) A disclosure by a committee member at a meeting of the committee that the committee member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the committee (but not exceeding the maximum fee prescribed by the regulations).
- (4) The book must be kept at the same address as the register of committee members.
- (5) After a committee member has disclosed the nature of an interest in any matter, the committee member must not, unless the committee otherwise determines:
 - (a) be present during any deliberation of the committee with respect to the matter, or
 - (b) take part in any decision of the committee with respect to the matter.
- (6) For the purposes of the making of a determination by the committee under subsection (5), a committee member who has a direct or indirect interest in a matter to which the disclosure relates must not:

exposure draft

Associations Incorporation Bill 2008

Clause 30

Management of associations

Part 4

- (a) be present during any deliberation of the committee for the purpose of making the determination, or
 - (b) take part in the making by the committee of the determination.
- (7) A contravention of this section does not invalidate any decision of the committee.

30 Dishonesty

- (1) A committee member of an association who, as a committee member, acts dishonestly is guilty of an offence.
Maximum penalty: 60 penalty units.
- (2) A committee member of an association who, as a committee member, acts with intent to deceive or defraud:
- (a) the association, or
 - (b) any member or creditor of the association,
- is guilty of an offence.
Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

31 Improper use of information

- (1) A committee member or former committee member of an association who makes improper use of information that he or she has acquired as a committee member with intent:
- (a) to gain, directly or indirectly, an advantage for himself or herself or for any other person, or
 - (b) to cause harm to the association,
- is guilty of an offence.
Maximum penalty: 60 penalty units.
- (2) A committee member or former committee member of an association who makes improper use of information that he or she has acquired as a committee member with intent to deceive or defraud:
- (a) the association, or
 - (b) any member or creditor of the association,
- is guilty of an offence.
Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

32 Improper use of position

- (1) A committee member of an association who makes improper use of his or her position as a committee member with intent:

exposure draft

Clause 33 Associations Incorporation Bill 2008

Part 4 Management of associations

(a) to gain, directly or indirectly, an advantage for himself or herself or for any other person, or

(b) to cause harm to the association,
is guilty of an offence.

Maximum penalty: 60 penalty units.

(2) A committee member of an association who makes improper use of his or her position with intent to deceive or defraud:

(a) the association, or

(b) any member or creditor of the association,
is guilty of an offence.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

33 Negligence

A committee member of an association who, as a committee member, fails to exercise the degree of care and diligence that a reasonable person would exercise in the circumstances is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 2 Secretary and authorised signatories

34 Secretary

(1) An association must have a secretary.

(2) The secretary must be a person who is aged 18 years or more and is ordinarily resident in Australia.

Note. An association's registration is liable to be cancelled if its secretary does not comply with this subsection.

(3) The position of secretary may, but need not be, a committee member position.

(4) If the position of secretary is not a committee member position, the position may, but need not be, held by a committee member in addition to his or her position as a committee member.

(5) The secretary's acts are valid despite any defect in his or her appointment.

(6) Any act done by a former secretary purporting to act as secretary is valid, in relation to a person dealing with the association in good faith and not knowing that the former secretary is no longer the secretary, as if the former secretary were still the secretary.

exposure draft

Associations Incorporation Bill 2008

Clause 35

Management of associations

Part 4

- (7) The first secretary of an association is the person nominated as secretary in the application for registration of the association.
- (8) Within 28 days after taking office as the association's secretary (otherwise than as the association's first secretary), a person must notify the Director-General, in the approved form, of:
 - (a) the person's name and residential address, and
 - (b) the fact that the person has taken office as secretary.Maximum penalty: 1 penalty unit.

35 Vacation of office of secretary

- (1) The secretary of an association vacates office in the following circumstances:
 - (a) if he or she dies, or
 - (b) if he or she resigns the office in writing addressed to the association's committee, or
 - (c) if he or she is removed from office by resolution of a general meeting of the association, or
 - (d) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (e) if he or she becomes a mentally incapacitated person, or
 - (f) if he or she ceases to ordinarily reside in Australia, or
 - (g) in such other circumstances as the constitution of the association may provide.
- (2) Within 14 days after vacating office, a former secretary of an association must ensure that all documents in his or her possession that belong to the association are delivered to a committee member.
- (3) An association must fill any vacancy in the office of secretary within 28 days after the vacancy arises.
Maximum penalty: 2 penalty units

36 Authorised signatories

- (1) An association's secretary is, by virtue of that office, an authorised signatory for the association.
- (2) An association may from time to time appoint additional authorised signatories from among such of its committee members as are ordinarily resident in Australia, and may at any time revoke any such appointment.

exposure draft

Clause 37 Associations Incorporation Bill 2008

Part 4 Management of associations

- (3) A person (other than the association's secretary) vacates office as an authorised signatory of an association if:
- (a) his or her appointment as an authorised signatory is revoked, or
 - (b) he or she ceases to be a committee member, or
 - (c) he or she ceases to be ordinarily resident in Australia.

Division 3 General administration

37 General meetings

- (1) An association's first annual general meeting must be held within 18 months after the association's incorporation under this Act.
- (2) Subsequent annual general meetings must be held:
- (a) within 5 months after the close of the association's financial year, or
 - (b) within such further time as may be allowed by the Registrar or prescribed by the regulations.
- (3) If the association's constitution so provides, a meeting may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate.
- (4) In any proceedings before a court, a meeting held at 2 or more venues, or part of such a meeting, is not to be declared invalid on the ground that one or more of the association's members did not have a reasonable opportunity to participate in the meeting or part unless the court is satisfied that:
- (a) substantial injustice has been, or may be, caused, and
 - (b) the injustice cannot be remedied by any other order available to the court.

38 Postal ballots

- (1) Votes on a resolution proposed at a meeting of an association may be cast by postal ballot unless the association's constitution provides otherwise.
- (2) A postal ballot is to be conducted in accordance with the regulations.

39 Voting generally

A resolution is passed by an association if it is supported by more than half of the votes that are cast:

- (a) at a meeting of the association, or

exposure draft

Associations Incorporation Bill 2008

Clause 40

Management of associations

Part 4

- (b) if the association's constitution so permits, in a postal ballot conducted by the association,
by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

40 Voting on special resolutions

- (1) A resolution is passed by an association as a *special resolution* if it is supported by at least three-quarters of the votes that are cast:
 - (a) at a meeting of the association, or
 - (b) if the association's constitution so permits, in a postal ballot conducted by the association, or
 - (c) in such other manner as the Director-General may direct,
by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.
- (2) A direction under subsection (1) (c) may not be given unless the Director-General is satisfied that, in the circumstances, it is impracticable to require votes to be cast in the manner provided by subsection (1) (a) or (b).

41 Register of committee members

- (1) An association must keep a register of committee members.
- (2) The register must contain the following particulars in relation to each committee member:
 - (a) the committee member's name and residential address,
 - (b) the date on which the committee member takes office,
 - (c) the date on which the committee member vacates office,
 - (d) such other particulars as may be prescribed by the regulations.
- (3) The register must be kept in New South Wales:
 - (a) at the main premises of the association, or
 - (b) if the association has no premises, at the association's official address.
- (4) The secretary must record in the register any change in the membership of the committee within one month after the change occurs.
- (5) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.
Maximum penalty: 1 penalty unit.

exposure draft

Clause 42 Associations Incorporation Bill 2008

Part 4 Management of associations

42 Association not to provide pecuniary gain for its members

- (1) An association must not provide pecuniary gain for its members.
Maximum penalty: 60 penalty units.
- (2) Subsection (1) does not affect the association's civil liability to any person as a result of it having provided pecuniary gain for its members.

43 Where name must appear

- (1) An association must not issue any letter, statement, invoice, notice, publication, order for goods or services, receipt or other document in connection with its activities unless the association's name appears in legible characters on the document.
Maximum penalty: 2 penalty units.
- (2) Nothing in this section requires an association to use the word "Incorporated" or the abbreviation "Inc" at the end of its name when the name appears on any document (other than a document referred to in subsection (1)) or on any other matter.
- (3) This section does not limit the operation of section 24 of the *Business Names Act 2002* in relation to any association that carries on activities under a business name registered under that Act.

Part 5 Financial reporting

Division 1 Large associations

44 Application of Division

This Division applies to any association whose gross receipts (as calculated in accordance with the regulations) for the financial year last ended exceeded \$200,000 or such other amount as may be prescribed by the regulations (*a large association*).

45 Financial statements

- (1) As soon as practicable after the end of each financial year, the committee members of a large association:
 - (a) must cause financial statements for that year to be prepared in relation to the association's financial affairs, and
 - (b) must cause the financial statements to be audited in time for them to be submitted to the association's next annual general meeting.Maximum penalty: 5 penalty units.
- (2) The financial statements must be prepared in accordance with the Australian Accounting Standards and must deal with such matters as are prescribed by the regulations.
- (3) The auditor's report:
 - (a) must be prepared in accordance with the Australian Auditing Standards, and
 - (b) must state whether the association has kept such financial records as are necessary to enable financial statements to be prepared in accordance with Australian Accounting Standards.

46 Submission of financial statements to AGM

At each annual general meeting of a large association, the committee members of the association must cause:

- (a) the association's financial statements for the previous financial year, and
 - (b) the auditor's report for those statements,
- to be submitted to the meeting.

Maximum penalty: 5 penalty units.

47 Lodgment of documents with Director-General

- (1) The secretary of a large association must lodge the following documents with the Director-General in accordance with this section:

exposure draft

Clause 48 Associations Incorporation Bill 2008

Part 5 Financial reporting

- (a) a summary, in the approved form, of the association's financial affairs for the previous financial year,
- (b) the association's financial statements for that year,
- (c) the auditor's report for those statements,
- (d) a document setting out the terms of any resolution passed at the association's annual general meeting in connection with the documents referred to in paragraphs (b) and (c).

Maximum penalty: 5 penalty units.

- (2) The documents referred to in subsection (1):
 - (a) must be lodged within:
 - (i) one month after the annual general meeting for the current financial year, or
 - (ii) 7 months after the end of the previous financial year, whichever is the earlier, or within such further time as the Director-General may allow, and
 - (b) must be accompanied by the prescribed fee.
- (3) For the avoidance of doubt, the documents referred to in subsection (1) are taken not to have been lodged if the prescribed fee has not been paid.

Division 2 Small associations

48 Application of Division

This Division applies to any association to which Division 1 does not apply (*a small association*).

49 Financial statements

- (1) As soon as practicable after the end of each financial year, the committee members of a small association must cause financial statements for that year to be prepared, in accordance with this section, in relation to the association's financial affairs.

Maximum penalty: 5 penalty units.

- (2) The financial statements must give a true and fair view of the association's affairs and must deal with such matters as are prescribed by the regulations.

50 Submission of reports and statements to AGM

At each annual general meeting of a small association, the committee members of the association must cause the association's financial statements for the previous financial year to be submitted to the meeting.

exposure draft

Associations Incorporation Bill 2008

Clause 51

Financial reporting

Part 5

Maximum penalty: 5 penalty units.

51 Lodgment of documents with Director-General

- (1) The secretary of a small association must lodge the following documents with the Director-General in accordance with this section:
- (a) a summary, in the approved form, of the association's financial affairs for the previous financial year,
 - (b) the association's financial statements for that year,
 - (c) a document setting out the terms of any resolution passed at the association's annual general meeting in connection with the documents referred to in paragraph (b).

Maximum penalty: 5 penalty units.

- (2) The documents referred to in subsection (1):
- (a) must be lodged within:
 - (i) one month after the annual general meeting for the current financial year, or
 - (ii) 7 months after the end of the previous financial year, whichever is the earlier, or within such further time as the Director-General may allow, and
 - (b) must be accompanied by the prescribed fee.
- (3) For the avoidance of doubt, the documents referred to in subsection (1) are taken not to have been lodged if the prescribed fee has not been paid.

Division 3 General

52 Keeping of accounts and minutes of proceedings

- (1) An association:
- (a) must keep records that correctly record and explain its financial transactions and financial position, and
 - (b) must keep minutes of the proceedings of its committee meetings and general meetings.

Maximum penalty: 5 penalty units.

- (2) In the case of a large association within the meaning of Division 1, the records referred to in subsection (1) (a) must be sufficient to enable financial statements to be prepared in accordance with Australian Accounting Standards.
- (3) If any document required to be kept under this section is, either in whole or in part, in a language other than the English language, a copy of the

exposure draft

Clause 53 Associations Incorporation Bill 2008

Part 5 Financial reporting

document wholly in the English language must be kept with the document.

- (4) The regulations may make provision for or in respect of the keeping and inspection of records and minutes under this section.

53 Audit at the Director-General's direction

- (1) The Director-General may direct an association to cause the whole or any specified part of an association's financial records to be audited, and an auditor's report lodged with the Director-General, within a specified time.
- (2) Such a direction may be given regardless of whether the financial records have previously been audited.
- (3) An association to which such a direction is given must ensure that the direction is complied with.
Maximum penalty: 5 penalty units.
- (4) An auditor's report under this section must state whether the association's financial records:
- (a) have been properly kept, and
 - (b) give a true and fair view of the association's affairs.

54 Auditor to be qualified and independent

- (1) Subject to subsection (2), an audit under this Part must be carried out:
- (a) by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (b) by some other person approved by the Director-General.
- (2) Except with the written approval of the Director-General, an audit under this Part may not be carried out by any person who is, or who has at any time within the last 2 years been:
- (a) a member of the association, or
 - (b) an employee of, or provider of professional services (other than audit services) to the association or to a committee member or secretary of the association.

exposure draft

Associations Incorporation Bill 2008

Clause 55

External administration and winding up

Part 6

Part 6 External administration and winding up

Division 1 External administration on grounds of insolvency

55 Appointment of administrator (cf Co-operatives Act 1992, sections 332 and 332A)

- (1) An 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 the provisions of Part 5.3A and Division 3 of Part 5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) those provisions are to be read as if an association and its committee were, respectively, a company and its board,
 - (b) those provisions are to be read as including the provisions of subsections (2) and (3),
 - (c) a reference in those provisions to sections 128 and 129 of the *Corporations Act 2001* of the Commonwealth is to be read as a reference to sections *22 and *23 of this Act,
 - (d) a reference in those provisions to an administrator appointed under a provision of Part 5.3A is to be read as including a reference to an administrator appointed by the Director-General under this section,
 - (e) a reference in those provisions to ASIC is to be read as a reference to the Director-General,
 - (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) Without limiting subsection (1), the Director-General may appoint a person as an administrator for the purposes of the provisions of Part 5.3A of the *Corporations Act 2001* of the Commonwealth (as applying under this section) if of the opinion that the association is, or is likely to become, insolvent.
- (3) A person appointed under subsection (2) may, but need not, be a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

exposure draft

Clause 56 Associations Incorporation Bill 2008

Part 6 External administration and winding up

Division 2 External administration on grounds other than insolvency

56 Appointment of administrator

The Director-General may appoint an administrator to administer an association's affairs if:

- (a) the association has persistently failed to comply with the requirements of this Act or the regulations, and
- (b) having regard to those circumstances, the Director-General is satisfied that it is in the interests of the association's members or creditors for an administrator to be appointed.

57 Effect of appointment of administrator (cf Co-operatives Act 1992, section 334)

- (1) On the appointment of an administrator for an association:
 - (a) the committee members and the secretary cease to hold office, and
 - (b) the administrator may terminate any contract of employment with the association or any contract for the provision of secretarial, administrative or other services to the association.
- (2) An administrator for an association has the functions of the association's committee and the functions of the association's secretary.

58 Revocation of appointment (cf Co-operatives Act 1992, section 335)

- (1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.
- (2) When a liquidator of an association is appointed, the appointment of any administrator of the association is automatically revoked.
- (3) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Director-General showing how the administration was carried out, and for that purpose an administrator has access to the association's records and documents.
- (4) On providing the report and accounting fully in relation to the administration of the association to the satisfaction of the Director-General, the administrator is released from any 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.
- (5) Before revoking the appointment of an administrator of an association, the Director-General must:

exposure draft

Associations Incorporation Bill 2008

Clause 59

External administration and winding up

Part 6

- (a) appoint another administrator, or
 - (b) ensure that committee members and the secretary have been elected in accordance with the association's constitution at a meeting convened by the administrator in accordance with the constitution, or
 - (c) appoint committee members and a secretary for the association.
- (6) Committee members elected or appointed under subsection (5):
- (a) take office on revocation of the administrator's appointment, and
 - (b) if appointed, hold office until the next annual general meeting of the association after the revocation of that appointment.
- (7) The secretary of an association appointed under subsection (5) (c) takes office on revocation of the administrator's appointment.

59 Expenses of administration (cf Co-operatives Act 1992, section 336)

- (1) The expenses of and incidental to the conduct of an association's affairs by an administrator are payable from the association's funds.
- (2) The expenses of conducting an association's affairs include:
 - (a) if the administrator is a public servant, such amount as the Director-General may certify as being the Crown's costs in relation to the administrator's remuneration, or
 - (b) if the administrator is not a public servant, such amount as the Director-General may approve in relation to the administrator's remuneration.
- (3) An amount certified under subsection (2) (a) may be recovered in a court of competent jurisdiction as a debt due to the Crown.
- (4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding up of an association as the liquidator of the association has.

60 Liabilities arising from administration (cf Co-operatives Act 1992, section 337)

- (1) An administrator is liable for any loss incurred by the association because of any fraud, dishonesty, negligence or wilful failure by the administrator to comply with this Act, the regulations or the association's constitution.
- (2) An administrator is not liable for any other loss, but must account for the loss in a report given under section *58.

exposure draft

Clause 61 Associations Incorporation Bill 2008

Part 6 External administration and winding up

61 Stay of proceedings (cf Co-operatives Act 1992, section 337B)

- (1) If the Director-General appoints an administrator to conduct an association's affairs, a person must not begin or continue any proceeding in a court against the association until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.
- (2) A person intending to apply for the leave of the Supreme Court under subsection (1) must give the Director-General not less than 10 days' notice of intention to apply.
- (3) On the hearing of an application under subsection (1), the Director-General may be represented and may oppose the granting of the application.

62 Administrator to report to Director-General (cf Co-operatives Act 1992, section 337C)

On the receipt of a request from the Director-General, the administrator for an association must, without delay, prepare and give to the Director-General a report showing how the administration is being carried out.

Division 3 Winding up

63 Voluntary winding up

- (1) An association may be wound up voluntarily if the association so resolves by special resolution.
- (2) The voluntary winding up of an 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 Parts 5.5 and 5.6 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications referred to in section *65,
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

64 Winding up by the Supreme Court

- (1) The Supreme Court may order the winding up of an association if:
 - (a) the association has by special resolution resolved that it be wound up by the Court, or

exposure draft

Associations Incorporation Bill 2008

Clause 64

External administration and winding up

Part 6

- (b) the association does not commence its operations within one year after the date of its registration under this Act or suspends its operations for a whole year, or
 - (c) the association is insolvent, or
 - (d) the association has provided pecuniary gain for its members, or
 - (e) the association has engaged in activities inconsistent with its objects, or
 - (f) the committee of the association has acted in affairs of the association in the interests of the committee or the committee members rather than in accordance with its objects, or in any other manner whatever that appears to the Court to be unfair or unjust to the association's members, or
 - (g) the association would, if not registered under this Act, not be eligible to be so registered, or
 - (h) the Director-General has, pursuant to section *74, directed the association to apply for cancellation of its registration and the association has failed to do so within the time fixed by the direction, or
 - (i) the Court is of the opinion that it is just and equitable that the association be wound up.
- (2) An application to the Supreme Court for the winding up of an association may be made by the association, by a member or creditor of the association or by the Director-General.
- (3) The winding up of an association (other than by a voluntary winding up) by the Supreme Court 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 5.7 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
- (a) the modifications referred to in section *65,
 - (b) the provisions of the Part are to be read as if that Part extended to the winding up of the affairs of an association in New South Wales,
 - (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

exposure draft

Clause 65 Associations Incorporation Bill 2008

Part 6 External administration and winding up

65 Modifications to text of applied Corporations Act 2001 of the Commonwealth

The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of sections *63 (2) and *64 (3):

- (a) a reference to a company or body is to be read as a reference to an association,
- (b) a reference to the directors of a company is to be read as a reference to the committee members of an association,
- (c) a reference to ASIC is to be read as a reference to the Director-General,
- (d) a reference to a company's principal place of business is to be read as a reference to an association's official address,
- (e) the reference to 5 years in section 1316 of that Act is taken to be a reference to 3 years.

66 Distribution of surplus property

- (1) In this section, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.
- (2) In a winding up of an association, the surplus property of the association is to be distributed in accordance with a special resolution of the association.
- (3) Any such distribution of surplus property:
 - (a) must be approved by the Director-General, and
 - (b) is not to be made to:
 - (i) any member or former member of the association, or
 - (ii) any person to be held on trust for any member or former member of the association,unless the member or former member is an association (whether incorporated or unincorporated) whose constitution, at the time of the distribution, prohibits the distribution of property to its members, and
 - (c) is subject to any trust affecting that property or any part of it.
- (4) Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

exposure draft

Associations Incorporation Bill 2008

Clause 67

External administration and winding up

Part 6

- (5) A person aggrieved by the operation of this section in relation to the surplus property of an association may apply to the Supreme Court which may make such orders as to the disposal of the surplus property as to the Court appears just.

67 Appeal

A person aggrieved by any act, omission or decision of a liquidator or provisional liquidator of an association may appeal to the Supreme Court in respect of the act, omission or decision, and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as the Court thinks fit.

Division 4 Offences relating to incurring of debts or fraudulent conduct

68 Definitions

- (1) This Division applies to an association:
- (a) that has been or is being wound up, or
 - (b) whose registration has been cancelled by the Director-General, or
 - (c) that is unable to pay its debts.
- (2) In this Division, *appropriate officer* means:
- (a) in relation to an association that has been or is being wound up, the liquidator, or
 - (b) in relation to an association whose registration has been cancelled by the Director-General or that is unable to pay its debts, the Director-General.
- (3) For the purposes of this section, an association is taken to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the association is returned unsatisfied in whole or in part.

69 Incurring of debts in respect of association to which this Division applies

- (1) If an association incurs a debt and:
- (a) immediately before the debt is incurred:
 - (i) there are reasonable grounds for believing that the association is or will become insolvent, or
 - (ii) there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent, and

exposure draft

Clause 70 Associations Incorporation Bill 2008

Part 6 External administration and winding up

- (b) the association is, at the time the debt is incurred, or becomes at a later time, an association to which this Division applies, any person who was a committee member of the association at the time the debt was incurred is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for 1 year, or both.
- (2) The association and any person who was a committee member of the association at the time the debt was incurred are jointly and severally liable for the payment of the debt.
- (3) In any proceedings against a person under subsection (1), it is a defence if the defendant proves:
- (a) that the debt was incurred without the defendant's express or implied authority or consent, or
- (b) that, at the time the debt was incurred, the defendant did not have:
- (i) reasonable grounds to believe that the association was insolvent, or
- (ii) reasonable grounds to expect that, if the association incurred that debt, it would become insolvent.
- (4) Proceedings may be brought under subsection (2) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of the debt.
- (5) If subsection (2) renders a person or persons liable to pay a debt incurred by an association, the payment by that person or either or any of those persons of the whole or any part of the debt does not render the association liable to the person or persons concerned in respect of the amount so paid.

70 Fraudulent conduct in respect of association to which this Division applies

If:

- (a) an association does any act (including the entering into of a contract or transaction) with intent to defraud creditors of the association or any other person or for any other fraudulent purpose, and
- (b) the association is at the time it does the act, or becomes at a later time, an association to which this Division applies, any person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

exposure draft

Associations Incorporation Bill 2008

Clause 71

External administration and winding up

Part 6

71 Powers of Court

- (1) If a person (*the offender*) has been convicted of an offence under section *69 (1) in respect of the incurring of a debt, the Supreme Court may, on the application of:
 - (a) the Director-General, or
 - (b) the person to whom the debt is payable (*the creditor*),declare that the offender is personally responsible, without any limitation of liability, for payment to the creditor of an amount equal to the whole of the debt or such part of it as the Court thinks proper.
- (2) If a person (*the offender*) has been convicted of an offence under section *70, the Supreme Court may, on the application of:
 - (a) the Director-General, or
 - (b) the appropriate officer, or
 - (c) a member or creditor of the association authorised by the Director-General to make such an application,declare that the offender is personally responsible, without any limitation of liability, for payment to the association of the amount required to satisfy so much of the debts of the association as the Court thinks proper.
- (3) If the Supreme Court makes a declaration under subsection (1), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.
- (4) In particular, the Supreme Court may order that the liability of the offender is a charge:
 - (a) on a debt or obligation due from the association to the creditor, or
 - (b) on a right or interest under a charge on any property of the association held by or vested in the offender or a person on behalf of the offender, or a person claiming as assignee from or through the offender or a person acting on behalf of the offender.
- (5) The Supreme Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (4).
- (6) For the purpose of subsection (4) (b), *assignee* includes a person to whom or in whose favour, by the direction of the offender:
 - (a) the debt, obligation or charge was created, issued or transferred, or
 - (b) the interest was created,but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and

exposure draft

Clause 72 Associations Incorporation Bill 2008

Part 6 External administration and winding up

without actual knowledge of any of the matters on which the conviction or declaration was made.

72 Certain rights not affected

Nothing in this Division affects any rights of a person to indemnity, subrogation or contribution.

exposure draft

Associations Incorporation Bill 2008

Clause 73

Cancellation of registration

Part 7

Part 7 Cancellation of registration

Division 1 Voluntary cancellation

73 Application for cancellation

- (1) An association may apply to the Director-General for cancellation of the association's registration.
- (2) The application:
 - (a) must be in the approved form, and
 - (b) must include a copy of the special resolution by which the association has approved:
 - (i) the cancellation of its registration, and
 - (ii) the proposed distribution of its assets, and
 - (c) must be accompanied by a statement (verified by statutory declaration by 2 committee members) that the association has no outstanding liabilities, and
 - (d) must be accompanied by the prescribed fee.

74 Director-General may order association to apply for cancellation of registration

- (1) The Director-General may, by order in writing served on an association, direct the association to apply for cancellation of its registration within such time (being not less than 3 months) as is fixed by the direction.
- (2) The Director-General may not give such a direction unless satisfied that it is inappropriate for the association to continue to be registered under this Act:
 - (a) by reason of the Director-General's assessment of the nature or extent of the association's activities, or
 - (b) by reason of the Director-General's assessment of the nature or extent of the association's dealings with the public, or
 - (c) for any other reason that appears sufficient to the Director-General.

75 Decision on application

- (1) The Director-General may determine an application for cancellation of an association's registration by cancelling the registration or by refusing the application.
- (2) An application for cancellation of an association's registration must be refused if the Director-General suspects:

exposure draft

Clause 76 Associations Incorporation Bill 2008

Part 7 Cancellation of registration

- (a) that the association has outstanding obligations under this Act, or
 - (b) that the association has outstanding liabilities, or
 - (c) that the proposed distribution of assets does not comply with section *76.
- (3) On cancelling an association's registration, the Director-General is to cause notice of that fact to be published in the Gazette and to be given to the association.

76 Distribution of assets

- (1) On the cancellation of an association's registration under this Division, the association's assets are to be distributed in accordance with a special resolution of the association.
- (2) The assets of an association whose registration has been cancelled under this Division:
- (a) may not be distributed to any member or former member of the association, or to any person to be held on trust for any member or former member of the association, and
 - (b) remain subject to any trust to which they were subject immediately before the association's registration was cancelled.
- (3) Any asset that has been supplied by a government department or public authority (including any unexpended portion of a grant) must be returned to the department or authority that supplied it or delivered to such person or body as that department or authority may direct.
- (4) A person aggrieved by the operation of this section in relation to the distribution of an association's assets may apply to the Supreme Court which may make such orders as to the distribution of those assets as it thinks proper.

77 Cancellation of registration following amalgamation

- (1) In the case of 2 or more associations that become a single association, the registration of each of the former associations is taken to be cancelled when the amalgamated association is registered.
- (2) Sections *74, *75 and *76 do not apply to the cancellation of an association's registration under this section.

Division 2 Involuntary cancellation

78 Director-General may cancel registration

- (1) The Director-General may cancel an association's registration if satisfied that:

exposure draft

Associations Incorporation Bill 2008

Clause 78

Cancellation of registration

Part 7

- (a) the association is not in operation, whether or not it has been wound up, or
 - (b) the association has fewer than 5 members, or
 - (c) the association's committee does not include 3 or more members of whom each is aged 18 years or more and of whom at least 3 are ordinarily resident in Australia, or
 - (d) the association's secretary is not aged 18 years or more and ordinarily resident in Australia, or
 - (e) the association is, or has been, providing pecuniary gain for its members, or
 - (f) during the last 3 financial years, the association has not held an annual general meeting, or
 - (g) during the last 3 financial years, no financial statements for the association have been lodged with the Director-General, or
 - (h) the association has failed to comply with a direction under section *10 for the change of its name, or
 - (i) the association has become registered under this Act by reason of fraud or mistake.
- (2) An association's registration is not to be cancelled under this section if:
- (a) the association is being wound up, or
 - (b) the Administrative Decisions Tribunal has ordered the Director-General not to cancel the association's registration.
- (3) Before cancelling an association's registration under this section, the Director-General:
- (a) must cause notice of the proposed cancellation to be given to the association stating the ground or grounds referred to in subsection (1) that the Director-General believes exist, and
 - (b) must give the association and its members a period of at least 28 days within which to make submissions to the Director-General with respect to the proposed cancellation, and
 - (c) must give due consideration to any submissions that are made within that period.
- (4) After cancelling an association's registration under this section, the Director-General must cause notice of that fact to be given to the association.
- (5) Any notice to be sent to an association under this section must be sent by registered post addressed to the association:
- (a) at the association's official address, or

exposure draft

Clause 79 Associations Incorporation Bill 2008

Part 7 Cancellation of registration

- (b) if the Director-General suspects that the association's official address is no longer in use, at such other address as appears to the Director-General to be an address that is used by the association.

79 Distribution of assets

- (1) If the registration of an association is cancelled under this Division, the property of the association vests in the Director-General.
- (2) The Director-General:
 - (a) may give such directions as the Director-General considers just for or with respect to the payment of the debts and liabilities of the association, the distribution of its property and the winding up of its affairs, and
 - (b) may appoint a person for the purpose of investigating the affairs of the association with a view to the realisation of its property, payment of its debts, discharge of its liabilities, distribution of its property and winding up of its affairs, and
 - (c) may do all such other acts and things as are reasonably necessary to be done for the purpose of the exercise of the Director-General's powers under this section.
- (3) The Director-General is entitled to be paid out of the property of an association the reasonable costs incurred by the Director-General in the exercise of the Director-General's powers under this section in relation to the association.
- (4) Section *66 applies to and in respect of the vesting under this section of property of an association remaining after satisfaction of the debts and liabilities of the association and the payment of any amount under subsection (3) in the same way as that section applies to and in respect of the vesting of that property in a winding up of an association.

Division 3 Transfer of incorporation

80 Applications for transfer of registration declaration

- (1) An association may apply to the Director-General for a transfer of registration declaration in relation to its proposed incorporation under a corresponding law.
- (2) An application may only be made pursuant to a special resolution passed by the association.
- (3) An application:
 - (a) must be in the approved form, and

exposure draft

Associations Incorporation Bill 2008

Clause 81

Cancellation of registration

Part 7

- (b) must identify the corresponding law under which the association proposes to seek incorporation, and
 - (c) must include such information as is required by the regulations, and
 - (d) must be accompanied by the prescribed fee.
- (4) An application must also include a copy of the special resolution referred to in subsection (2).

81 Decision on application

- (1) The Director-General may determine an association's application for a transfer of registration declaration:
- (a) by making the transfer of registration declaration in terms:
 - (i) that identify the corresponding law under which the association proposes to seek incorporation, and
 - (ii) that indicate that the Director-General has no objection to the association becoming incorporated under that law, or
 - (b) by refusing the application.
- (2) An application for a transfer of registration declaration may be refused if the application does not comply with section *80.
- (3) On making a transfer of registration declaration, the Director-General is to cause a certificate as to the terms of the declaration to be given to the applicant.

Division 4 General

82 Loss of corporate status

- (1) An association ceases to be a body corporate under this Act:
- (a) when its registration is cancelled, as referred to in Division 1 or 2, or
 - (b) when it becomes incorporated under a corresponding law, as referred to in Division 3.
- (2) This Act (except for this Division) does not apply to an association that has ceased to be a body corporate under this Act.

83 Notice of cancellation to be sent to association

- (1) On cancelling an association's registration, the Director-General is to cause notice of that fact to be published in the Gazette and sent to the association.

exposure draft

Clause 84 Associations Incorporation Bill 2008

Part 7 Cancellation of registration

- (2) Any notice to be sent to an association under this section must be sent by registered post addressed to the association:
 - (a) at the association's official address, or
 - (b) if the Director-General suspects that the association's official address is no longer in use, at such other address as appears to the Director-General to be an address that is used by the association.

84 Certain liabilities not affected by cancellation

Cancellation of an association's registration does not affect any liability of any former secretary or former committee member, and any such liability may be enforced as if the association's registration had not been cancelled.

85 Restitution of registration

- (1) If the Director-General is satisfied that an association's registration should not have been cancelled under this Part, and the association has not become incorporated under any other Act or law, the Director-General may reinstate its registration under this section.
- (2) If an association's registration is reinstated under this section, the body corporate previously established by this Act in relation to the association is, as from the time of reinstatement, taken to have continued in existence as if the association's registration had not been cancelled.
- (3) The regulations may make provision of a savings or transitional nature consequent on the reinstatement of an association's registration and incorporation under this section.

exposure draft

Associations Incorporation Bill 2008

Clause 86

Administrative provisions

Part 8

Part 8 Administrative provisions

Division 1 Power to require information and documents

86 Power to require information and documents

- (1) The Director-General may, by notice in writing served on any person, require the person to do either or both of the following within such time as is specified in the notice:
 - (a) to furnish the Director-General with such information as the person possesses in connection with the affairs of an association,
 - (b) to produce to the Director-General such documents as the person possesses in connection with the affairs of an association.
- (2) A person must not fail to comply with a requirement under this section.
Maximum penalty: 60 penalty units.
Note. The furnishing of false or misleading information and the production of false or misleading documents are offences under Division 3 of Part 5 of the *Crimes Act 1900*.
- (3) A person is not excused from furnishing information or producing a document pursuant to a requirement under this section on the ground that to do so may tend to incriminate the person, but any information so furnished or document so produced is not admissible in evidence against the person in any criminal proceedings other than proceedings for an offence under Division 3 of Part 5 of the *Crimes Act 1900*.

87 Power to enter land

- (1) An authorised officer:
 - (a) may enter any premises at which an association carries on any activity, other than any part of premises used for residential purposes, and
 - (b) may inspect, and take copies of or extracts from, any document that relates to the carrying on of business at or from the premises, for the purpose of ascertaining whether the provisions of this Act are being complied with.
- (2) The power of entry conferred by subsection (1) may only be exercised while business is being carried on, or during the hours that business is usually carried on, at or from the premises.

88 Search warrants

- (1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the

exposure draft

Clause 89 Associations Incorporation Bill 2008

Part 8 Administrative provisions

authorised officer under this Act believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.

- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a named authorised officer under this Act to enter the premises and to exercise any of the authorised officer's functions under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

89 Manner in which power of entry to be exercised

- (1) The powers conferred on an authorised officer by this Division may not be exercised in relation to any premises unless:
 - (a) the officer is in possession of a certificate of authority, issued in accordance with the regulations, that evidences his or her authority to exercise those powers, and
 - (b) the occupier of the premises has been given at least 24 hours' notice that those powers are to be exercised or the Director-General has given prior authority for the exercise of those powers without the need for such notice.
- (2) Authority under subsection (1) (b) may only be given if the Director-General is satisfied, in the circumstances of the case, that the giving of 24 hours' notice would frustrate the purpose for which the powers are to be exercised.
- (3) Reasonable force may be used for the purpose of effecting entry under this Division.

90 Damage to be minimised

- (1) In exercising the powers conferred by this Division, an authorised officer must do as little damage as possible.
- (2) The Director-General must compensate all interested parties for any damage caused by an authorised officer as a consequence of the exercise of the powers conferred by this Division.
- (3) Subsection (2) does not apply to the extent to which the occupier of the premises has obstructed or hindered the authorised officer in the exercise of the powers conferred by this Division.

exposure draft

Associations Incorporation Bill 2008

Clause 91

Administrative provisions

Part 8

Division 2 Offences

91 Offence of using certain names

- (1) Any person or body (other than an association) that calls itself by a name that includes the word “Incorporated” or “Inc” is guilty of an offence.

Maximum penalty: 2 penalty units.

- (2) Subsection (1) does not apply to a body that is incorporated, whether in New South Wales or elsewhere, under a name that includes either of those words.

92 Offences by committee members

- (1) If an association contravenes, whether by act or omission, any provision of this Act or the regulations, each committee member of the association is taken to have contravened the same provision unless he or she satisfies the court that:

- (a) the association contravened the provision without his or her knowledge, or
- (b) he or she was not in a position to influence the conduct of the association in relation to its contravention of the provision, or
- (c) he or she, being in such a position, used all due diligence to prevent the contravention of the provision by the association.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the association has been proceeded against or convicted under that provision.

- (3) In the case of a contravention of section *42, each person who, pursuant to subsection (1), is taken to have contravened that section is, together with the association, jointly and severally liable for all debts incurred by the association as a consequence of that contravention.

- (4) Nothing in this section affects any liability imposed on an association for an offence committed by the association under this Act.

- (5) For the purposes of this section, an association’s secretary (not otherwise being a committee member) is taken to be a committee member.

93 Obstruction of authorised officers

A person must not obstruct or hinder an authorised officer in the exercise of the officer’s functions under this Act.

Maximum penalty: 60 penalty units.

exposure draft

Clause 94 Associations Incorporation Bill 2008

Part 8 Administrative provisions

94 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations:
 - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) may prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) may prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Division 3 General

95 Register

- (1) The Director-General is to keep a Register of Incorporated Associations in such form, and containing such particulars, as the Director-General thinks fit.
- (2) On payment of the prescribed fee, a person is entitled:

exposure draft

Associations Incorporation Bill 2008

Clause 96

Administrative provisions

Part 8

- (a) to inspect any document that has been lodged with the Director-General under this Act, not being a document that has been destroyed or otherwise disposed of, and
- (b) to be given a copy (including a copy certified by the Director-General) of, or an extract (including an extract certified by the Director-General) from, any such document.

96 Authorised officers

The Director-General may appoint any member of staff of the Department as an authorised officer for the purposes of this Act.

97 Exclusion of personal liability

Anything done or omitted to be done:

- (a) by the Director-General, or a person acting under the direction of the Director-General, or
- (b) by an authorised officer,

does not subject the Director-General, person so acting or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

98 Review of decisions of Director-General

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any decision made by the Director-General under this Act, other than a decision referred to in subsection (2).
- (2) A person aggrieved by a decision made by the Director-General to appoint an administrator under section *55 or *56 may apply to the Supreme Court for a review of the decision.

99 Evidentiary provision

A certificate issued by the Director-General to the effect that:

- (a) a specified association was or was not, on a specified date or during a specified period, registered under this Act, or
- (b) an association was or was not, on a specified date or during a specified period, registered under this Act by a name so specified, or
- (c) a requirement of this Act specified in the certificate had or had not been complied with by a specified date or within a specified period, or

exposure draft

Clause 100 Associations Incorporation Bill 2008

Part 8 Administrative provisions

- (d) a specified address was or was not, on a specified date or during a specified period, the official address of a specified association, or
- (e) the constitution of a specified association was or was not, on a specified date or during a specified period, in terms so specified, is evidence of the matter or matters so certified.

100 Service of documents

- (1) A document addressed to an association may be served on the association:
 - (a) by leaving it at, or by sending it by post to, the association's official address, or
 - (b) by delivering copies of it personally to the association's secretary or to each of 2 committee members of the association, or
 - (c) in such other manner as the Director-General may in the special circumstances of the case direct.
- (2) As soon as practicable after a document addressed to an association is received by a person who is, or has at any time within the past 12 months been, the association's secretary or a committee member of the association, the person must bring the document to the attention of the committee of the association.
Maximum penalty: 1 penalty unit.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

101 Waiver, remittal and postponement of fees

The Director-General may waive, remit or postpone payment of the whole or any part of a fee payable under this Act.

102 Delegation by Director-General

- (1) The Director-General may delegate any of the Director-General's functions under this Act, other than this power of delegation.
- (2) Subject to the terms of the delegation, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

exposure draft

Associations Incorporation Bill 2008

Clause 103

Miscellaneous

Part 9

Part 9 Miscellaneous

103 Commonwealth Corporations legislation excluded from applying to associations

- (1) An association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation the whole of the Corporations legislation except to the extent referred to in subsection (2).
 - (2) Subsection (1) does not apply:
 - (a) to the extent specified by section *104, and
 - (b) to the extent necessary for an association that is a company under the *Corporations Act 2001* of the Commonwealth to be deregistered as a company under Chapter 5A of that Act.
- Note.** This section ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to an association.
- (3) Subsection (1) extends to a company within the meaning of the *Corporations Act 2001* of the Commonwealth as soon as it becomes an association under this Act.
 - (4) Subsection (1) has effect only for so long as a body is an association under this Act.

104 Incorporation of company

Subject to this Division, if a company is registered as an association, section *103 does not operate to declare a company to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* in relation such provisions of the Corporations legislation as are necessary:

- (a) to continue in existence any right, privilege, obligation or liability acquired or incurred under that Act or any other law before the registration, or
- (b) to preserve any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act or any other law before the registration, or
- (c) to enable any investigation, legal proceeding or remedy to be instituted, continued or enforced in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

105 Applying the Corporations legislation to associations

- (1) The regulations may declare any matter relating to associations to be an applied Corporations legislation matter for the purposes of Part 3 of the

exposure draft

Clause 106 Associations Incorporation Bill 2008

Part 9 Miscellaneous

Corporations (Ancillary Provisions) Act 2001 in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration).

Note. Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of New South Wales in respect of any matter declared by a law of New South Wales (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) Without limiting subsection (1), any such regulations may:
 - (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
 - (b) specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and
 - (c) identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
 - (d) specify a New South Wales court (other than the Supreme Court) to exercise any function conferred on a court or the Supreme Court by any excluded Corporations legislation provision to which the declaration relates.
- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.
- (4) In this section, ***excluded Corporations legislation provision*** means any provision of the Corporations legislation that does not apply to associations as a law of the Commonwealth.

106 Modifications to applied provisions

- (1) If a provision of this Act declares a matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (***the declaratory provision***) in relation to any provisions of the Corporations legislation (***the applied provisions***), the declaratory provision is taken to specify the following modifications:
 - (a) a reference in the applied provisions to the constitution of a company is to be read as a reference to the constitution of an association,

exposure draft

Associations Incorporation Bill 2008

Clause 107

Miscellaneous

Part 9

- (b) a cross-reference in the applied provisions to another provision of the Corporations legislation is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act,
 - (c) a reference in the applied provisions to the Commonwealth is to be read as a reference to New South Wales,
 - (d) any of the applied provisions that are not relevant to associations or which are incapable of application to associations are to be ignored,
 - (e) modifications directed by the Director-General under subsection (2).
- (2) The Director-General may, by order published in the Gazette, give directions as to the modifications that are necessary or desirable for the effectual operation of applied provisions.

107 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following matters:
- (a) the form and content of a model constitution,
 - (b) the imposition of additional fees for late payment of any prescribed fee,
 - (c) the exemption of associations from the requirements of this Act in relation to the preparation and auditing of financial statements,
 - (d) the books, documents and other records that must be kept by associations.
- (2) A model constitution must address each of the matters referred to in Schedule *1, and may deal with any other matters.
- (3) A provision of a regulation may impose a penalty not exceeding 2 penalty units for any offence against the provision.

108 Repeals

The *Associations Incorporation Act 1984* and the *Associations Incorporation Regulation 1999* are repealed.

109 Amendment of other Acts

The Acts specified in Schedule *3 are amended as set out in that Schedule.

exposure draft

Clause 110 Associations Incorporation Bill 2008

Part 9 Miscellaneous

110 Savings, transitional and other provisions

Schedule *4 has effect.

111 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

exposure draft

Associations Incorporation Bill 2008

Matters to be addressed in association's constitution

Schedule 1

Schedule 1 Matters to be addressed in association's constitution

(Sections *5, *9 and *107)

1 Membership qualifications

The qualifications (if any) for membership of the association.

2 Register of members

The register of the association's members.

3 Fees, subscriptions etc

The entrance fees, subscriptions and other amounts (if any) to be paid by the association's members.

4 Members' liabilities

The liability (if any) of the association's members to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.

5 Disciplining of members

The procedure (if any) for the disciplining of the association's members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.

6 Internal disputes

The mechanism for the resolution of disputes between members (in their capacity as members) and between members and the association.

7 Committee

The constitution and functions of the committee, including:

- (a) the election or appointment of the committee members, and
- (b) the terms of office of the committee members, and
- (c) the grounds on which, or reasons for which, the office of a committee member is to become vacant, and
- (d) the filling of casual vacancies occurring on the committee, and
- (e) the quorum and procedure at meetings of the committee.

8 Secretary

The functions of the association's secretary.

exposure draft

Associations Incorporation Bill 2008

Schedule 1 Matters to be addressed in association's constitution

9 General meetings—calling of

The intervals between general meetings of the association's members and the manner of calling general meetings.

10 General meetings—procedure

The quorum and procedure at general meetings of the association's members and whether members are entitled to vote by proxy at general meetings.

11 General meetings—notices

The time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated.

12 Postal ballots

The matters for which a postal ballot must not be held (if any).

13 Funds—source

The sources from which the funds of the association are to be or may be derived.

14 Funds—management

The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the association.

15 Custody of books etc

The custody of books, documents and securities of the association.

16 Inspection of books etc

The inspection by the association's members of books and documents of the association.

17 Financial year

The association's financial year (being either the year ending 30 June or the year ending 31 December).

Schedule 2 Provisions relating to assets and liabilities of associations

(Section *7)

1 Definitions

In this Schedule:

former body, in relation to an association, means:

- (a) an unincorporated body that has been incorporated under this Act to form the association, or
- (b) each of 2 or more associations that have amalgamated to form the association.

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

2 Transfer of assets and liabilities etc

- (1) On the incorporation of an association under this Act, the following provisions have effect:
 - (a) the assets of the former body vest in the association without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of the former body become the rights and liabilities of the association,
 - (c) all proceedings relating to the assets, rights and liabilities of the former body commenced before incorporation by or against the former body and pending immediately before incorporation are taken to be proceedings pending by or against the association,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities of the former body before incorporation by, to or in respect of the former body is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the association,
 - (e) a reference in an instrument or in any document of any kind to the former body is, subject to the regulations, to be read as, or as including, a reference to the association.
- (2) Assets that vest in an association by virtue of this clause are not to be dealt with contrary to the provisions of any trust affecting the assets immediately before the incorporation of the association under this Act,

exposure draft

Associations Incorporation Bill 2008

Schedule 2 Provisions relating to assets and liabilities of associations

being provisions as to the purposes for which the assets may or are required to be applied.

- (3) The operation of this clause is not to 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) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.

3 Certificate evidence

- (1) A certificate that is issued by the secretary of an association, that is in the approved form, that is verified by statutory declaration and that states that specified property was, immediately before the association's incorporation under this Act:
- (a) vested in a specified former body, or
 - (b) was held by a person, in trust or otherwise, for or on behalf of a specified body or for its objects,
- is evidence in any legal proceedings of the matters so stated.
- (2) A certificate that is issued by the Director-General and that states that a specified body is a former body in relation to a specified association is evidence of the matter so stated.

4 Attornment not necessary

No attornment to an association by any lessee of land vested in the association by reason of the operation of this Schedule is to be necessary.

5 Stamp duty etc

- (1) A document or an instrument executed or registered only for:
- (a) a purpose ancillary to, or consequential on, the operation of this Schedule, or
 - (b) the purpose of giving effect to this Schedule,
- is not liable to duty under the *Duties Act 1997* or to any fee or charge payable under any Act for registration.

exposure draft

Associations Incorporation Bill 2008

Provisions relating to assets and liabilities of associations

Schedule 2

- (2) A dutiable transaction within the meaning of the *Duties Act 1997* that is not in writing and that occurs only for:
- (a) a purpose ancillary to, or consequential on, the operation of this Schedule, or
 - (b) the purpose of giving effect to this Schedule,
- is not liable to duty under the *Duties Act 1997*.