

Western Australia

# Associations Incorporation Act 2015

As at 01 Jul 2016 Version 00-b0-02

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Western Australia

# Associations Incorporation Act 2015

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## Associations Incorporation Act 2015

No. 30 of 2015

An Act to —

- establish a scheme for the incorporation of associations;
- make provision for corporate governance, financial accountability and matters relating to the rules and membership of incorporated associations;
- repeal the Associations Incorporation Act 1987;
- make provision for related matters.

The Parliament of Western Australia enacts as follows:

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Preliminary

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## Part 1 — Preliminary

### 1. Short title

This is the Associations Incorporation Act 2015.

### 2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent; (b) the rest of the Act — on a day fixed by proclamation,

and different days may be fixed for different provisions.

### 3. Terms used

In this Act, unless the contrary intention appears — **alter**, in relation to the rules of an incorporated association, includes to add to, replace or rescind; **approved form** means a form approved by the Commissioner for the purposes of the provision in which the term is used; **a repealed Act** means —

(a) the **Associations Incorporation Act 1987** repealed by section 185; (b) the **Associations Incorporation Act 1895** repealed by section 47 of the Act mentioned in paragraph (a); **association** includes society, club, institution or body; **books** includes the following —

(a) a register; (b) financial records, financial statements or financial reports, as each of those terms is defined in section 62, however compiled, recorded or stored; (c) a document; (d) any other record of information;

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**Commissioner** means the person for the time being designated as the Commissioner under section 153; **Corporations Act** means the **Corporations Act 2001** (Commonwealth); **Department** means the department of the Public Service principally assisting in the administration of this Act; **financial year** means the period provided for under Schedule 1 Division 2 clause 4 or 5; **full voting rights**, in relation to an association, means the right to vote at its general meetings; **incorporated association** means an association that is, or is taken to be, incorporated under this Act; **liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person; **management committee**, in relation to an incorporated association, has the meaning given in section 38; **model rules**

means the model rules prescribed under section 26; **officer**, of an incorporated association, means any of the following —

- (a) a member of the management committee of the association;
- (b) a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association;
- (c) a person who has the capacity to significantly affect the association's financial standing;
- (d) a person in accordance with whose instructions or wishes the management committee of the association is accustomed to act (but excluding a person who gives advice to the association in the proper performance of

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functions attaching to the person's professional capacity or to the person's business relationship with members of the management committee or with the association); **property** means any legal or equitable estate or interest in, or claim to, real or personal property of any description, whether present or future and whether vested or contingent, and includes —

- (a) a thing in action; and (b) money; **special resolution** means a resolution of an incorporated association passed in accordance with section 51;
- surplus property**, in relation to an incorporated association, means property remaining after satisfaction of —

- (a) the debts and liabilities of the association; and (b) the costs, charges and expenses of winding up or cancelling the incorporation of the association, but does not include books pertaining to the management of the association; **the repealed Act** means the Associations Incorporation Act 1987 repealed by section 185.



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Incorporation of association Division 1 Eligibility

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## Part 2 — Incorporation of association

### Division 1 — Eligibility

#### 4. Associations eligible for incorporation

Without limiting section 11(1), an association is eligible to be incorporated under this Act if —

(a) it is formed and carried on for one or more of the following purposes —

- (i) a religious, educational, charitable or benevolent purpose;
- (ii) the purpose of promoting or encouraging literature, science or the arts;
- (iii) the purpose of providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability or condition;
- (iv) the purpose of sport, recreation or amusement;

(v) the purpose of establishing, carrying on or improving a community centre, or promoting the interests of a local community or a particular section of a local community; (vi) the purpose of conserving resources or preserving any part of the environmental, historical or cultural heritage of the State; (vii) the purpose of promoting the interests of students or staff of an educational institution; (viii) a political purpose;

(ix) the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry; (x) any purpose approved by the Commissioner; and

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Division 1 s. 5

(b) it has at least 6 members who under its rules have full voting rights; and (c) it is not excluded by section 5 or under regulations made for the purposes of section 6.

## 5. Associations not eligible for incorporation

(1) Despite section 4, an association is not eligible to be incorporated under this Act if it is formed or carried on for the purpose of securing pecuniary profit for its members from its transactions.

(2) An association secures pecuniary profit for its members if —

(a) it carries on any activity for the purpose of securing pecuniary profit for its members; or (b) it has capital that is divided into shares or stock held by its members; or (c) it holds property in which its members have a disposable interest, whether directly or in the form of shares or stock in the capital of the association or otherwise; or (d) it is an association

that —

(i) is prescribed for the purposes of this subsection;  
or (ii) belongs to a class of associations that is so  
prescribed.

(3) An association is not ineligible under subsection (1) by reason  
only of any one or more of the following circumstances — (a)  
that the association itself is empowered to make a  
pecuniary profit, unless that profit or some part of it is divided  
among or received by its members or some of them; (b) that  
the association is established for the protection or  
regulation of some trade, business, industry or calling in  
which the members are engaged or interested (the

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Incorporation of association Division 1 Eligibility

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activity), if the association itself does not engage or take part in  
the activity, or any part or branch of the activity; (c) that any  
member of the association derives pecuniary  
profit from the association by way of salary paid in good faith as  
an employee or member of the management committee of the  
association; (d) that any member of the association derives  
pecuniary  
profit from the association by way of remuneration paid in good  
faith; (e) that any member of the association derives from the  
association a pecuniary profit to which the member would be  
equally entitled if the member were not a member of the  
association; (f) that the members of the association compete  
with each  
other for trophies or prizes in contests directly related to the  
purposes of the association; (g) that the association itself may or  
does make a profit from  
subscriptions, donations, sponsorship or the sale of any

broadcasting rights; (h) that the members of the association derive pecuniary profit through the enjoyment of facilities or services provided by the association for social, recreational, educational or other like purposes; (i) that the association charges admission fees to displays, exhibitions, contests, sporting fixtures or other occasions organised for the promotion of the objects or purposes of the association; (j) that the association provides pecuniary profit of a kind

that is prescribed for the purposes of this subsection.

- (4) For the purposes of subsection (1), a pecuniary profit that by reason of a person's membership of the association is received by any other person is taken to be a pecuniary profit for the member by reason of the person's membership of that association.

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Part 2 Requirements for application for incorporation Division 2 s. 6

## 6. Regulations may declare associations to be ineligible

An association is not eligible to be incorporated under this Act if, according to a determination of the Commissioner, it is an association that —

- (a) is prescribed for the purposes of this section; or (b) belongs to a class of associations that is so prescribed.

## Division 2 — Requirements for application for incorporation

### 7. Application to Commissioner

- (1) An application for the incorporation of an association must be lodged with the Commissioner in the approved form by a person duly authorised by the association to apply for incorporation.

- (2) An application must —

- (a) state the name and address of the association; and (b) include a certificate

given by the applicant that the applicant is authorised by the association to apply for incorporation; and (c) comply with any other requirements prescribed for the purposes of this subsection.

(3) An application for the incorporation of an association must be accompanied by —

(a) if an association's proposed rules on incorporation will be its own rules — a copy of the proposed rules certified by the applicant as a true copy; or (b) if the association has approved the adoption of the model rules —

(i) a statement to that effect; and (ii) the information referred to in subsection (4).

(4) The following information is to be provided for the purposes of subsection (3)(b)(ii) —

(a) the name of the association;

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(b) the objects or purposes of the association; (c) the quorum for a general meeting of members of the association; (d) the quorum for a meeting of the management committee of the association; (e) the period of the first financial year of the association.

(5) The applicant must provide the Commissioner with such other information and documents as the Commissioner may in writing request.

8. Commissioner may require public notice of application for incorporation

(1) The Commissioner may in writing require an applicant under

section 7 to give public notice of the application in some way that the Commissioner thinks appropriate.

(2) For the purposes of section 9, the applicant must include in the public notice a statement in wording approved by the Commissioner showing —

- (a) that a written request, including the reasons for the request, may be given to the Commissioner by any person under that section; and (b) the period within which any request must be received by  
the Commissioner.

## 9. Request for refusal of incorporation

(1) Where public notice is given under section 8 in respect of an association, any person may, in accordance with the terms of the notice, request the Commissioner to decline to incorporate the association under this Act.

(2) A request under subsection (1) must include the reasons for the request.

## Division 3 — Incorporation

### 10. Incorporation of association

(1) Unless section 11 applies, the Commissioner must incorporate an association by the issue to the association of a certificate of incorporation if —

- (a) an application for the incorporation of an association is made under Division 2; and (b) the Commissioner

is of the opinion that —

(i) the association is eligible to be incorporated under this Act; and (ii) the rules of the association lodged with the Commissioner conform to the requirements of this Act; and (iii) the name of the association is appropriate having regard to section 12.

(2) The Commissioner must not incorporate the association until —

(a) the time during which any request might be made under section 9 has expired; and (b) any request made under that section has been finally refused.

(3) For the purposes of subsection (2), a request under section 9 has been finally refused if the request is refused by the Commissioner and either —

(a) the time for making an application for review under section 170 has expired without such an application being made; or (b) any application for review made under section 170 —

(i) has resulted in the Commissioner's refusal being confirmed; or (ii) has been dismissed or struck out.

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Incorporation of association Division 3

Incorporation s. 11

## 11. Refusal of incorporation

(1) The Commissioner must not incorporate an association under this Act if in the opinion of the Commissioner —

(a) it is more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law; or (b) the incorporation of the association is against the public

interest.

- (2) The grounds on which the Commissioner may form the opinion that subsection (1)(a) or (b) applies include the following —
- (a) the likely scale or nature of the activities of the association;
  - (b) the likely value or nature of the property of the association;
  - (c) the extent or nature of the dealings the association is likely to have with the public;
  - (d) any other matter the Commissioner considers relevant.
- (3) The Commissioner must not incorporate an association if, in the Commissioner's opinion, any ground for refusal of incorporation prescribed by the regulations applies to the association.

## 12. Restrictions as to names of associations

The Commissioner must not incorporate an association under this Act by a name that in the opinion of the Commissioner is —

- (a) offensive or undesirable; or
- (b) likely to mislead the public as to the object or purpose of the association; or
- (c) identical to the name by which an association in existence is, or is taken to be, incorporated under this Act or which resembles any such name in a manner likely to mislead the public; or

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- (d) identical to, or likely to be confused with, the name of any other body corporate or a business name registered to another body under the **Business Names Registration Act 2011** (Commonwealth); or
- (e) prescribed for the purposes of this section; or
- (f) of a kind that is so prescribed.



### 13. Effect of incorporation

(1) Upon incorporation of an association under this Act —

(a) the association becomes a body corporate with perpetual succession and may have a common seal; and (b) the corporate name of the association is the name of the association as stated in the certificate of incorporation, concluding with the word “Incorporated” or the abbreviation “Inc.”; and (c) except as provided in subsection (2), all rights and

liabilities exercisable against members or members of the management committee of the association in their capacity as such immediately before the incorporation of the association become rights and liabilities of and exercisable against the incorporated association; and (d) the association may sue or be sued in its corporate name.

(2) Subsection (1)(c) is not to be construed so as to relieve or release any person in respect of liabilities incurred by or on behalf of the association prior to incorporation.

### 14. Powers of incorporated association

(1) Subject to this Act and to its rules, an incorporated association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may —

(a) acquire, hold, deal with, and dispose of any real or personal property; and (b) open and operate bank accounts; and

(c) invest its money —

(i) as trust funds may be invested under the Trustees Act 1962 Part III; or (ii) in any other manner authorised by the rules of the association; and (d) borrow money upon such terms and conditions as the association thinks fit; and (e) give such security for the discharge of liabilities incurred by the association as the association thinks fit; and (f) appoint agents to transact any business of the association on its behalf; and (g) enter into any other contract it considers necessary or desirable.

(2) An incorporated association may, unless its rules otherwise provide, act as trustee and accept and hold real and personal property upon trust, but an incorporated association does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the association.

#### 15. Manner in which contract may be made

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

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

would be required to be in writing signed by the parties may be made on behalf of the association in writing by any person acting under its express or implied authority;

(c) a contract which, if made between natural persons,

would be valid although not in writing signed by the parties may be made orally on behalf of the association by any person acting under its express or implied authority.

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

#### 16. When contract affected by deficiency in association's legal capacity

- (1) A contract made with an incorporated association is not invalid by reason of any deficiency in the legal capacity of the association to enter into, or carry out, the contract unless the person contracting with the association has actual notice of the deficiency.
- (2) An incorporated association that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.
- (3) This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into a transaction that is beyond the powers of the association.

#### 17. Requirements of section 4 continue after incorporation

- (1) After its incorporation an association —
  - (a) must continue to be carried on for one or more purposes mentioned in section 4(a); and (b) must at all times have at least 6 members who under its rules have full voting rights; and (c) must not, itself or as a trustee secure pecuniary profit for its members.

(2) The application of subsection (1) extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this section.

#### 18. Certain property vests in incorporated association

(1) On the incorporation of an association under section 10 all real and personal property held by any person for or on behalf of the association vests, by virtue of this subsection, in the incorporated association.

(2) Any property vested in an incorporated association by subsection (1) is vested subject to any trust, restriction or obligation to which that property was subject immediately before it became so vested.

(3) On —

(a) the application of an incorporated association in which any estate or interest in land has been vested by subsection (1); and (b) the production of such duplicate instruments of title and other documents as the Registrar of Titles or the Registrar of Deeds and Transfers may require,

the Registrar of Titles or the Registrar of Deeds and Transfers must record and register the vesting of that estate or interest in land in the association.

#### 19. Liability of members of management committee, trustees and members

(1) A member of the management committee, trustee or a member of an incorporated association is not by reason only of being such a member of the management committee, trustee or member liable in respect of the liabilities of the association.

(2) Subsection (1) does not apply in respect of liabilities incurred by or on behalf of the association prior to incorporation.

## 20. Issue of replacement certificate

The Commissioner must issue a replacement certificate of incorporation of an association if —

- (a) the incorporated association satisfies the Commissioner that the certificate has been lost or destroyed; and (b) the fee prescribed by the regulations is paid by the incorporated association.

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## Part 3 — Rules

### Division 1 — Rules of incorporated association

#### 21. Effect of rules

- (1) The rules of an incorporated association bind the association and the members of the association as if —

(a) they contained an agreement on the part of each member to be bound by and observe all the provisions of the rules; and (b) that agreement were duly executed by each member.

(2) Subsection (1) has effect only so far as the rules are consistent with this Act.

(3) The application of this section extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this section.

## 22. General requirements for content of rules

(1) The rules of an incorporated association must specify the following —

(a) the name of the association; (b) the objects or purposes of the association; (c) the quorum for a general meeting of members of the incorporated association; (d) the quorum for a meeting of the management committee of the incorporated association.

(2) The rules of an incorporated association must include a provision in, or substantially in, the following terms —

The property and income of the association must be applied solely towards the promotion of the objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any

member of the association, except in good faith in the promotion of those objects or purposes.

(3) Subject to section 23, the rules of an incorporated association must at all times —

(a) address each of the matters set out in Schedule 1 Division 1; and (b) comply with any applicable requirement under Schedule 1 Division 2; and (c) be otherwise consistent with this Act.

(4) The rules of an incorporated association must include a reference to any exemption or approval under section 23(1) or 25(1) and the effect of the exemption or approval.

(5) An incorporated association is taken to have met the requirements of subsection (3) if the association —

(a) adopts the model rules without modification as its rules; and (b) provides to the Commissioner the information referred to in section 7(3)(b)(ii) or 29(5), as the case requires.

(6) The rules of an incorporated association that adopts the model rules are taken to include the information provided by the association under section 7(3)(b)(ii) or 29(5).

(7) The application of this section extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this section.

### 23. Commissioner may exempt from requirement of section 22

(1) A provision in Schedule 1 does not apply to an incorporated association to the extent that the Commissioner in writing exempts it from that provision.

(2) The Commissioner may at any time revoke or amend an exemption.

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(3) An exemption has effect subject to compliance with any



condition that the Commissioner attaches to it.

(4) An application for an exemption may be lodged —

(a) on behalf of an association as part of an application under section 7; or (b) by an incorporated association.

(5) The Commissioner is only to grant an exemption in respect of a provision if satisfied —

(a) that the special circumstances of the association justify the exemption; and (b) that the exemption will not affect the objects or purposes of the association; and (c) that the application of the provision to the association would cause undue hardship to its members; and (d) as to any other prescribed matter.

(6) The Commissioner must give written notice of a decision under this section to the association, and allow the association a reasonable time to comply with the provision concerned as affected by the decision.

#### 24. Restriction on distribution of surplus property

(1) There is implied in the rules of every incorporated association a provision that, on the cancellation of the incorporation or the winding up of the association, its surplus property can only be distributed to one or more of the following —

(a) an incorporated association; (b) a company limited by guarantee that is registered as

mentioned in the Corporations Act section 150; (c) a company holding a licence that continues in force under the Corporations Act section 151;

(d) a body corporate that at the time of the distribution is the holder of a licence under the **Charitable Collections Act 1946**;

(e) a body corporate that —

(i) is a member or former member of the incorporated association; and (ii) at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members; (f) a trustee for a body corporate referred to in paragraph (e); (g) a co-operative registered under the **Co-operatives Act 2009** that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.

(2) The provision described in subsection (1) has effect —

(a) subject to section 134; and (b) despite any inconsistent provision in the rules of an incorporated association.

(3) The application of this section extends to an association that is, or is deemed to be, an incorporated association immediately before the commencement of this section.

## 25. Commissioner may approve variation of provision implied by section 24

(1) The Commissioner may, for the rules of a particular incorporated association, approve in writing a variation of the provision implied by section 24 so that it includes a reference to —

(a) a particular body corporate; or (b) a particular body corporate that is to apply property for a particular charitable purpose approved by the Commissioner.

- (2) An approval has effect subject to compliance with any condition that the Commissioner attaches to it.
- (3) An application for an approval under subsection (1) may be made —
  - (a) on behalf of an association as part of an application for incorporation under section 7; or (b) by an incorporated association.
- (4) An application for an approval under subsection (1) must include the written consent of the body corporate concerned to the application being made.
- (5) The Commissioner may revoke or amend an approval given under subsection (1).

## 26. Model rules

- (1) Regulations are to be made prescribing model rules for incorporated associations.
- (2) The model rules must —
  - (a) address each of the matters set out in Schedule 1 Division 1 other than specifying the following —
    - (i) the name of the incorporated association; (ii) the objects or purposes of the incorporated association; (iii) the quorum for a general meeting of members of the incorporated association; (iv) the quorum for a meeting of the management committee of the incorporated association; and (b) comply with the requirements under Schedule 1 Division 2 other than fixing the period of the first financial year of an incorporated association.
- (3) The model rules may deal with any other matter.

## 27. Rules of associations existing at the commencement of section 185

- (1) This section applies to an association that was incorporated under a repealed Act and whose incorporation has effect immediately before the commencement of section 185.
- (2) The rules of an association as in force immediately before the commencement of section 185 continue to have effect but without limiting —
  - (a) the ability of the association, or of the management committee of the association, to alter the rules of the association in accordance with Division 2 or section 200; or
  - (b) the operation of section 22 as qualified by Part 16 Division 2 Subdivision 4.

## 28. Rules of an incorporated association

- (1) On the registration of an incorporated association under this Act, the rules of the association are —
  - (a) the rules that accompanied the application for the registration of the association; or
  - (b) if the application was accompanied by a statement that the model rules have been approved as the rules of the proposed incorporated association — the model rules including the information provided under section 7(3)(b)(ii) or 29(5).
- (2) The model rules apply as the rules of an association on its incorporation —
  - (a) if the association does not have its own rules; or
  - (b) if the association has its own rules, to the extent that they do not —
    - (i) address a matter referred to in Schedule 1 Division 1; or

(ii) comply with any applicable requirement under  
Schedule 1 Division 2.

## 29. Adoption of model rules

- (1) An incorporated association may, by special resolution, approve the adoption of the model rules as the rules of the association at any time after its incorporation under this Act.
- (2) If an incorporated association approves the adoption of the model rules as its rules, it is taken to have adopted any subsequent amendment to the model rules as an alteration of its rules.
- (3) An alteration of the rules of an incorporated association referred to in subsection (2) —
  - (a) takes effect on the day the relevant amendment to the model rules comes into operation; and (b) takes effect without the requirement of a special resolution of the association; and (c) does not require the approval of the Commissioner.
- (4) If an incorporated association that has approved the adoption of the model rules as its own rules alters those rules under section 30, other than an alteration to its name, objects, purposes or quorums, the association is taken to have adopted its own rules and subsections (2) and (3) do not apply to those rules.
- (5) An incorporated association that approves the adoption of the model rules as its own rules under subsection (1) must notify the Commissioner and include in the notification the following information —
  - (a) the name of the association; (b) the objects or purposes of the association; (c)

the quorum for a general meeting of members of the association;

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(d) the quorum for a meeting of the management committee of the association; (e) if relevant, the period of the first financial year of the association.

## Division 2 — Alteration of rules

### 30. Alteration of rules

- (1) Subject to sections 31 and 33, an incorporated association may alter its rules by special resolution but not otherwise.
- (2) In this section, a reference to rules includes a reference to information provided under section 7(3)(b)(ii) or 29(5).
- (3) Within one month after the passing of a special resolution altering its rules, or such further time as the Commissioner may in a particular case allow, an incorporated association must lodge the required documents with the Commissioner. Penalty: a fine of \$1 000.
- (4) The required documents are —
  - (a) a notice of the special resolution setting out particulars of the alterations; and (b) a certificate in the approved form that the resolution was  
duly passed as a special resolution; and (c) except where only the model rules will apply, a consolidated copy of the rules of the incorporated association, including all alterations to which the special resolution relates.

(5) The certificate under subsection (4)(b) must be signed by a member of the management committee of the incorporated association.

(6) An alteration of the rules of an incorporated association does not take effect until subsection (3) is complied with.

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(7) The regulations may make provision for the circumstances and manner in which notice of any alteration of an incorporated association's rules must be given to members of the association.

### 31. Change of name by alteration of rules

(1) An alteration of the rules of an incorporated association having effect to change the name of the association does not take effect until section 30 is complied with and the approval of the Commissioner is given to the change of name.

(2) The Commissioner may direct that notice of a proposed change of name of an incorporated association be published in accordance with the Commissioner's directions as a prerequisite to approval of the change.

(3) The Commissioner must not approve a name under this section unless the Commissioner is of the opinion that the proposed name is an appropriate name under which an association might be incorporated under this Act.

(4) The Commissioner must issue a new certificate of incorporation in the approved form showing the new name of the incorporated association if —

(a) the Commissioner approves a change of name; and (b) subsection (5) is complied with; and (c) any fee prescribed for the purposes of

this subsection  
has been paid.

(5) A new certificate of incorporation under subsection (4) must not be issued unless —

(a) the certificate of incorporation previously issued has been returned to the Commissioner; or (b) the Commissioner is satisfied that the certificate has been lost or destroyed.

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### 32. Corporate identity and other matters not affected by change of name

(1) A change of name of an incorporated association does not affect —

(a) the corporate identity of the incorporated association; or (b) its rights and obligations; or (c) any legal proceeding by or against it.

(2) A legal proceeding that might have been commenced or continued by or against the incorporated association in its former name may be commenced or continued by or against it in its new name.

### 33. Certain other rule alterations to be approved by Commissioner

(1) This section applies to an alteration of the rules of an incorporated association having effect to alter —

(a) the objects or purposes of the association; or (b) the manner in which surplus property of the association



must be distributed or dealt with if the association is wound up or its incorporation is cancelled.

- (2) The alteration does not take effect until section 30 is complied with and the approval of the Commissioner is given to it.
- (3) The Commissioner may direct that notice of the proposed alteration be published in accordance with the Commissioner's directions as a prerequisite to it being approved.

#### 34. Request for refusal of change of name or other rule alterations

- (1) Any person may, in accordance with the terms of a public notice given under —
  - (a) section 31(2) in respect of a change of name; or

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- (b) section 33(3) in respect of a rule alteration to which section 33 applies,

- request the Commissioner to decline to approve the change or alteration.

- (2) A request under subsection (1) must include the reasons for the request.

#### Division 3 — Provision of rules to members

#### 35. Rules to be available to members

- (1) An incorporated association must keep and maintain in an up-to-date condition a copy of the rules of the association. Penalty: a fine of \$2 750.

(2) At the request of a member of an incorporated association, the association must make the copy of the rules available for inspection by the member. Penalty: a fine of \$2 750.

(3) The member may make a copy of or take an extract from the copy of the rules but does not have the right to remove the rules for that purpose.

### 36. When member to receive copy of rules

(1) Without limiting section 35, an incorporated association must —

(a) at the request of a member of the association, give to the member a copy of the association's rules, or of any particular part of those rules to which the request relates, as in force at the time of the request; and (b) give to each person who becomes a member of the

association a copy of the association's rules as in force when the membership commences. Penalty: a fine of \$2 750.

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(2) An incorporated association must not make a charge for taking any action that it is required to take under this section.

(3) The regulations may make provision for the manner in which a copy of an incorporated association's rules or of any part of those rules may be, or must be, given under this section.

### 37. Further provision as to obligations under sections 35 and 36

The obligations under sections 35 and 36 in respect of the rules of an association include reference to —

(a) model rules if those rules are the rules of the association;  
and (b) the association's own rules.

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Management Division 1 Management

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## Part 4 — Management

### Division 1 — Management committee

#### 38. Management committee

The persons who under the rules of the incorporated association have the power to manage the affairs of the association constitute the management committee of the association for the purposes of this Act.

#### 39. Persons who are not to be members of management

committee

(1) Subject to section 40, this section applies to the following persons —

(a) a person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws; (b) a person who has been convicted, within or outside the

State, of —

(i) an indictable offence in relation to the promotion, formation or management of a body corporate; or (ii) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than 3 months; or (iii) an offence under Division 3 or section 127.

(2) A person to whom this section applies must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an incorporated association. Penalty: a fine of \$10 000.

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Associations Incorporation Act 2015  
Management Part 4 Management committee  
Division 1 s. 40

40. Limitation of period for which section 39 applies to certain persons

Section 39 applies to a person referred to in subsection (1)(b) of that section, in relation to the person's conviction of an offence, only for the period of 5 years —

(a) from the time of the person's conviction; or (b) if the conviction results in a term

of imprisonment, from  
the time of the person's release from custody.

#### 41. Handing over of documents and records when membership of management committee ceases

(1) In this section —

relevant documents and records means documents and records  
pertaining to the management of the affairs of an incorporated  
association that —

(a) if subsection (2)(a) applies, were in the possession of the  
member of the management committee immediately before the  
member's death; or (b) if subsection (2)(b) applies, are in the  
possession of the

person who has ceased to be a member of the  
management committee.

(2) This section applies where a member of the management  
committee of an incorporated association —

(a) dies; or (b) otherwise ceases to be a member of the management  
committee.

(3) As soon as is practicable after a person has ceased to be a  
member of the management committee of an incorporated  
association —

(a) the person; or

(b) if subsection (2)(a) applies, the personal representative  
of the person,

must deliver to a member of the management committee of the association all relevant documents and records or, in the case of relevant documents or records that are stored on a computer, a copy of all such documents and records. Penalty: a fine of \$10 000.

## Division 2 — Matters of material personal interest

### 42. Disclosure of material personal interest

- (1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee. Penalty: a fine of \$10 000.
- (2) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must disclose the nature and extent of the interest at the next general meeting of the association. Penalty: a fine of \$10 000.
- (3) Subsections (1) and (2) do not apply in respect of a material personal interest —
  - (a) that exists only because the member —
    - (i) is an employee of the incorporated association;
    - or (ii) is a member of a class of persons for whose benefit the association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the association.

- (4) If a member of the management committee of an incorporated association discloses a material personal interest in a contract or

proposed contract in accordance with this section, and the member has complied with section 43(1) or the member's interest is not required to be disclosed because of subsection (3) —

(a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and (b) the member is not liable to account for profits derived from the contract.

(5) A disclosure of a material personal interest required by subsection (1) or (2) must give details of —

(a) the nature and extent of the interest; and (b) the relation of the interest to the activities of the incorporated association.

(6) The details referred to in subsection (5) must be recorded in the minutes of the meeting of the management committee at which the disclosure is made.

#### 43. Voting on contract in which management committee member has a material personal interest

(1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a meeting of the management committee must not —

(a) be present while the matter is being considered at the meeting; or (b) vote on the matter. Penalty: a fine of \$10 000.

(2) Subsection (1) does not apply in respect of a material personal interest —

(a) that exists only because the member belongs to a class of person for whose benefit the association is established; or (b) that the member has in common with all, or a substantial proportion of, the members of the association.

(3) If there are not enough management committee members to form a quorum to consider a matter because of subsection (1) — (a) one or more committee members (including those who have a material personal interest in the matter) may call a general meeting; and (b) the general meeting may pass a resolution to deal with the matter.

### Division 3 — Duties of officers

#### 44. Duty of care and diligence

(1) An officer of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if that person —

(a) were an officer of the association in the association's circumstances; and (b) occupied the office held by, and had the same responsibilities within the association as, the officer. Penalty: a fine of \$10 000.

(2) An officer of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the judgment if the officer —

(a) makes the judgment in good faith for a proper purpose;  
and



(b) does not have a material personal interest in the subject matter of the judgment; and (c) informs himself or herself about the subject matter of the judgment to the extent the officer reasonably believes to be appropriate; and (d) rationally believes that the judgment is in the best interests of the association.

(3) For the purposes of subsection (2) —

**business judgment** means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association.

(4) The officer's belief that the judgment is in the best interests of the incorporated association is a rational one unless the belief is one that no reasonable person in the position of the officer would hold.

#### 45. Duty of good faith and proper purpose

An officer of an incorporated association must exercise his or her powers and discharge his or her duties —

(a) in good faith in the best interests of the association; and (b) for a proper purpose.  
Penalty: a fine of \$10 000.

#### 46. Use of position

An officer of an incorporated association must not improperly use his or her position to —

(a) gain an advantage for the officer or another person; or (b) cause detriment to the association. Penalty: a fine of \$10 000.

#### 47. Use of information

A person who obtains information because the person is, or has been, an officer of an incorporated association must not improperly use the information to —

- (a) gain an advantage for the person or another person; or (b) cause detriment to the association. Penalty: a fine of \$10 000.

#### 48. Interaction of sections 44 to 47 with other laws

- (1) Sections 44 to 47 —

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office in relation to an incorporated association; and (b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

- (2) This section does not apply to section 44(2), (3) and (4) to the extent to which those provisions operate on the duties at common law and in equity that are equivalent to the requirements of section 44(1).

#### 49. Reliance on information or advice

- (1) This section applies if the reasonableness of the reliance of an officer of an incorporated association on information or advice given to the officer arises in a proceeding brought to determine whether the officer has performed a duty under this Act or an equivalent duty at common law or in equity.

- (2) Unless the contrary is proved, the officer's reliance on the information or advice is taken to be reasonable if —
- (a) the information or advice was given or prepared by —
- (i) an employee of the incorporated association whom the officer reasonably believed to be

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reliable and competent in relation to the matters concerned; or (ii) a professional advisor or expert in relation to the matters that the officer reasonably believed to be within that person's professional or expert competence; or (iii) another officer of the incorporated association in relation to matters within the other officer's authority; or (iv) a sub-committee of the incorporated association of which the officer was not a member in relation to matters within the sub-committee's authority; and (b) the reliance was made — (i) in good faith; and (ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the incorporated association and the complexity of the structure of the incorporated association.

#### Division 4 — Annual general meeting and special resolutions

##### 50. Annual general meeting

- (1) Except as allowed under subsection (2), an incorporated association must in each calendar year hold an annual general meeting. Penalty: a fine of \$5 000.
- (2) An incorporated association may hold its first annual general meeting at any time within 18 months after incorporation.

(3) Except as allowed under subsection (2), an incorporated association must hold its annual general meeting —

(a) within 6 months after the end of the association's financial year; or

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(b) within such longer period as may in a particular case be allowed by the Commissioner. Penalty: a fine of \$2 750.

#### 51. Requirements for special resolution

(1) For the purposes of this Act, a resolution is a special resolution if it is passed —

(a) at a general meeting of an incorporated association; and (b) by the votes of not less than three-fourths of the members of the association who cast a vote at the meeting.

(2) A person is taken to cast a vote at a general meeting as mentioned in subsection (1) if the person has a right under the rules of the association to vote on the resolution and —

(a) votes in person at the meeting; or (b) where proxies or postal votes are allowed by the rules of the association, votes on the resolution by proxy or postal vote.

(3) Before the general meeting, written notice of —

(a) the proposed special resolution; and (b) the time and place of the general meeting at which it is

proposed to move the resolution,

must be given, as required under the rules of the incorporated association, to each member of the association.

- (4) The notice must set out the wording of the proposed special resolution.
- (5) If notice is not given in accordance with subsections (3) and (4) the special resolution has no effect.

## 52. Evidence of passing of resolution

- (1) At a general meeting of an incorporated association at which a resolution proposed as a special resolution is submitted, a

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declaration by the person presiding that the resolution has been passed as a special resolution is evidence of the fact.

- (2) Subsection (1) does not apply if, during the meeting at which the resolution is submitted, a poll is demanded —

(a) in accordance with the rules of the incorporated association; or (b) if the rules do not make provision as to the manner in which a poll may be demanded, by at least 3 members of the association present in person or, where proxies are allowed, by proxy.

- (3) If a poll is taken under subsection (2), a declaration by the person presiding as to the result of a poll is evidence of the matter so declared.

## Division 5 — Register of members

### 53. Register to be maintained

- (1) An incorporated association must —
  - (a) maintain a register of its members in accordance with the regulations and the requirements of this section; and (b) record

in the register any change in the membership of the association within 28 days after the change occurs. Penalty: a fine of \$2 750.

(2) The register of members must include each member's name and —

(a) residential address; or (b) postal address; or (c) email address; or (d) information, by means of which contact can be made with the member, that is prescribed for the purposes of this paragraph.

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#### 54. Inspection of register by member

(1) An incorporated association must, at the request of a member, make the register of members available for inspection by the member. Penalty: a fine of \$2 750.

(2) Subject to any rules of the kind mentioned in subsection (3), a member inspecting the register of members may make a copy of, or take an extract from, the register but is not entitled to remove the register for that purpose.

(3) The rules of an incorporated association may require a member who wishes to make a copy of, or take an extract from, the register of members to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the association.

#### 55. Commissioner may request copy of register

(1) The Commissioner may request an incorporated association to provide the Commissioner with a copy of the register of members.

- (2) The incorporated association must comply with the request within 14 days after it is made.  
Penalty: a fine of \$5 000.

#### 56. Member may request copy of register

- (1) A member of an incorporated association may in writing request the association to provide the member with a copy of the register of members.
- (2) The rules of an incorporated association may require a member who requests a copy of the register of members to provide a statutory declaration setting out the purpose for which the request is made and declaring that the purpose is connected with the affairs of the association.

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- (3) Subject to any rules of the kind mentioned in subsection (2), the incorporated association must comply with the request on payment of any amount required to be paid under subsection (4). Penalty: a fine of \$2 750.

- (4) The management committee may —
- (a) determine a reasonable charge for the cost of complying with a request under subsection (1); and (b) require the person making the request to pay the charge to the association.

- (5) The regulations may make provision for —
- (a) the manner in which a copy of the register of members may be, or must be, provided to a member under subsection (3); and
- (b) the maximum amount, or a method of calculating the maximum amount, that may be charged under

subsection (4).

## 57. Improper use of information in register

- (1) A person must not use or disclose information in the register of members of an incorporated association except for a purpose —
- (a) that is directly connected with the affairs of the association; or
  - (b) that is related to the administration of this Act.
- Penalty: a fine of \$10 000.
- (2) Without limiting subsection (1), a person contravenes that subsection if the person —
- (a) uses information obtained from the register of members of an incorporated association for advertising purposes; or
  - (b) discloses information obtained from the register of members of an incorporated association to another

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person, knowing that the information is likely to be used for advertising purposes.

- (3) The reference in subsection (2) to the use of information for advertising purposes is a reference to using it to contact, or send material to, the association or a member of the association for the purpose of advertising for political, religious, charitable or commercial purposes.
- (4) Subsection (2) does not apply if the use or disclosure of the information is approved by the incorporated association concerned.

## Division 6 — Record of office holders

### 58. Record of office holders



(1) In this section —

**address** means —

(a) a residential or business address; or (b) a post office box address; or (c) an email address.

(2) An incorporated association must maintain a record of —

(a) the names and addresses of the persons who —

(i) are members of its management committee; or (ii) hold other offices of the association provided for

by its rules; and (b) the name and address of any person who is authorised to use the common seal of the association (if it has a common seal); and (c) the name and address of any person who is appointed or acts as trustee on behalf of the association. Penalty: a fine of \$2 750.

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(3) The incorporated association must, upon the request of a member of the association, make available the record for the inspection of the member. Penalty: a fine of \$5 000.

(4) The member may make a copy of or take an extract from the record but does not have a right to remove the record for that purpose.

(5) A person must not use or disclose information in the record maintained under subsection (2) except for a purpose — (a) that is directly connected with the affairs of the association; or (b) that is related to the administration of this Act. Penalty: a fine of \$10 000.

**59. Commissioner may ask apparent office holders to provide information**

(1) This section applies to a person if it appears to the Commissioner that the person is or may be the holder of an office provided for by the rules of an incorporated association.

(2) The Commissioner may, by notice served on the person, require the person, within the time specified in the notice, to lodge with the Commissioner in writing —

(a) particulars of the person's residential address; and (b) a statement showing

—

(i) whether or not the person holds or has held the office specified in the Commissioner's notice; and (ii) if the person has held the office, when the person ceased to hold it.

(3) A person must comply with any requirement made of the person by a notice under subsection (2).  
Penalty: a fine of \$5 000.

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Associations Incorporation Act 2015 Part 4 Management Division 7 Direction by Commissioner to convene general meeting s. 60

## Division 7 — Direction by Commissioner to convene general meeting

60. Commissioner may direct that general meeting be convened

(1) In this section —

**relevant office holder** means any person who under the rules of an incorporated association has power to convene a general meeting of the association; **specified** means specified in a direction given under subsection (3).

(2) This section applies if the Commissioner is of the opinion that —

(a) there is a dispute or matter affecting the proper conduct

of the affairs of an incorporated association; and (b) the giving of a direction under this section may assist in or towards the resolution of the dispute or matter.

- (3) The Commissioner may in writing given to a relevant office holder of the incorporated association direct the office holder to take such steps as are required under the rules of the association to convene a general meeting of the association at a specified time or within a specified period.
- (4) A direction under subsection (3) may also require the office holder to take such steps as are reasonably required to enable any specified matter to be discussed and determined at the meeting or at an adjourned meeting, including the putting of any specified motion for consideration at the meeting.
- (5) The Commissioner may in writing given to a relevant office holder revoke or amend a direction given to that person under subsection (3).
- (6) A relevant office holder to whom a direction is given under subsection (3) must not, without reasonable excuse, fail to comply with the direction.

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Penalty: a fine of \$5 000.

## 61. Rights of Commissioner or a delegate at meeting

(1) In this section —

authorised person means —

- (a) the Commissioner; or (b) a person authorised in writing by the Commissioner to attend a meeting as the representative of the Commissioner;
- meeting means a meeting convened pursuant to a direction under section 60 and includes an adjourned meeting.

(2) An authorised person may attend a meeting and take part in the consideration and discussion of the dispute or matter in relation to which the direction under section 60 was given and of any incidental matter.

(3) An authorised person cannot vote at a meeting and is not to be counted for the purpose of determining the existence of a quorum.

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## Part 5 — Financial records, reporting and accountability

### Division 1 — Preliminary

#### 62. Terms used

In this Part — **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; **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; **financial records** includes —

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and (b) documents of prime entry; and (c) working papers and other documents needed to

explain —

(i) the methods by which financial statements are prepared; and (ii) adjustments to be made in preparing financial statements; **financial report** has the meaning given in section 63; **financial statements** means the financial statements in relation to an incorporated association required under Division 3; **tier 1 association** has the meaning given in section 64(1); **tier 2 association** has the meaning given in section 64(2); **tier 3 association** has the meaning given in section 64(3).

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Associations Incorporation Act 2015 Financial records, reporting  
and accountability Part 5 Preliminary Division 1 s. 63

### 63. Financial reports of tier 2 and tier 3 associations

(1) The financial report for a financial year of a tier 2 association or tier 3 association consists of —

(a) the financial statements for the year; and (b) the notes to the financial statements; and (c) the management committee's declaration about the statements and notes.

(2) The notes to the financial statements of an incorporated association are —

(a) the disclosures required by the regulations; and (b) notes required by the accounting standards; and (c) any other information necessary to give a true and fair

view of the financial position and performance of the association.

(3) The management committee's declaration is a declaration by the management committee stating —

(a) whether, in the management committee's opinion, there are reasonable grounds to believe that the association will be able to pay its debts as and when they become due and payable; and (b) whether, in the management committee's opinion, the

financial statements and notes are in accordance with this Part.

(4) The management committee's declaration must —

(a) be made in accordance with a resolution of the management committee; and (b) specify the date on which the declaration is made; and (c) be signed by at least 2 members of the management committee who are authorised to do so by the management committee.

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Associations Incorporation Act 2015 Part 5 Financial records, reporting and accountability Division 1 Preliminary s. 64

#### 64. Tier 1, tier 2 and tier 3 associations

(1) An incorporated association is a tier 1 association in respect of a financial year if —

(a) for the year it has revenue of less than —

(i) an amount prescribed for the purposes of this subsection; or (ii) if no amount is prescribed, \$250 000; or (b) the Commissioner has declared the incorporated association to be a tier 1 association in respect of the financial year under section 65(1)(a).

- (2) An incorporated association is a **tier 2 association** in respect of a financial year if —
- (a) for the year it is not a tier 1 association or a tier 3 association; or (b) the Commissioner has declared the incorporated association to be a tier 2 association in respect of the financial year under section 65(1)(b).
- (3) An incorporated association is a **tier 3 association** in respect of a financial year if for the year it has revenue of or exceeding —
- (a) an amount prescribed for the purposes of this subsection; or (b) if no amount is prescribed, \$1 000 000.
- (4) Revenue is to be calculated for the purposes of this section in accordance with the accounting standards in force at the relevant time (even if the standards do not otherwise apply to the financial year of the incorporated association concerned).

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Associations Incorporation Act 2015 Financial records, reporting and accountability Part 5 Financial records Division 2 s. 65

## 65. Commissioner may declare association to be tier 1 or tier 2 association

- (1) On application by an incorporated association, the Commissioner may, in writing, in respect of a financial year declare the incorporated association to be —
- (a) a tier 1 association; or (b) a tier 2 association.
- (2) The Commissioner may make a declaration under subsection (1) only if the Commissioner is satisfied that unusual and non-recurring circumstances warrant the making of the

declaration.

- (3) An application by an incorporated association to the Commissioner for a declaration under subsection (1) in respect of a financial year must be made within 3 months after the end of the financial year.

## Division 2 — Financial records

### 66. Obligation to keep financial records

An incorporated association must keep financial records that —

- (a) correctly record and explain its transactions and financial position and performance; and (b) enable true and fair financial statements to be prepared

in accordance with Division 3. Penalty: a fine of \$2 750.

### 67. Retention of financial records

An incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed. Penalty: a fine of \$2 750.

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## Division 3 — Financial statements and reports

### Subdivision 1 — Tier 1 associations

### 68. Obligation to prepare annual financial statements

- (1) Within 6 months after the end of each financial year, a tier 1 association in respect of the financial year must prepare



financial statements that give a true and fair view of the financial position and performance of the association.  
Penalty: a fine of \$2 750.

(2) For the purposes of subsection (1) —

(a) a tier 1 association that uses the cash basis of accounting may prepare —

(i) a statement of receipts and payments for the financial year; and (ii) a reconciled statement of bank account balances as at the end of the financial year; and (iii) a statement of assets and liabilities as at the end

of the financial year; and (b) a tier 1 association that uses the accrual basis of

accounting may prepare —

(i) a statement of income and expenditure for the financial year; and (ii) a balance sheet.

#### 69. Review or audit of financial statements

(1) A tier 1 association in respect of a financial year must ensure that its financial statements for the financial year are reviewed or audited in accordance with Divisions 5, 6 and 7 before being submitted to the annual general meeting of the association if —

(a) a majority of the members present at a general meeting of the association pass a resolution to that effect; or

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3 s. 70

(b) the association is directed by the Commissioner to do so. Penalty: a fine of \$2 750.

(2) A resolution or direction under subsection (1) must specify whether the financial statements are to be reviewed or audited.

## 70. Financial reporting to annual general meeting and Commissioner

- (1) This section applies to an incorporated association that is a tier 1 association in respect of its last financial year.
- (2) At the annual general meeting of an incorporated association, if section 69(1)(a) or (b) does not apply in respect of its last financial year, the association must present for consideration the financial statements of the association for that financial year. Penalty: a fine of \$5 500.
- (3) At the annual general meeting of an incorporated association to which section 69(1)(a) or (b) applies in respect of its last financial year, the association must present for consideration —
  - (a) the financial statements of the association for that financial year reviewed or audited as required under section 69; and
  - (b) a copy of the report of the review or the auditor's report, as the case requires, on those financial statements. Penalty: a fine of \$5 500.
- (4) If section 69(1)(b) applies to an incorporated association in respect of its last financial year, the association must give to the Commissioner as soon as is practicable after receiving them —
  - (a) the financial statements of the association for that financial year reviewed or audited as required under section 69; and
  - (b) a copy of the report of the review or the auditor's report, as the case requires, on those financial statements. Penalty: a fine of \$5 500.

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Associations Incorporation Act 2015 Part 5 Financial records,  
reporting and accountability Division 3 Financial statements and  
reports s. 71

## Subdivision 2 — Tier 2 associations

### 71. Obligation to prepare annual financial report

- (1) Within 6 months after the end of each financial year, a tier 2 association in respect of the financial year must prepare a financial report for the financial year that complies with subsection (2). Penalty: a fine of \$2 750.
- (2) The financial statements for the year and the notes to the financial statements that are included in the financial report must —
  - (a) give a true and fair view of the financial position and performance of the association; and (b) comply with the accounting standards.

## 72. Review or audit of financial reports

- (1) A tier 2 association in respect of a financial year must ensure that its financial report for the year is reviewed in accordance with Divisions 5, 6 and 7. Penalty: a fine of \$2 750.
- (2) Subsection (1) does not apply if the tier 2 association is required under subsection (3) to have the financial report audited.
- (3) A tier 2 association in respect of a financial year must ensure that its financial report for the year is audited in accordance with Divisions 5, 6 and 7 if —
  - (a) a majority of the members present at a general meeting of the association make a resolution to that effect; or (b) the association is directed by the Commissioner to do so. Penalty: a fine of \$2 750.

## 73. Financial reporting to annual general meeting and

## Commissioner

- (1) This section applies to an incorporated association that is a tier 2 association in respect of its last financial year.
- (2) At the annual general meeting of an incorporated association to which section 72(3)(a) or (b) does not apply in respect of its last financial year, the association must present for consideration — (a) the financial report of the association for that financial year reviewed as required under section 72(1); and (b) a copy of the report of the review of the financial report. Penalty: a fine of \$5 500.
- (3) At the annual general meeting of an incorporated association to which section 72(3)(a) or (b) applies in respect of its last financial year, the association must present for consideration — (a) the financial report of the association for that financial year audited as required under section 72(3); and (b) a copy of the auditor's report on the financial report. Penalty: a fine of \$5 500.
- (4) If section 72(3)(b) applies to an incorporated association in respect of its last financial year, the association must give to the Commissioner as soon as is practicable after receiving them — (a) the financial report of the association for that financial year audited as required under section 72(3); and (b) a copy of the auditor's report on the financial report. Penalty: a fine of \$5 500.

### Subdivision 3 — Tier 3 associations

#### 74. Obligation to prepare annual financial report

- (1) Within 6 months after the end of each financial year, a tier 3 association in respect of the financial year must prepare a

financial report for the financial year that complies with

subsection (2). Penalty: a fine of \$2 750.

(2) The financial statements for the year and the notes to the financial statements that are included in the financial report must —

(a) give a true and fair view of the financial position and performance of the association; and (b) comply with the accounting standards.

#### 75. Audit of financial report

A tier 3 association in respect of a financial year must ensure that its financial report for the year is audited in accordance with Divisions 5, 6 and 7. Penalty: a fine of \$2 750.

#### 76. Financial reporting to annual general meeting

At the annual general meeting of an incorporated association that is a tier 3 association in respect of its last financial year, the association must present for consideration —

(a) the financial report of the association for that financial year audited as required under section 75; and (b) a copy of the auditor's report on the financial report. Penalty: a fine of \$5 500.

### Division 4 — Special audit

#### 77. Commissioner may require special audit to be carried out

(1) The Commissioner may direct an incorporated association to cause —

(a) the whole or any specified part of the association's financial records to be audited; and

- (b) an auditor's report to be lodged with the Commissioner, within the time specified in the direction.
- (2) The direction may be given regardless of whether the financial records have previously been audited.
- (3) An incorporated association to which the direction is given must ensure that the direction is complied with.  
Penalty: a fine of \$2 750.
- (4) An auditor's report under this section must state whether the incorporated association's financial records —
- (a) have been properly kept; and (b) give a true and fair view of the association's affairs.

#### Division 5 — Reviews and audits

##### 78. Review or audit to be conducted in accordance with auditing standards

A reviewer or auditor must conduct a review or audit under this Part in accordance with the auditing standards. Penalty: a fine of \$5 500.

##### 79. Working papers to be retained for 7 years

A reviewer or auditor who conducts a review or audit under this Part must retain all working papers prepared by or for, or considered or used by, the reviewer or auditor in accordance with the requirements of the auditing standards for at least 7 years after the date of the report prepared in relation to the review or audit.  
Penalty: a fine of \$5 500.

##### 80. Reviewer's or auditor's independence declaration

- (1) A reviewer or auditor who conducts a review or audit of financial statements or a financial report of an incorporated association under Division 3 must give the management

committee of the association with the report of the review or audit —

(a) a written declaration that, to the best of the reviewer's or auditor's belief, there have been no contraventions of any applicable code of professional conduct in relation to the review or audit; or (b) a written declaration that, to the best of the reviewer's or

auditor's belief, the only contraventions of any applicable code of professional conduct in relation to the review or audit are those contraventions details of which are set out in the declaration. Penalty: a fine of \$5 500. (2) The declaration must be signed by the reviewer or auditor.

(3) The reviewer or auditor is not excused from giving a declaration under this section on the ground that giving the declaration might tend to incriminate the reviewer or auditor or expose the reviewer or auditor to a penalty.

(4) However, neither —

(a) the information included in the declaration; nor (b) any information, document or thing obtained as a direct or indirect consequence of including the information in the declaration, is admissible in evidence against the reviewer or auditor in any criminal proceedings, or in any proceedings that would expose the reviewer or auditor to a penalty.

#### 81. Reviewer's report on financial statements or financial

report A reviewer must include in the reviewer's report on financial statements or a financial report of an incorporated association — (a) a statement as to whether the reviewer became aware of

any matter that causes the reviewer to believe that the

financial statements do not, or the financial report does not, satisfy the requirements of Division 3; and

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(b) a description of any matter that causes the reviewer to believe that the financial statements do not, or the financial report does not, satisfy the requirements of Division 3; and (c) a statement as to why that matter causes the reviewer to so believe. Penalty: a fine of \$5 500.

**82. Auditor's opinion and report on financial statements or financial report** (1) An auditor who conducts an audit of financial statements or a financial report of an incorporated association under this Part must form an opinion about the following —

(a) whether the financial statements satisfy, or the financial report satisfies, the requirements of this Part; (b) whether the auditor has been given all information, explanations and assistance necessary for the conduct of the audit; (c) whether the association has kept financial records sufficient to enable financial statements or a financial report to be prepared and audited; (d) whether the association has kept other records as

required by this Part. (2) An auditor who audits the financial statements or the financial

report of an incorporated association must report to the members of the association in accordance with subsection (3). Penalty: a fine of \$5 500.

(3) The auditor's report must —

(a) include a statement as to —

(i) whether the auditor is of the opinion that the financial statements are, or the financial report is, in



accordance with this Part; and (ii) if not of that opinion, why not;

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and (b) describe —

(i) any defect or irregularity in the financial statements or the financial report; and (ii) any deficiency, failure or shortcoming in respect of the matters referred to in subsection (1)(b), (c) or (d); and (c) include any statements or disclosures required by the auditing standards; and (d) specify the date on which it is made.

(4) If the auditor is of the opinion that the financial statements have not, or the financial report has not, been prepared in accordance with this Part, the auditor's report must —

(a) to the extent that it is practicable to do so, quantify the effect that non-compliance has on the financial statements or financial report; and (b) if it is not practicable to quantify the effect fully, say why.

### 83. Reporting breaches of Act to Commissioner

(1) If —

(a) a reviewer or auditor conducting a review or audit of the financial statements or the financial report of an incorporated association under this Part is aware of circumstances that —

(i) the reviewer or auditor has reasonable grounds to suspect amount to a contravention of this Part; or (ii) amount to an attempt, in relation to the review or audit, by any person to unduly influence, coerce, manipulate or

mislead a person involved in the conduct of the review or  
audit; or

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(iii) amount to an attempt, by any person, to  
otherwise interfere with the proper conduct of the review or audit;  
and (b) if paragraph (a)(i) applies —

(i) the contravention is a significant one; or (ii) if the contravention is not a  
significant one and

the reviewer or auditor believes that the  
contravention has not been or will not be adequately  
dealt with by commenting on it in the reviewer's or  
auditor's report or bringing it to the attention of the  
management committee of the incorporated  
association,

the reviewer or auditor must notify the Commissioner in writing of  
those circumstances as soon as practicable, and in any case within  
28 days, after the auditor becomes aware of those circumstances.  
Penalty: a fine of \$5 500.

(2) In determining for the purposes of subsection (1) whether a  
contravention of this Act is a significant contravention, regard  
must be had to the following —

(a) the level of penalty provided for in relation to the  
contravention; (b) the effect that the contravention has, or may have, on the  
following —

(i) the overall financial position of the incorporated  
association; (ii) the adequacy of the information available about  
the overall financial position of the incorporated  
association; (iii) any other relevant matter.

## Division 6 — Provisions relating to reviewers and auditors generally

### 84. Fees and expenses

The reasonable fees and expenses of a reviewer or auditor of an incorporated association are payable by the association.

### 85. Information and assistance

- (1) An officer of an incorporated association must allow a reviewer or auditor of the association access at all reasonable times to the books of the association. Penalty: a fine of \$2 750.
- (2) A reviewer or auditor of an incorporated association may require an officer of the association to give the reviewer or auditor information, explanations or other assistance for the purposes of the review or audit.
- (3) A requirement under subsection (2) must be a reasonable one.
- (4) An officer of an incorporated association must comply with a requirement under subsection (2).  
Penalty: a fine of \$2 750.

### 86. Right to attend general meeting and be heard

- (1) A reviewer or auditor of an incorporated association, or an agent of a reviewer or auditor authorised by the reviewer or auditor in writing for the purpose, is entitled —
  - (a) to receive all notices of and other communications relating to any general meeting of the association that a member

is entitled to receive; and (b) to attend any general meeting of the association; and (c) to be heard at any general meeting that the reviewer or auditor attends on any part of the business of the meeting that concerns the functions of the reviewer or auditor under this Part.

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(2) Subsection (1) applies despite the fact that the reviewer or auditor retires at the meeting or a resolution to remove the reviewer or auditor from office is passed at the meeting.

(3) An incorporated association must ensure that a reviewer or auditor is afforded the rights conferred by this section.

Penalty: a fine of \$2 750.

## Division 7 — Appointment and removal of reviewers and auditors

### 87. Appointment of reviewer or auditor

(1) Except as provided in subsection (2), a reviewer or auditor, as the case requires, for an incorporated association may only be appointed by resolution of the members of the association at a general meeting.

(2) The management committee of the incorporated association may appoint a reviewer or auditor, as the case requires, if —

(a) under this Part the management committee of an incorporated association is required to ensure that its financial statements for a year are reviewed or audited; and (b) no appointment is of effect under subsection (1) for the association.

(3) A reviewer or auditor of an incorporated association appointed at a general meeting holds office until the reviewer or auditor —

(a) dies; or (b) becomes an insolvent under administration as that term is defined in the Corporations Act; or (c) ceases to be qualified for appointment as provided by section 88(2); or (d) is removed from office under section 89; or (e) resigns from office under subsection (5).

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- (4) A reviewer or auditor appointed under subsection (2) holds office until the report of the review or the auditor's report, as the case requires, has been presented for consideration at the annual general meeting of the incorporated association.
- (5) A reviewer or auditor of an incorporated association may, by notice in writing given to the association, resign as reviewer or auditor of the association.
- (6) An incorporated association must, within 14 days after being given a notice of resignation by a reviewer or auditor, lodge with the Commissioner notice of the resignation in the approved form. Penalty: a fine of \$1 000.

## 88. Qualifications for appointment

- (1) An incorporated association or management committee must not appoint a person as the reviewer or auditor for the association if the person is not qualified for appointment.
- (2) A person is qualified for appointment as a reviewer or auditor if the person is —
  - (a) a member of a professional accounting body who has a designation in respect of that membership that is prescribed by the regulations for the purposes of this paragraph; or (b) a registered company auditor under the Corporations

Act; or (c) a person the Commissioner considers has appropriate qualifications or experience and approves for the purposes of this section.

#### 89. Removal of reviewer or auditor by resolution

(1) A reviewer or auditor of an incorporated association may be removed from office by resolution at a general meeting of the association in accordance with this section but not otherwise.

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(2) Written notice of an intention to move a resolution referred to in subsection (1) must be given to every member of the association at least 2 months before the general meeting is to be held.

(3) The notice must state in full the proposed resolution.

(4) As soon as possible after being given the notice of the resolution, the committee of management of the association must —

(a) give a copy of the notice to the reviewer or auditor; and (b) lodge a copy of the notice with the Commissioner. Penalty: a fine of \$1 000.

#### 90. Reviewer or auditor may make representations

(1) A reviewer or auditor of an incorporated association who receives a notice from the association under section 89(4)(a) may, within 30 days after receiving the notice, make a written representation, not exceeding a reasonable length, to the management committee of the incorporated association.

(2) Subject to section 91, if the reviewer or auditor makes a representation under subsection (1), a resolution proposing the reviewer's or auditor's removal is of no effect unless — (a) the management committee gives a copy of the

representation to all members of the association at least 7 days before the meeting at which the resolution is to be considered; and (b) the reviewer or auditor is allowed to attend the meeting and address the members present before the vote on the resolution.

(3) A document required to be given to a member of an incorporated association under this section may be given —

(a) personally; or (b) by post; or

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(c) by any other means authorised under the rules of the association.

(4) All costs associated with giving a document to the members of an incorporated association under this section are to be borne by the association.

## 91. Exemption from section 90(2) requirements

(1) An incorporated association may lodge with the Commissioner an application for an order exempting the association from the requirements of section 90(2).

(2) The application must —

(a) be in writing; and (b) state the reasons for the exemption; and (c) be accompanied by the prescribed fee, if any.

(3) The Commissioner may make the order subject to any conditions the Commissioner considers appropriate.

## Part 6 — Transfer of incorporation

### 92. Term used: prescribed body corporate

In this Part — prescribed body corporate means —

- (a) a company within the meaning of the Corporations Act that is taken to be registered in Western Australia; or (b) a co-operative within the meaning of the Co-operatives Act 2009; or (c) an entity that —
  - (i) is a body corporate under another Commonwealth Act or a written law other than this Act; and
  - (ii) is prescribed for the purposes of this definition.



93. Incorporated association may apply for approval of registration or incorporation under another law

(1) An incorporated association may by special resolution decide to apply for registration or incorporation as a prescribed body corporate and, subject to this section, the association is authorised to give effect to that decision.

(2) An incorporated association cannot lodge an application for registration or incorporation unless the Commissioner has, on application made to the Commissioner by the association, approved —

(a) the application being lodged; and (b) the doing of the things that are reasonably necessary to obtain the registration or incorporation.

(3) An application lodged with the Commissioner under subsection (2) must —

(a) be made in the approved form; and

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(b) include a copy of the special resolution referred to in subsection (1); and (c) include any information required by the regulations; and (d) specify the period within which the application for registration or incorporation is expected to be made; and (e) be accompanied by the fee prescribed.

94. Approval of Commissioner

(1) The Commissioner must approve an application for registration or incorporation being lodged if satisfied that the continued

incorporation of the association under this Act would for any reason be inappropriate, including —

(a) on account of the incorporated association having, in the opinion of the Commissioner, ceased to be eligible to be incorporated under this Act; or (b) because any prescribed circumstances exist.

(2) The Commissioner may approve an application for registration or incorporation being lodged if, in the opinion of the Commissioner, it would be more appropriate for the activities of the incorporated association that lodged the application to be carried on by a body corporate registered or incorporated under some other law.

(3) The grounds on which the Commissioner may form an opinion for the purposes of subsection (2) include the following —

(a) the scale or nature of the activities of the incorporated association; (b) the value or nature of the property of the incorporated association; (c) the extent or nature of the dealings the incorporated association has with the public; (d) any other matter the Commissioner considers relevant.