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ELIZABETHAE II REGINAE

A.D. 1992

No. 36 of 1992

An Act to amend the Associations Incorporation Act 1985.

[Assented to 21 May 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Associations Incorporation (Miscellaneous) Amendment Act 1992*.

(2) The *Associations Incorporation Act 1985* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of “accounts” of an incorporated association and substituting the following definition:

“accounts” of an incorporated association means—

(a) a combination of—

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

and

(ii) a statement of assets and liabilities;

or

(b) a combination of—

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

and

(ii) a balance sheet,

together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the account, statement or balance sheet, as the case may be;

(b) by inserting after the definition of "association" in subsection (1) the following definitions:

"authorized person" means a person appointed by the Commission by instrument in writing to be an authorized person for the purposes of this Act:

"beneficiary" includes an object under a discretionary trust:

"body corporate" means a body corporate as defined in section 9 of the *Corporations Law*;

(c) by striking out from subsection (1) the definition of "committee";

(d) by inserting after the definition of "financial year" in subsection (1) the following definition:

"gross receipts" of an incorporated association means the total amount of the receipts of the association including any grant or subsidy paid to or on behalf of the association by the Government of the State or the Commonwealth, local government or an agency of the Crown in right of the State or the Commonwealth, but not including any money received by the association—

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

(b) as a devise or bequest;

or

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

(e) by striking out from subsection (1) the definition of "officer" and substituting the following definitions:

"officer" of an incorporated association means—

(a) any person who—

(i) occupies or acts in a position of—

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

or

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

or

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

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

(b) the holder of any other office established by the rules of the association (except a patron or the holder of some other honorary

office that confers no right to participate in the management of the affairs of the association);

or

(c) any person in accordance with whose directions or instructions the committee of the association is accustomed to act:

“prescribed association” means an incorporated association—

(a) that had gross receipts in that association’s previous financial year in excess of—

(i) \$200 000;

or

(ii) such greater amount as is prescribed by regulation;

or

(b) that is prescribed or of a class prescribed by regulation:

“putative spouse” includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person;

(f) by striking out subparagraph (ii) of paragraph (a) of the definition of “special resolution” in subsection (1) and substituting the following subparagraph:

(ii) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such members of the association as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting;;

(g) by striking out subparagraph (ii) of paragraph (b) of the definition of “special resolution” in subsection (1) and substituting the following subparagraph:

(ii) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such members of the committee as, being entitled to do so, vote in person or, where alternates are allowed, by alternates, at that meeting;;

(h) by inserting after the definition of “special resolution” in subsection (1) the following definition:

“total receipts and payments” means the amount arrived at by aggregating receipts and payments in connection with all activities of the association in that association’s financial year;;

(i) by striking out from subsection (2) “A reference” and substituting “Except as otherwise provided, a reference”;

(j) by striking out from subsection (5) “*Companies (South Australia) Code*” and substituting “*Corporations Law*”;

and

(k) by inserting after subsection (5) the following subsection:

(6) For the purposes of this Act, a person is an associate of another person if—

(a) they are partners;

(b) one is a spouse, putative spouse, parent or child of the other;

- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;
 - (d) one is a corporation and the other is a director of the corporation;
 - (e) one is a corporation and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the corporation;
 - (f) they are related bodies corporate for the purposes of the *Corporations Law*;
- or
- (g) a chain of relationships can be traced between them under any one or more of the above paragraphs.

Substitution of s. 4

4. Section 4 of the principal Act is repealed and the following section is substituted:

Act binds Crown

4. This Act binds the Crown.

Substitution of ss. 7 and 8

5. Sections 7 and 8 of the principal Act are repealed and the following section is substituted:

Power of Commission to refuse to register or reject document, etc.

7. (1) If the Commission is of the opinion that a document submitted to the Commission—

- (a) contains matter contrary to law;
 - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
 - (c) by reason of an omission or misdescription, has not been duly completed;
 - (d) does not comply with the requirements of this Act;
- or
- (e) contains an error, alteration or erasure,

the Commission may refuse to register or may reject the document and may request—

- (f) that the document be appropriately amended or completed and resubmitted;
 - (g) that a fresh document be submitted in its place;
- or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be submitted.

(2) The Commission may request a person who submits a document to the Commission to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it should refuse to register or should reject the document.

(3) If a person fails to comply with a request of the Commission made pursuant to subsection (1) or (2) within 14 days after the service on the person of the request, a court of summary jurisdiction may, on an application of the Commission, order the person to comply with the Commission's request within the time specified in the order.

(4) An order made under subsection (3) may provide that all costs of, and incidental to, the application are to be borne by the person responsible for the non-compliance.

(5) A person who contravenes or fails to comply with an order made under subsection (3) is guilty of an offence.

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 6 fine;

or

(b) in any other case—division 8 fine.

Privileged communications

6. Section 13 of the principal Act is amended—

(a) by striking out from subsection (1) “One thousand dollars” and substituting “Division 6 fine”;

and

(b) by striking out from subsection (2) “One thousand dollars” and substituting “Division 6 fine”.

Offences

7. Section 14 of the principal Act is amended—

(a) by striking out from subsection (1) “Subject to this section, a” and substituting “A”;

(b) by striking out from subsection (1) “Penalty: Two thousand dollars” and substituting the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 6 fine;

or

(b) in any other case—division 7 fine.;

(c) by striking out from subsection (2) “Penalty: Two thousand dollars” and substituting the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 6 fine;

or

(b) in any other case—division 7 fine.;

and

(d) by striking out from subsection (4) “Penalty: Two thousand dollars” and substituting the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—
division 6 fine;

or

(b) in any other case—division 7 fine.

Self-incrimination

8. Section 15 of the principal Act is amended by striking out from subsection (2) “section” and substituting “Division”.

Substitution of s. 17

9. Section 17 of the principal Act is repealed and the following section is substituted:

Secrecy

17. (1) An authorized person who, by reason of the authority granted to him or her pursuant to this Act, acquires information must not, except to the extent necessary to perform his or her official duties or to perform a function or exercise a power authorized by this Act, make a record of, or divulge or make use of in any other way, the information acquired.

Penalty: Division 5 fine.

(2) Notwithstanding subsection (1), a person is not guilty of an offence if he or she—

(a) produces a document to a court in the course of criminal proceedings or proceedings taken under this or any other Act;

(b) divulges to a court during the course of any proceedings referred to in paragraph (a), any matter or thing coming under his or her notice in the performance of his or her official duties or in the performance of a function or exercise of a power referred to in subsection (1);

(c) produces a document or divulges information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged;

or

(d) produces a document or divulges information that is required or permitted by any other Act to be produced or divulged, as the case may be.

Eligibility for incorporation

10. Section 18 of the principal Act is amended—

(a) by striking out “Minister” from subsection (5) and substituting “Commission”;

(b) by striking out paragraph (a) of subsection (6) and substituting the following paragraph:

(a) that the association itself makes a pecuniary profit, unless that profit or any part of it is or is to be divided among or received by the members or any of them otherwise than in accordance with section 55;;

(c) by striking out from paragraph (b) of subsection (6) “the public” and substituting “non-members (other than spouses, children or parents of members)”;

and

(d) by inserting in subsection (7) after “Minister” twice occurring, in each case, “or the Commission”.

Manner in which application for incorporation is to be made

11. Section 19 of the principal Act is amended by inserting after paragraph (c) of subsection (2) the following paragraph:

(ca) a copy of the settled draft of any instrument prepared for the creation or establishment of a trust of which the association is intended to be the trustee—

(i) where the contemplated trust is referred to in the rules of the association;

or

(ii) where any rule of the association relies on the contemplated trust for its operation;.

Rights and liabilities of members

12. Section 21 of the principal act is amended by striking out subsection (2) and substituting the following subsection:

(2) Except as may be provided by the rules of the association, a member of an association is not liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding up of the association.

Amalgamation

13. Section 22 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) “, not later than one month after those resolutions have been passed,”;

(b) by inserting after paragraph (d) of subsection (2) the following paragraph:

(da) must be accompanied by a copy of the settled draft of any instrument prepared for the creation or establishment of a trust of which the association proposed to be formed by the amalgamation is intended to be the trustee—

(i) where the contemplated trust is referred to in the rules of the association proposed to be formed by the amalgamation;

or

(ii) where any rule of the association proposed to be formed by the amalgamation relies on the contemplated trust for its operation;

and

(c) by inserting after subsection (8) the following subsection:

(9) Where property vests by virtue of this section in an association, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Rules binding on association and its members

14. Section 23 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) The reference in this section to the rules of an association extends to rules, by-laws or ordinances of the association relating to any matter.

Insertion of s. 23a

15. The following section is inserted after section 23 of the principal Act:

Contents of rules of an incorporated association

23a. (1) The rules of an incorporated association—

- (a) must state the name of the association and set out its objects;
- (b) must not contain any provision that is contrary to or inconsistent with this Act;

and

- (c) must contain provisions that, in the opinion of the Commission, deal with the following matters with sufficient particularity and certainty having regard to the nature and objects of the association:
 - (i) membership in the case of an association that has members;
 - (ii) the powers, duties and manner of appointment of the committee of the association;
 - (iii) the appointment of an auditor in the case of an association that is a prescribed association;
 - (iv) the commencing and ending dates of the association's financial year;
 - (v) the calling of and procedure at general meetings;
 - (vi) who has the management and control of the funds and other property of the association;
 - (vii) the powers of the association and by whom and in what manner they may be exercised;
 - (viii) the manner in which the rules of the association may be altered;
 - (ix) any other matter prescribed by regulation.

(2) This section applies only to rules, or an alteration to rules, submitted to the Commission for registration after the commencement of this section.

Alteration of rules

16. Section 24 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsections:

(1) An alteration to a rule of an incorporated association may be made by a special resolution of the association unless other provision is made in the rules of the association.

(2) An incorporated association must, within one month after making an alteration to a rule, register the alteration with the Commission.

Penalty: Division 8 fine.

Substitution of s. 30

17. Section 30 of the principal Act is repealed and the following section is substituted:

Certain persons not to be members of the committee

30. (1) A person who is an insolvent under administration must not, without leave of the Commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

Penalty: Division 6 fine.

(2) A person who has been convicted within or outside the State—

- (a) on an indictment of an offence in connection with the promotion, formation or management of a body corporate;
 - (b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than three months;
 - (c) of an indictable offence;
- or
- (d) of—
 - (i) an offence against section 39a;
 - (ii) an offence against a provision applied by section 41b;
- or
- (iii) an offence against section 60,

must not, within a period of five years after his or her conviction or, if he or she was sentenced to imprisonment, after his or her release from prison, without leave of the Commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

Penalty: Division 6 fine.

(3) When granting leave under this section, the Commission may impose such conditions or limitations as it thinks fit and any person contravening or failing to comply with any such condition or limitation that is applicable to him or her is guilty of an offence.

Penalty: Division 6 fine.

(4) The Commission may, at any time, revoke leave granted by it under this section.

Disclosure of interest

18. Section 31 of the principal Act is amended—

- (a) by striking out from subsection (1) “made by, or in the contemplation of, the committee” and substituting “with the association”;
- (b) by striking out from subsection (1) “One thousand dollars” and substituting “Division 6 fine”;

and

- (c) by striking out from subsection (2) “or” occurring between paragraphs (a) and (b) and inserting after paragraph (b) the following:

or

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

Voting on a contract in which a committee member has an interest

19. Section 32 of the principal Act is amended—

- (a) by striking out from subsection (1) “made by, or in the contemplation of, the committee,” and substituting “with the association”;
- (b) by striking out from subsection (1) “One thousand dollars” and substituting “Division 6 fine”;

and

(c) by striking out subsection (2) and substituting the following subsection:

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

(a) that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established;

or

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

Repeal of s. 33

20. Section 33 of the principal Act is repealed.

Accounts to be kept

21. Sections 34 and 35 of the principal Act are repealed and the following section is substituted:

Accounts to be kept

35. (1) A prescribed association must keep its accounting records in such a manner as will enable—

(a) the preparation from time to time of accounts that present fairly the results of the operations of the association;

and

(b) the accounts of the association to be conveniently and properly audited in accordance with this Division.

Penalty: Division 6 fine.

(2) A prescribed association must, after the end of a financial year of the association—

(a) cause accounts in respect of the financial year to be prepared;

(b) cause the accounts to be audited by a registered company auditor, a firm of registered company auditors, a person who is a member of the Australian Society of Certified Practising Accountants or The Institute of Chartered Accountants in Australia or such other person who may be approved by the Commission as an auditor of the accounts of the association for the purposes of this Division;

and

(c) cause to be attached to the accounts, before the auditor reports on the accounts, a statement made in accordance with a resolution of the committee of the association and signed by two or more members of the committee—

(i) stating that—

(A) the accounts present fairly the results of the operations of the association for the financial year and the state of affairs of the association as at the end of the financial year;

and

(B) the committee has reasonable grounds to believe that the association will be able to pay its debts as and when they fall due;

and

(ii) giving particulars—

(A) of any body corporate that is a subsidiary of the association within the meaning of section 46 of the *Corporations Law*;

and

(B) of any trust of which the association is a trustee.

Penalty: Division 6 fine.

(3) A prescribed association will not be taken to have complied with subsection (2) unless the accounts prepared for a financial year are submitted to the auditor in sufficient time to enable the auditor to audit the accounts and furnish a report in respect of the accounts in accordance with section 37 (3).

(4) A person who is—

(a) an officer;

(b) a partner, employer or employee of an officer;

or

(c) a partner or employee of an employee,

of a prescribed association, may not be appointed as auditor of the accounts of the association for the purposes of this section.

(5) The committee of a prescribed association must cause a report of the committee to be made in accordance with a resolution of the committee and signed by two or more members of the committee, stating—

(a) whether, during the financial year to which the accounts relate—

(i) an officer of the association;

(ii) a firm of which the officer is a member;

or

(iii) a body corporate in which the officer has a substantial financial interest,

has received or become entitled to receive a benefit as a result of a contract between the officer, firm or body corporate and the association, and if so the general nature of the benefit;

(b) whether, during the financial year to which the accounts relate, an officer of the association has received directly or indirectly from the association any payment or other benefit of a pecuniary value, and if so the general nature and extent of that benefit.

(6) The committee of a prescribed association that has members must cause—

(a) the audited accounts including the statement prepared in accordance with subsection (2) (c);

(b) the auditor's report on those accounts;

and

(c) the report of the committee prepared in accordance with subsection (5), to be laid before the members of the association at the annual general meeting of the association or, if an annual general meeting is not to be held, within five months of the end of the financial year to which the accounts relate.

(7) A member of the committee of an association who fails to take all reasonable steps to comply with or secure compliance with this section is guilty of an offence.

Penalty:

(a) if the offence is committed with intent to deceive or defraud the association, creditors of the association or creditors of any other person or for any fraudulent purpose—division 4 fine or division 4 imprisonment;

or

(b) in any other case—division 6 fine.

Lodgment of periodic returns

22. Section 36 of the principal Act is amended—

(a) by striking out from subsection (1) “An incorporated association to which this Division applies shall” and substituting “A prescribed association must”;

and

(b) by striking out subsection (3) and substituting the following subsection:

(3) If a prescribed association fails to comply with subsection (1), the association is guilty of an offence.

Penalty: Division 6 fine.

Substitution of s. 37

23. Section 37 of the principal Act is repealed and the following sections are substituted:

Provisions relating to auditors acting under this Division

37. (1) An auditor of a prescribed association has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from any officer of the association such information and explanations as he or she desires for the purposes of an audit.

(2) An officer of a prescribed association must not, without lawful excuse—

(a) refuse or fail to allow an auditor of the association access, for the purposes of this Division, to any accounting records and other records of the association in his or her custody or control;

(b) refuse or fail to give any information or explanation as and when required by the auditor;

or

(c) otherwise hinder, obstruct or delay an auditor in the performance of his or her duties or the exercise of his or her powers as auditor.

Penalty: Division 8 fine.

(3) The auditor of a prescribed association must furnish to the committee of the association, in sufficient time to enable the committee to comply with section 35 (6), a report that states—

(a) in respect of accounts consisting of an account of income and expenditure and a balance sheet, whether or not the auditor is satisfied that these accounts are drawn up so as to present fairly—

(i) the results of the association's activities for the association's financial year;

and

(ii) the financial state of the association at the end of the association's financial year;

(b) in respect of accounts consisting of an account of receipts and payments and a statement of assets and liabilities, whether or not the auditor is satisfied that these accounts present fairly—

(i) the results of the association's activities for the association's financial year;

and

(ii) the financial state of the association at the end of the association's financial year,

notwithstanding that the accounts may not have been prepared on the accrual method of accounting;

(c) whether the auditor has examined the accounts and auditors' reports of—

(i) each body corporate that is a subsidiary of the association within the meaning of section 46 of the *Corporations Law*;

and

(ii) each trust of which the association is a trustee,

and the conclusions drawn from the examination;

(d) in a case where the audit report includes qualifications by the auditor, whether the accounts on which the report was prepared are adequate given the nature and scope of the activities of the association;

and

(e) whether the auditor has obtained all of the information and explanations that he or she required from the association.

(4) If, in the course of performing his or her duties, an auditor is satisfied that—

(a) it is likely that there has been a contravention of, or failure to comply with, a provision of this Act or a rule of the association;

or

(b) there is a deficiency in relation to the accounts or information in respect of the activities of the association that, in the auditor's opinion, will not be adequately dealt with by bringing the matter to the notice of the committee of the association,

the auditor must immediately report the matter to the Commission by notice in writing.

(5) If an auditor is removed or dismissed as auditor of a prescribed association, the auditor must immediately report the matter of his or her removal or dismissal and the circumstances of the removal or dismissal to the Commission by notice in writing.

(6) An auditor of a prescribed association is not, in the absence of malice on his or her part, liable to any action for defamation in respect of any statement that he or

she makes, orally or in writing, in the course of performing his or her duties as an auditor under this Act.

(7) In subsection (6)—

“auditor” includes a person who has been removed or dismissed as the auditor of a prescribed association.

(8) Subsection (6) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as a defendant in an action for defamation.

Payment of auditor

37a. The reasonable fees and expenses of an auditor of a prescribed association are payable by the association.

Annual general meeting

24. Section 39 of the principal Act is amended—

(a) by striking out from subsection (1) “an incorporated association to which Division II applies shall” and substituting “a prescribed association must”;

(b) by striking out from subsection (2) “An incorporated association to which Division II applies” and substituting “A prescribed association”;

(c) by striking out subsection (3);

and

(d) by striking out from subsection (4) “an incorporated association to which Division II applies” and substituting “a prescribed association”.

Insertion of new divisions

25. The following divisions are inserted after section 39 of the principal Act:

DIVISION IIIA—DUTIES OF OFFICERS, ETC.

Duties of officers, etc.

39a. (1) An officer of an incorporated association must not, in the exercise of his or her powers or the discharge of the duties of his or her office, commit an act with intent to deceive or defraud the association, members or creditors of the association or creditors of any other person or for any fraudulent purpose.

Penalty: Division 4 fine or division 4 imprisonment.

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

Penalty: Division 4 fine or division 4 imprisonment.

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

Penalty: Division 4 fine or division 4 imprisonment.

(4) An officer of a prescribed association must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office.

Penalty: Division 8 fine.

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

Provisions indemnifying officers or auditors

39b. (1) Any provision, whether contained in the rules of an incorporated association or in a contract with the association or otherwise, exempting any officer or auditor of the association from, or indemnifying him or her against, any liability to the association that by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association, is void.

(2) Notwithstanding anything in this section, an incorporated association may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted.

(3) Subsection (1) does not apply in respect of a contract of insurance.

DIVISION IIIB—RECORDS

Keeping of records

39c. (1) An incorporated association must keep such accounting records as correctly record and explain the transactions of the association and the financial position of the association.

(2) The accounting records must be kept at the place at which the association is situated or established within the State or in the custody of an officer of the association in accordance with its rules or a resolution of the committee of the association.

(3) If an incorporated association fails to comply with subsection (1), the association and any officer of the association who is in default are each guilty of an offence.

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 7 fine;

or

(b) in any other case—division 8 fine.

Inspection of records

39d. (1) A member of an incorporated association may apply to the District Court for an order authorizing an inspection of the association's books on behalf of the member by a person authorized under this Act to audit the accounts of a prescribed association or a legal practitioner.

(2) If the Court is satisfied that—

(a) the member is acting in good faith;

and

(b) the inspection is for a proper purpose,

the Court may make an order authorizing a person authorized under this Act to audit the accounts of a prescribed association or a legal practitioner, at a time specified in the order, to inspect and make copies of or take extracts from the association's books.

(3) The Court may, on an application under this section, make such further or other orders as it thinks fit, including an order for costs.

Amendment of heading to Part V

26. The heading to Part V of the principal Act is amended by inserting "COMPROMISE," before "WINDING UP".

Substitution of s. 41

27. Section 41 of the principal Act is repealed and the following sections are substituted:

Power to compromise with creditors

40a. Part 5.1 of the *Corporations Law* applies, with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, as if an incorporated association were a Part 5.1 body and as if that Part were incorporated into this Act.

Winding up of incorporated association

41. (1) Subject to the succeeding provisions of this Part, an incorporated association may be wound up—

(a) by the Supreme Court;

(b) voluntarily;

or

(c) on the certificate of the Commission issued with the consent of the Minister.

(2) Parts 5.4 to 5.6 of the *Corporations Law* apply with such modifications, additions or exclusions as may be necessary for the purposes of this section, or as may be prescribed, as if an incorporated association were a company and as if those Parts were incorporated into this Act.

(3) The grounds on which an incorporated association may be wound up by the Supreme Court are as follows:

(a) that the association has by a special resolution resolved that it be wound up by the Court;

(b) that—

(i) the association has not commenced any activity or function;

and

(ii) more than one year has elapsed since the date of its incorporation;

(c) that the association is unable to pay its debts;

(d) that members of the committee of the association have acted in the affairs of the association in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members;

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

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

or

(g) that the Court is of the opinion that it is just and equitable that the association be wound up.

(4) For the purposes of subsection (3), if—

(a) a creditor, by assignment or otherwise, to whom the association is indebted in a sum exceeding \$1 000 then due, has served on the association a demand, signed by or on behalf of the creditor, requiring the association to pay the sum so due and the association has, for three weeks after service of the demand, failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor;

(b) 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;

or

(c) the Court, after taking into account any contingent and prospective liabilities of the association, is satisfied that the association is unable to pay its debts,

the association is to be taken to be unable to pay its debts.

(5) Where an application has been filed with the Court for the winding up of an incorporated association on the ground that it is unable to pay its debts, the association is not, without the leave of the Court, entitled to resolve that it be wound up voluntarily.

(6) Subject to subsection (5), an incorporated association may, by a special resolution, resolve that it be wound up voluntarily.

(7) The grounds on which the Commission may issue a certificate for the winding up of an incorporated association are as follows:

(a) that the association has contravened or failed to comply with a condition imposed in relation to the association by the Commission or the Minister under this Act;

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

(c) that the association has, after notice by the Commission of any breach of this Act or the rules of the association, failed, within the time referred to in the notice, to remedy the breach;

(d) that the association has not, within three months of notice being given by the Commission under section 42, requested the Commission to transfer its undertaking to another body corporate;

(e) that the association is defunct.

(8) For the purposes of this Act, the winding up of an incorporated association on the certificate of the Commission commences on application to the Supreme Court by the Commission and lodgment with the Court of a copy of the certificate and is to proceed as if the association had by special resolution resolved that it be wound up by the Court.

(9) The Supreme Court may, on an order being made for the winding up of an incorporated association by the Court (including a winding up on the certificate of the Commission), if the Commission nominates a person who is not a registered company liquidator for appointment as the liquidator of the association, appoint the person so nominated as the liquidator of the association.

(10) The Commission may, in relation to the voluntary winding up of an incorporated association, approve the appointment of a person who is not a registered company liquidator as the liquidator of the association.

(11) The reasonable costs of a winding up are payable out of the property of the association.

Appeals from decisions of receivers, liquidators, managers, etc.

41a. (1) A person aggrieved by an act, omission or decision of—

- (a) a person administering a compromise or arrangement;
- (b) a receiver, or a receiver and manager, of property of an incorporated association;
- (c) a liquidator or provisional liquidator of an incorporated association,

may appeal to the Supreme Court in respect of that act, omission or decision.

(2) The Court may, on an appeal pursuant to subsection (1), 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 it thinks fit.

Offences

41b. (1) Sections 589 to 596 and section 1307 of the *Corporations Law* apply, with such modifications, additions or exclusions as may be necessary for the purposes of this Act, or as may be prescribed, as if an incorporated association were a company and as if those sections were incorporated into this Act.

(2) Where a provision of the *Corporations Law* referred to in subsection (1) creates an offence, the penalty set out in the schedule in relation to that provision is to apply as the maximum penalty for contravention of the provision as applied by subsection (1).

Power of Commission to require transfer of activities

28. Section 42 of the principal Act is amended—

- (a) by striking out from subsection (3) “On the publication of an order” and substituting “On the date specified in the order”;

and

- (b) by inserting after subsection (4) the following subsection:

(5) The vesting of property in a body corporate by virtue of this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Distribution of assets upon winding up

29. Section 43 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

- (1) Subject to subsection (1a), it is not lawful to distribute among members, former members or associates of members or former members of an incorporated association

any surplus assets available for distribution at the completion of the winding up of the association under this Part.

(1a) The surplus assets of an incorporated association may, with the consent of the Commission, be distributed among the members of the association if each of the members of the association is also an incorporated association that has identical or similar aims and objects.

Defunct associations

30. Section 44 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) If the Commission is satisfied that an incorporated association was dissolved as a result of an error on the part of the Commission, the Commission may reinstate the association as an incorporated association after which the association is to be taken to have continued in existence as if it had not been dissolved and any property which may have vested in the Commission under section 45 is revested in the association.

Insertion of s. 44a

31. The following section is inserted after section 44 of the principal Act:

Commission to act as representative of defunct association in certain events

44a. (1) Where, after an association has been dissolved (whether before or after the commencement of this Act), it is proved to the satisfaction of the Commission—

(a) that the association, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter;

and

(b) that, in order to carry out, complete or give effect to that dealing, transaction or matter, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the association, or should be done by or on behalf of the association if the association still existed,

the Commission may, as representing the association or its liquidator under the provisions of this section, do that act or cause that act to be done.

(2) The Commission may execute or sign any relevant instrument or document adding a memorandum stating that it has done so pursuant to this section, and any such execution or signature has the same force, validity and effect as if the association, if it still existed, had duly executed the instrument or document.

Insertion of s. 49a

32. The following sections are inserted immediately before section 50 of the principal Act:

General power of exemption of the Commission

49a. (1) The Commission may, on the application of an incorporated association, an officer of an incorporated association, or a person authorized by an incorporated association to make an application under this section—

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

or

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

(2) An application under subsection (1) may be granted by the Commission on such conditions as it thinks fit.

(3) Where an incorporated association or an officer of an incorporated association contravenes or fails to comply with a condition imposed by the Commission under subsection (2), the association or the officer (as the case may be) is guilty of an offence.

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 6 fine;

or

(b) in any other case—division 8 fine.

(4) The Commission may, at any time by instrument in writing, revoke or vary an extension or exemption under subsection (1).

Immunity from liability

49b. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

Right of appeal

33. Section 50 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be lodged within the period fixed by this section.

Substitution of s. 51

34. The following section is substituted for section 51 of the principal Act (which expired on 1 July 1990):

Minutes

51. (1) An incorporated association must—

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

and

(b) cause those minutes to be—

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

and

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

(2) If a prescribed association fails to comply with subsection (1), the association and any officer of the association who is in default are each guilty of an offence.

Penalty: Division 7 fine.

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

(4) Where minutes have been entered, confirmed and signed in accordance with subsection (1), it is to be taken, in the absence of proof to the contrary, that—

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

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

and

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

(5) The books containing the minutes of proceedings of any general meeting or of a meeting of the committee of an incorporated association must be kept by the association at the place at which the association is situated or established or in the custody of an officer of the association in accordance with its rules or a resolution of the committee of the association.

(6) The books containing the minutes of proceedings of general meetings must be made available for inspection by any member without charge.

(7) If default is made in complying with subsection (5) or (6), the incorporated association and any officer of the association who is in default are each guilty of an offence.

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 7 fine;

or

(b) in any other case—division 8 fine.

Repeal of s. 52

35 Section 52 of the principal Act is repealed.

Substitution of s. 53

36. Section 53 of the principal Act is repealed and the following section is substituted:

Investing or depositing money with association

53. (1) An incorporated association must not invite any person who is not a member of the association to invest or deposit money with the association, unless—

(a) prior to or at the time of making any such invitation, the association issues to the person a disclosure statement in accordance with subsection (2);

and

(b) the Commission has approved the invitation.

(2) For the purposes of this section, a disclosure statement must set out—

(a) the name and principal objects of the association as set out in the rules of the association;

(b) the names, addresses and occupations of the members of the committee of the association;

- (c) the total amount of deposits sought by the association;
 - (d) the purposes for which the deposits (if obtained) will be applied;
 - (e) the particulars of the security (if any) to be given in respect of the deposits;
 - (f) the rate of interest (if any) payable on the deposits;
 - (g) the terms of repayment of the deposits;
- and
- (h) details of the association's—
 - (i) current assets and liabilities;
 - (ii) other assets and liabilities;
- and
- (iii) net tangible assets,
- as at the association's last balance date and the amount of any operating profit and extraordinary items after income tax for the association's last financial year.

(3) Where a person invests or deposits money with an association in response to an invitation made contrary to subsection (1), the transaction is void.

(4) A person who invests or deposits money with an association pursuant to a transaction that is void by virtue of subsection (3) may recover that money from the association as a debt.

(5) Where a disclosure statement—

(a) includes any statement—

(i) that is false;

or

(ii) that is misleading in the form or context in which it is included;

or

(b) omits any matter or thing that is required to be included,

any person who authorized or caused the disclosure statement to be issued is guilty of an offence.

Penalty: Division 6 fine.

(6) It is a defence to a charge of an offence against subsection (5)—

(a) that the statement or omission was immaterial;

(b) that he or she had reasonable grounds to believe, and did at the time of the issue of the disclosure statement believe, that the statement was not false or misleading or that the omission was immaterial;

or

(c) in the case of an omission—that the omission was inadvertent.

(7) For the purposes of subsection (5) a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document.

(8) The approval of the Commission under subsection (1) may be granted on such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be varied or revoked by the Commission.

(9) This section does not apply to an invitation by an association for the investment of money—

(a) in a fund that was being maintained by the association on 1 March 1985;

or

(b) in accordance with an approval of the Commission given before the commencement of this section.

Name of association to be printed, etc., on documents

37. Section 54 of the principal Act is amended by striking out “Two hundred dollars” and substituting “Division 8 fine”.

Substitution of s. 55

38. Section 55 of the principal Act is repealed and the following section is substituted:

Prohibition against securing profits for members

55. (1) Unless the Commission otherwise approves, an incorporated association must not conduct its affairs in a manner calculated to secure a pecuniary profit for the members of the association or any of them, or for associates of the members or any of them.

(2) Unless the Commission otherwise approves, an incorporated association must not make a payment from its income or capital, or dispose of any of its assets *in specie*, to the members of the association or any of them, or to associates of the members or any of them.

(3) Subsection (2) does not apply—

(a) to reasonable remuneration of a member of the association for work done by the member for or on behalf of the association;

or

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

(4) An officer of an incorporated association who is knowingly concerned in or party to a contravention of subsection (1) or (2) is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment or both.

(5) The approval of the Commission under this section may be granted on such conditions as the Commission thinks fit and may, by instrument in writing, be varied or revoked by the Commission.

Public officer

38. Section 56 of the principal Act is amended—

(a) by striking out subsection (4) and substituting the following subsection:

(4) If an incorporated association is without a public officer for a period longer than one month, the association is guilty of an offence.

Penalty: Division 8 fine.;

and

(b) by striking out from subsection (5) “Five hundred dollars” and substituting “Division 8 fine”.

Substitution of s. 57

40. Section 57 of the principal Act is repealed and the following section is substituted:

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

57. (1) If an officer of an incorporated association fails to take all reasonable steps to secure compliance by the association with its obligations under this Act, the officer is guilty of an offence.

Penalty: Division 8 fine.

(2) If an incorporated association, or an officer of an incorporated association, contravenes or fails to comply with a condition imposed under this Act by the Commission or the Minister in relation to the association, the association or the officer (as the case may be) is guilty of an offence.

Penalty: Division 8 fine.

Repeal of s. 58

41. Section 58 of the principal Act is repealed.

Variation or revocation of trusts

42. Section 59 of the principal Act is amended by striking out from subsection (2) "Five hundred dollars" and substituting "Division 8 fine".

Misrepresentation as to incorporation under this Act

43. Section 60 of the principal Act is amended by striking out "One thousand dollars" and substituting "Division 6 fine".

Oppressive or unreasonable acts

44. Section 61 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) An application to the Supreme Court for an order under this section may be made by a member of an incorporated association or by a former member expelled from the association (provided that the application is made within six months of the expulsion), who believes—

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

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

(c) that the rules of the association contain provisions that are oppressive or unreasonable;

or

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

(2) If, on the hearing of an application under subsection (1), the Court is of the opinion—

(a) that the affairs of an association are being conducted in a manner oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section referred to as "the

oppressed member or members”) or in a manner that is contrary to the interests of the members as a whole;

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

(c) that the rules of an association contain provisions that are oppressive or unreasonable;

or

(d) that the expulsion of the member was unreasonable or oppressive,

the Court may, subject to subsection (3), make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

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

(f) an order for regulating the conduct of the association’s affairs in the future;

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

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

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

(j) an order requiring a person to do a specified act or thing;

(k) an order for the alteration of the rules of the association;

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

(b) by striking out from subsection (3) “member or members referred to in subsection (2) (a) or the other members referred to in subsection (2) (b)” and substituting “oppressed member or members”;

(c) by inserting after subsection (4) the following subsection:

(4a) Where an order appointing a receiver or a receiver and manager of the property of the association is made pursuant to subsection (2), the provisions of the *Corporations Law* relating to receivers or receivers and managers apply, with such modifications, additions or exclusions as may be necessary for the purposes of this Act, or as may be prescribed, in relation to the receiver or receiver and manager so appointed as if the association were a company and as if those provisions were incorporated into this Act.;

(d) by striking out from subsection (6) “Two hundred dollars” and substituting “Division 9 fine”;

and

(e) by striking out from subsection (7) “unreasonable” and substituting “oppressive”.

Substitution of s. 62

45. Section 62 of the principal Act is repealed and the following sections are substituted:

Examination of persons concerned with associations

62. (1) In this section, a reference, in relation to an association, to a prescribed person, is to be construed as a reference to a liquidator or provisional liquidator of the association or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that association.

(2) Where it appears to the Commission or to a prescribed person that—

(a) a person who has taken part or been concerned in the formation, management, administration or winding up of, or has otherwise taken part or been concerned in affairs of, an association has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that association;

or

(b) a person may be capable of giving information in relation to the formation, management, administration or winding up of, or otherwise in relation to affairs of, an association,

the Commission or prescribed person may apply to the Supreme Court for an order under this section in relation to the person.

(3) Where an application is made under subsection (2) in relation to a person, the Court may, if it thinks fit, order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath or affirmation on any matters relating to the formation, management, administration or winding up of, or otherwise relating to affairs of, the association concerned.

(4) An examination under this section must be held in private except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in public.

(5) The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present), as it thinks fit.

(6) A person who is ordered under subsection (3) to attend before the Court must not, without reasonable excuse—

(a) fail to attend as required by the order;

or

(b) fail to attend from day to day until the conclusion of the examination.

Penalty: Division 5 fine or division 5 imprisonment.

(7) A person attending before the Court for examination pursuant to an order made under subsection (3) must not refuse or fail to take an oath or make an affirmation.

Penalty: Division 5 fine or division 5 imprisonment.

(8) A person attending before the Court for examination pursuant to an order made under subsection (3) must not refuse or fail to answer a question that he or she is directed by the Court to answer.

Penalty: Division 5 fine or division 5 imprisonment.

(9) A person attending before the Court for examination pursuant to an order made under subsection (3), if directed by the Court to produce any books in his or her possession or under his or her control relevant to the matters on which he or she is to be, or is being, examined, must not refuse or fail to comply with the direction.

Penalty: Division 5 fine or division 5 imprisonment.

(10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

(11) A person attending before the Court for examination pursuant to an order made under subsection (3) must not make any statement that is false or misleading in a material particular.

Penalty: Division 5 fine or division 5 imprisonment.

(12) A person is not excused from answering a question put to him or her at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him or her but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, the answer is not admissible in evidence against him or her in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given by him or her at an examination under this section to be recorded in writing and may require him or her to sign that written record.

(14) Subject to subsection (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules of the Court, may be used in evidence in any legal proceedings against the person.

(15) An examination under this section may, if the Court so directs and subject to the rules of the Court, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

(16) A person ordered to attend before the Court or another court for examination under this section may, at his or her own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to him or her such questions as the Court, or the other court (as the case may be) considers just for the purpose of enabling him or her to explain or qualify any answers or evidence given by him or her.

(17) The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

(18) Where the Court that made the order under subsection (3) for an examination is satisfied that the order for the examination was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

Orders against persons concerned with associations

62a. (1) In this section, a reference to a prescribed person, in relation to an association, is to be construed as a reference to a liquidator or provisional liquidator of the association or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that association.

(2) Subject to subsection (3), where, on application by the Commission or a prescribed person, the Supreme Court is satisfied that—

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

and

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

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

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

(a) to give evidence himself or herself;

(b) to call witnesses to give evidence;

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

and

(d) to employ, at his or her own expense, a solicitor, or a solicitor and counsel, to put to him or her, or to any other witness, such questions as the Court considers just for the purpose of enabling him or her to explain or qualify any answers or evidence given by him or her.

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

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

and

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

(5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Civil proceedings not to be stayed

62b. No civil proceeding under this Act may be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

Form and evidentiary value of books

62c. (1) A book that is required by this Act to be kept or prepared may be kept or prepared—

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

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

or

(c) in any other manner approved by the Commission.

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

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

or

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

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

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

Continuing offences

62d. (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence, and is liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done, notwithstanding that any period within which, or time before which, the act is required to be done, has expired or passed.

Proceedings for offences

62e. (1) An offence against this Act that is not punishable by imprisonment is a summary offence.

(2) An offence against this Act that is punishable by imprisonment is, subject to subsection (3), an indictable offence.

(3) Where—

(a) proceedings for an offence against this Act that is punishable by imprisonment are brought in a court of summary jurisdiction;

and

(b) the prosecutor requests the court to hear and determine the proceedings,

the offence is to be taken to be a summary offence and must be heard and determined as such.

(4) A court of summary jurisdiction may not—

(a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding two years;

or

(b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in aggregate, exceed five years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) A prosecution for an offence against this Act—

(a) may be commenced—

(i) by the Commission;

(ii) by an officer or employee of the Commission;

or

(iii) with the consent of the Minister, by any other person;

and

(b) must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, allow.

(7) A document apparently signed by the Minister and stating—

(a) that the Minister consents to a particular prosecution;

or

(b) that the Minister allows a specified extension of the period for commencing a particular prosecution,

is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(8) In any proceedings for an offence against this Act, an allegation in the complaint that the complainant is an officer or employee of the Commission is, in the absence of proof to the contrary, to be accepted as proved.

Evidentiary provision

46. Section 63 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) In any proceedings for an offence against this Act, an allegation in the complaint—

(a) that an association is or was at a specified time incorporated under this Act;

(b) that an association is or was at a specified time a prescribed association;

(c) that the defendant is or was at a specified time an officer of an association named in the complaint;

or

(d) that any meeting of the members of an association required by a specified provision of this Act to be held has not been held as required by that provision,

is, in the absence of proof to the contrary, to be accepted as proved.

Regulations

47. Section 67 of the principal Act is amended by striking out paragraph (e) of subsection (2) and substituting the following paragraph:

(e) impose a fine not exceeding a division 8 fine for contravention of, or non-compliance with, a regulation.

Insertion of schedule

48. The schedule set out in schedule 3 of this Act is inserted after section 67 of the principal Act.

SCHEDULE I*Transitional provisions*

- (1) The provisions of Division II of Part IV of the principal Act as in force immediately before the commencement of this Act continue to apply to an incorporated association in relation to a financial year of the association that commenced before the commencement of this Act.
- (2) The provisions of Division II of Part IV of the principal Act as amended by this Act apply to an incorporated association in relation to a financial year of the association that commences after the commencement of this Act.

SCHEDULE 2

Further amendments

The principal Act is further amended as follows:

Provision Amended	How Amended
Long title	Strike out "to repeal the Associations Incorporation Act, 1956;"
Section 2	Strike out this section.
Section 3 (1) definition of "financial year"	Strike out "eighteen"(first occurring) and substitute "18"; Strike out "thirtieth day of" (first occurring) and substitute "30";
Definition of "insolvent under administration" para (a)	Strike out "twelve" (first occurring) and substitute "12"; After "he" insert "or she".
Section 3 (3)	Strike out "shall not" and substitute "is not to".
Section 3 (4)	Strike out "shall not" and substitute "is not to".
Section 5 (1)	Strike out "shall be" and substitute "is".
Section 5 (2)	Strike out "shall" and substitute "is"; Strike out "be".
Section 6 (1)	Strike out "shall" and substitute "must".
Section 9 (1)	Strike out "shall" and substitute "must"; Strike out "the thirty-first day of December" and substitute "31 December"; Strike out "thirtieth day of June" and substitute "30 June".
Section 9 (2)	Strike out "shall" and substitute "must".
Section 10	Strike out "forthwith" wherever occurring and substitute, in each case, "immediately".
Section 11 (1) (a) (iv)	Strike out "shall" and substitute "must".
Section 11 (1) (b)	After "his" wherever occurring insert, in each case, "or her".
Section 11 (3)	After "he" insert "or she".
Section 12	Strike out "shall not be" and substitute "is not".
Section 13 (1) (b)	After "his" insert "or her".
Section 13 (1)	Strike out "he shall forthwith" and substitute "he or she must immediately".
Section 13 (1) (c)	After "he" insert "or she".
Section 13 (2) (b)	After "his" insert "or her".
Section 13 (2)	After "he" wherever occurring insert, in each case, "or she"; Strike out "shall forthwith" and substitute "must immediately".
Section 14 (1)	Strike out "shall" and substitute "must".
Section 14 (2)	Strike out "shall" and substitute "must".
Section 14 (3)	After "he" insert "or she".
Section 14 (4)	Strike out "shall" and substitute "must".
Section 15 (1)	After "him" wherever occurring insert, in each case, "or her".
Section 18 (6)	Strike out "shall" and substitute "is"; After "Act," insert "to".
Section 19 (2) (b) (i)	After "he" insert "or she".
Section 20 (1)	Strike out "shall" and substitute "must".
Section 20 (3) (a) (ii)	Strike out "forth" and substitute "out".
Section 20 (3) (b)	Strike out "shall be" and substitute "is".
Section 20 (4)	Strike out "shall" and substitute "must".
Section 22 (2) (d) (ii)	Strike out "upon" and substitute "on".
Section 22 (3)	Strike out "shall" and substitute "must".
Section 22 (4)	Strike out "shall" and substitute "must".

Provision Amended	How Amended
Section 22 (6) (a) (ii)	Strike out "forth" and substitute "out".
Section 22 (7)	Strike out "shall" and substitute "must".
Section 22 (8)	Strike out "shall, after the amalgamation, be" and substitute "is, after the amalgamation, to be".
Section 24 (4)	Strike out "shall" and substitute "must".
Section 24 (5) (a)	Strike out "shall" and substitute "must".
Section 24 (5) (b)	Strike out "shall" and substitute "must".
Section 25 (d) (i)	Strike out "vested" and substitute "invested".
Section 28	Strike out "shall not" and substitute "is not to".
Section 29 (2)	Strike out "shall" and substitute "is to"; After "he" insert "or she".
Section 29 (3)	Strike out "shall" and substitute "is to".
Section 31 (1) (a)	Strike out "shall" and substitute "must"; After "he" insert "or she"; After "his" twice occurring insert, in each case, "or her".
Section 31 (1) (b)	Strike out "shall" and substitute "must"; After "his" insert "or her".
Section 31 (3)	After "his" insert "or her".
Section 32 (1)	Strike out "shall" and substitute "must".
Section 40	Strike out "shall" and substitute "must".
Section 42 (4)	Strike out "shall" and substitute "must".
Section 43 (2)	Strike out "shall on a winding up of the association be distributed" and substitute "are, on a winding up of the association, to be distributed".
Section 43 (4)	Strike out "shall", and substitute "must".
Section 45 (1)	Strike out this subsection.
Section 45 (3)	Strike out "but which had" and substitute "but which was".
Section 46 (4)	Strike out "shall" twice occurring and substitute, in the first case only, "may".
Section 46 (5)	Strike out "shall" and substitute "must"; After "him" insert "or her".
Section 46 (6)	After "him" twice occurring insert, in each case, "or her"; Strike out "shall" and substitute "must".
Section 46 (7)	After "subsection (6)" insert "for payment"; Strike out "shall" and substitute "must".
Section 47	Strike out "shall not be" and substitute "is not to be".
Section 48	Strike out "shall" and substitute "must".
Section 49	Strike out "shall" and substitute "is to".
Section 50 (4)	Strike out "shall" and substitute "must"; Strike out "shall be deemed" and substitute "is to be taken".
Section 50 (5)	Strike out "shall lie" and substitute "lies".
Section 52	Strike out "shall" and substitute "is to".
Section 54	Strike out "shall" and substitute "must".
Section 56 (1)	Strike out "shall" and substitute "must".
Section 56 (3)	After "he" insert "or she".
Section 56 (5)	Strike out "shall" and substitute "must".
Section 59 (2)	Strike out "shall" and substitute "must".
Section 60	Strike out "shall" and substitute "must"; After "himself" insert "or herself".
Section 61 (3)	Strike out "shall" and substitute "must".

Provision Amended	How Amended
Section 61 (6)	Strike out "shall" and substitute "must".
Section 63 (1)	Strike out "shall" and substitute "is to".
Section 63 (2)	Strike out "shall" and substitute "is to".
Section 63 (4)	Strike out "shall" and substitute "is to".
Section 63 (5)	Strike out "shall" and substitute "is to".
Section 63 (6)	Strike out "shall" twice occurring and substitute, in each case, "is to".
Section 66 (1)	Strike out "shall be deemed" and substitute "is to be taken".

SCHEDULE 3

New Schedule Inserted in Principal Act

SCHEDULE

Penalties for Offences Against Section 41b.

Provision in Corporation Law	Brief Description of Offence	Penalty for Equivalent Offence under this Act
Section 590 (1)	Liability for non-disclosures, etc.	Division 5 fine or division 5 imprisonment
Section 590 (5)	Liability for pawning or pledging property in contravention of s. 590 (1)	Division 6 fine or division 6 imprisonment
Section 591 (1)	Liability where proper accounts not kept	If the offence is committed in respect of a prescribed association—division 6 fine or division 6 imprisonment If the offence is committed in respect of any other incorporated association—division 6 fine
Section 592 (1)	Liability for incurring of debts or fraudulent conduct	Division 6 fine or division 6 imprisonment
Section 592 (6)	Liability for fraudulent conduct	Division 5 fine or division 5 imprisonment
Section 595	Liability for inducement to be appointed liquidator or official manager	Division 8 fine or division 8 imprisonment
Section 596	Liability for frauds by officers	Division 5 fine or division 5 imprisonment
Section 1307	Liability for falsification of books	Division 5 fine or division 5 imprisonment

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor