

NORFOLK



ISLAND

ASSOCIATIONS INCORPORATION ACT 2005

[Consolidated as at 5 November 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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NORFOLK ISLAND

ASSOCIATIONS INCORPORATION ACT 2005

An Act to provide for the Incorporation of certain Associations, and for matters incidental thereto.

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows —

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Associations Incorporation Act 2005*.

Commencement

2. This Act shall commence on the day on which notification of assent to this Act is published in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears —

“Assistant Registrar” means a person appointed under section 4 as Assistant Registrar of Associations;

“association” means —

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

- (i) a religious, educational, benevolent or charitable purpose; or
- (ii) the purpose of providing medical treatment, attention or assistance; or
- (iii) promoting or encouraging music, literature, science or art; or
- (iv) for the purpose of recreation or amusement; or
- (v) of establishing, beautifying or improving a community centre or facility,

being an association, society, institution or body the activities of which are carried on in whole or in part in Norfolk Island; or

- (b) any other association, society, institution or body certified in writing by the Minister to be an association for the purposes of this Act

but not including any association, society, club, institution or body that is formed or carried on for the purpose of trading or securing pecuniary profit for its members;

“committee”, in relation to an association means —

- (a) where there is a committee of the association — that committee; or
- (b) where there is no committee of the association — the person having the management of the affairs of the association;

“Commonwealth” means Commonwealth of Australia including all States and Territories but not Norfolk Island unless the context otherwise requires;

“incorporated association” means an association that has been incorporated under this Act;

“model rules” means the rules of an incorporated association that are from time to time prescribed by regulation;

“prescribed property” means property that was acquired —

- (a) from; or
- (b) using funds obtained under a grant from, the Administration or the Commonwealth,

and includes an interest, whether legal or equitable, in such property, but does not include —

- (c) property acquired from the Administration or Commonwealth for full consideration using funds that were not, directly or indirectly, obtained under a grant from the Administration or Commonwealth; or
- (d) an item of property, being personalty, that has a total value of not more than \$25,000 or such other amount as the Minister may prescribe by notice in the Gazette;

“secretary” means, in relation to an incorporated association the secretary of that association appointed under section 16; and

“Registrar” means the person appointed under section 4 as the Registrar of Associations;

“rules” means the rules of an incorporated association including the model rules, the model rules with changes, or other rules adopted in lieu of the model rules;

“unauthorised name”, in relation to an association or trading association, means a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that is unacceptable by virtue of the operation of section 78 of the *Companies Act 1985*.

(2) In this Act a reference to an alteration of the objects, purposes or rules of an association, or of the trusts relating to an association, includes a reference to any addition to, or revocation or rescission (whether in whole or part) of those objects, purposes, rules or trusts.

PART 2 — ADMINISTRATION

Registrar and Assistant Registrar

4. (1) The Minister may, by instrument in writing, appoint a public sector employee under the *Public Sector Management Act 2000*, to be the Registrar of Associations and such other employee to be Assistant Registrar of Associations as he thinks fit.

(2) The Registrar, in the performance of his functions and the exercise of his powers is subject to the written directions of the Minister consistent with this Act.

(3) The Assistant Registrar may, subject to the directions of the Registrar, perform a function and exercise a power of the Registrar.

(4) The Registrar and the Assistant Registrar may be the same persons as hold the post of Registrar and Assistant Registrar under the *Companies Act 1985*.

Acting appointments

5. (1) The Minister may, by instrument in writing, appoint a person to act as the Registrar or as the Assistant Registrar —

- (a) during a vacancy in the office of the Registrar or in the office of the Assistant Registrar, as the case may be, whether or not an appointment has previously been made to the office; or
- (b) during a period, or during all periods, when the Registrar or the Assistant Registrar is absent from duty or from Norfolk Island or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under subsection 5(1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Where a person is acting as the Registrar or as the Assistant Registrar in accordance with this section and the office of the Registrar or of the Assistant Registrar becomes vacant while that person is so acting then, subject to subsection 5(2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The Minister may, at any time, terminate the appointment of a person appointed to act in accordance with this section.

(5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as the Registrar or as the Assistant Registrar in accordance with this section, he shall perform all the functions and may exercise all the powers of the Registrar or of the Assistant Registrar, as the case requires.

(7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Judicial notice

6. (1) A court shall take judicial notice of —
- (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of the Registrar or the Assistant Registrar; and
 - (b) the fact that that person holds or has held, or is acting or has acted in, that office,

if the signature purporting to be the signature of that person appears on an official document.

(2) In this section, a reference to a court shall be construed as including a reference to —

- (a) a judge; and
- (b) a person authorised by law or by consent of parties to receive evidence,

and, in relation to a person referred to in paragraph 6(2)(b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

Secrecy

7. (1) Subject to this section, a person who is, or has at any time been —
- (a) appointed for the purposes of this Act;
 - (b) engaged as a member of the staff of the Registrar; or
 - (c) authorised to perform a function or exercise a power of the Registrar on behalf of the Registrar,

shall not, except to the extent necessary to perform his official duties, or to perform a function or exercise a power, either directly or indirectly, make a record of, or divulge or communicate to a person, information that is or was acquired by him by reason of his being or having been so appointed, engaged or authorised, or make use of such information, for purposes other than the performance of his official duties or the performance of a function or exercise of a power.

Penalty: 50 penalty units.

- (2) Nothing in subsection 7(1) precludes a person from —
- (a) producing a document to a court in the course of criminal proceedings or in the course of proceedings under this or any other Act;

- (b) divulging or communicating to a court in the course of proceedings referred to in paragraph 7(2)(a) a matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that subsection;
- (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Registrar, it is in the public interest that the document be produced or the information be divulged or communicated; or
- (d) producing a document or divulging or communicating information that is required or permitted by an Act to be produced, divulged or communicated, as the case may be.

PART 3 — INCORPORATED ASSOCIATIONS

Notice of intention to apply for incorporation

8. (1) Where the committee of an association authorises a person to apply for the incorporation of the association under this Part, that person may, by notice published in the *Gazette*, give notice that he intends to apply for the incorporation of the association under this Part.

- (2) A notice given under subsection 8(1) shall —
 - (a) be in the prescribed form;
 - (b) briefly state the objects and purposes of the association in respect of which it is given; and
 - (c) be approved by the Registrar before publication.

Restraint on incorporation

9. (1) Any person may, within 21 days following the publication of a notice under section 8 of intention to apply for the incorporation of an association, apply to the Supreme Court for an injunction to restrain the person who gave the notice, or any other person, from applying, or proceeding with an application, for the incorporation of the association.

(2) The Supreme Court may grant an injunction for which application is made under subsection 9(1) —

- (a) on the ground that —
 - (i) the association is not an association for the purposes of this Act;
 - (ii) the association was formed or is carried on, or is proposed to be incorporated, for an immoral, disloyal or illegal purpose; or
 - (iii) the incorporation of the association is against the public interest; or
- (b) on any other ground which the Supreme Court considers just.

(3) The Supreme Court may determine an application under this section notwithstanding that all the parties interested are not parties to the proceedings.

Application for incorporation

10. (1) Subject to any injunction granted under section 9, a person who gives notice under section 8 of intention to apply for the incorporation of an association may, after the expiration of a period of 28 days, and within a period of 180 days, after the publication of the notice, apply in writing to the Registrar, in the prescribed form for the incorporation of the association.

(2) An application under subsection 10(1) in respect of an association shall state —

- (a) the name of the association;
- (b) the objects and purposes of the association;
- (c) the place or places where the association was formed and is carried on; and
- (d) the names and addresses of the persons who constitute the committee of the association or, if there is no committee of the association, the names and addresses of the persons having the management of the affairs of the association and the means by which the management is so vested.

(3) The application shall be accompanied by a statement made by the applicant certifying —

- (a) that he is authorised by the committee of the association to apply for the incorporation of the association under this Part;
- (b) that, on a date and in a newspaper specified in the declaration, he gave notice under section 8 of his intention to apply for the incorporation of the association; and
- (c) that the particulars contained in the application are true.

Certificates of incorporation

11. (1) Upon receipt of an application under, and in accordance with, section 10 or section 52 for the incorporation of an association, the Registrar may, if he is satisfied that it is proper for him so to do, issue to the association a certificate of incorporation in the prescribed form.

(2) Except with the consent of the Minister, the Registrar shall refuse to issue a certificate of incorporation under this Act to an association if the name of the association is an unauthorised name.

(3) Subject to subsection 11(4), the Registrar may refuse to issue a certificate of incorporation to an association on any ground specified in paragraph 9(2)(a) or on any other ground which he considers just.

(4) The Registrar shall not refuse to issue a certificate of incorporation to an association on any ground which the Supreme Court has refused to make the ground for the granting of an injunction under section 9 to restrain a person from applying, or proceeding with an application, for the incorporation of the association.

Incorporation of associations

12. (1) Upon the issue of a certificate of incorporation to an association under section 11, the association becomes a body corporate with perpetual succession and a common seal, and may acquire and, subject to section 50, may hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

(2) The corporate name of an incorporated association is the name of the association followed by the word “Incorporated”.

(3) The common seal of an incorporated association is of no effect unless the name of the association is inscribed on the seal in legible characters.

(4) All Courts, judges and persons acting judicially shall take judicial notice of the seal of an incorporated association affixed to a document and shall presume that it was duly affixed.

Short form of name

13. A description of an incorporated association is not inadequate or incorrect by reason only of the use of the abbreviation “Inc.” in lieu of “Incorporated”.

Vesting of personal property in incorporated associations

14. Upon the incorporation of an association under this Act, any personal property (other than personal property consisting of an estate or interest in land) held by a person, in trust or otherwise, for or on behalf of the association shall, subject to any trust, covenant, contract or liability affecting the property, be vested in the association.

Power to borrow money and give securities

- 15.** An incorporated association may, subject to the rules of the association —
- (a)** raise or borrow money upon such terms and in such manner as it thinks fit; and
 - (b)** subject to section 50, secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving mortgages, charges or securities upon or over all or any of the real or personal property of the association.

Appointment of secretary

16. (1) The committee of an incorporated association shall, within 14 days after the incorporation of the association under this Part, appoint a person resident in Norfolk Island to be the secretary of the association and, if that office at any time becomes vacant, shall, within 14 days after it becomes vacant, appoint a person resident in Norfolk Island to fill that vacancy.

(2) If the committee of an association fails to comply with subsection 16(1), each member of the committee is guilty of an offence.

Penalty: 2 penalty units.

Vacation of secretary

17. (1) The office of secretary of an incorporated association becomes vacant if the person holding that office —

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors;
- (c) becomes of unsound mind;
- (d) resigns his office by writing under his hand addressed to the committee of the association; or
- (e) ceases to be resident in Norfolk Island.

(2) Where under the rules of an incorporated association the secretary of the association is required to be an employee of the association or to hold another office specified in the rules, the office of secretary of the association becomes vacant if the secretary ceases to be an employee of the association or to hold the other office specified in the rules, as the case may be.

(3) The secretary of an incorporated association may, subject to the rules of the association, hold any other office in the association.

Notification of appointment and change of address of secretary

18. (1) A secretary shall, within 14 days after his appointment, give notice in writing to the Registrar of his appointment and of his full name and address.

(2) If a secretary changes his address, he shall, within 14 days after the change, give notice in writing to the Registrar of the change.

Penalty: 1 penalty unit.

Filing of rules and trusts

19. (1) An incorporated association shall, within 3 months after its incorporation under this Part, and if it has not adopted the Model Rules without change, file with the Registrar —

- (a) a copy of the rules of the association; and
- (b) particulars of, and a copy of any instruments evidencing, the trusts, if any, relating to the association on the day on which the association is incorporated.

Penalty: 3 penalty units.

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

Penalty: 3 penalty units.

(3) A copy of the rules of an incorporated association or of any other instrument filed under subsection (1) or (2) shall be accompanied by a statutory declaration made by the secretary of the association declaring that that copy is a true copy of the instrument of which it purports to be a copy.

Alteration of rules, etc

20. (1) The secretary of an incorporated association shall, within one month after an alteration of —

- (a) the objects or purposes of the association;
- (b) the rules of the association; or
- (c) any trusts relating to the association,

file with the Registrar notice of the alteration, a copy of any instrument evidencing the alteration and a statement made by the secretary certifying that that copy is a true copy of the instrument of which it purports to be a copy and, in the case of an alteration of the objects, purposes or rules of the association, that the alteration is authorised, and was made in the manner provided, by the rules of the association.

Penalty: 5 penalty units.

(2) If, under the rules of an incorporated association, the members of the association are liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding-up of the association and an alteration of the rules of the association affects that liability, the secretary of the association must, within one month after the alteration, give notice of that alteration in the Gazette.

Penalty: 5 penalty units.

(3) An alteration of the objects and purposes of an incorporated association is of no effect until the alteration is approved by the Registrar.

(4) An alteration of the objects, purposes or rules of an incorporated association, or an alteration of a trust relating to an incorporated association, is of no effect until —

- (a) the notice of the alteration;
- (b) the copy of any instrument evidencing the alteration; and
- (c) the certification by the secretary,

are filed with the Registrar, and, in a case to which subsection (2) applies, until notice of the alteration is given in the Gazette.

Change of name

21. (1) Where the Registrar is satisfied that the members of an incorporated association have, in accordance with the rules of the association, resolved to change the name of the association, the Registrar may, upon the application of the secretary of the association, issue to the association a certificate of incorporation in the new name and that certificate of incorporation has effect, from the date of issue, as the certificate of incorporation of the association.

(2) Except with the consent of the Minister, the Registrar shall refuse to issue a certificate of incorporation to an association under subsection (1) if the proposed new name of the association is an unauthorised name.

(3) If the name of an incorporated association is (whether through inadvertence or otherwise or whether originally or by change of name) an unauthorised name, the Registrar may, by notice in writing, direct the association to change its name to a name that is not an unauthorised name.

(4) An association to which a notice under subsection (3) is given which does not change its name as directed by the notice within the time specified in the notice is, unless the Minister by order in writing annuls the direction, guilty of an offence, which offence shall be deemed to continue until the name of the association is so changed, and the offence is punishable by a fine not exceeding 5 penalty units for each day during which the offence continues.

Alteration of rules, change of name, etc, does not affect existing rights and obligations

22. An alteration of the objects, purposes or rules of an incorporated association, or of any trusts relating to an incorporated association, or the issue of a certificate of incorporation under section 21 to an incorporated association in a new name, does not affect any right, liability or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect or the certificate was issued, as the case may be.

Name of association to appear on documents

23. An incorporated association shall cause every notice, advertisement, bill of exchange, promissory note, endorsement, order, way-bill, invoice, receipt or other document given, published, drawn, endorsed or issued by it to contain the name of the association in legible characters.

Penalty: 2 penalty units.

Winding-up

24. (1) Subject to sections 25, 26 and 27, the provisions of the *Companies Act 1985* apply, so far as applicable and with such modifications as are prescribed, to and in relation to the winding-up of incorporated associations and, in that application —

- (a) a reference in the *Companies Act 1985* to a Part 22 body shall be read as a reference to an incorporated association;
- (b) a reference in the *Companies Act 1985* to the directors of a company shall be read as a reference to the members of the committee of an incorporated association;
- (c) a reference in the *Companies Act 1985* to the secretary of a company shall be read as a reference to the secretary of an incorporated association; and
- (d) a reference in the *Companies Act 1985* to the principal place of business of a company shall be read as a reference to the place where the secretary of an incorporated association resides.

Liability of members

25. A member of an incorporated association is not liable, except as provided in the rules of the association, 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.

Distribution of surplus assets

26. (1) Where, upon the winding-up of an incorporated association, a resolution relating to the distribution of the surplus assets of the association has been passed by a majority of at least two-thirds of the members of the association, the Judge shall, subject to subsection (2), make an order for the distribution of those assets in accordance with the resolution.

(2) Where —

- (a)** the Judge considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in subsection 26(1) would not be just; or
- (b)** such a resolution has not been passed,

the Judge shall make such order for the distribution of those assets as, having regard to the objects and purposes of the association being wound up, he considers just.

(3) In this section, “surplus assets” means, in relation to an incorporated association, the assets remaining on a winding-up of the association after payment of the debts and liabilities of the association and the costs, charges and expenses of the winding-up.

(4) Except with the consent in writing of the Minister prescribed property, being a lease from the Crown or the Administration, is not an asset in the winding-up of an incorporated association.

Transfer of property

27. (1) An incorporated association may, by resolution passed in accordance with the rules of the association, determine to transfer all its real and personal property, other than prescribed property, to any other body, whether corporate or unincorporate, formed for promoting objects similar to its own or charitable objects.

(2) Within 14 days of the passing of a resolution mentioned in subsection (1), the incorporated association shall file a copy thereof with the Registrar and shall give notice in the Gazette of its intention so to transfer all its property.

(3) A member of an association, not being a member who voted in favour of the resolution, or any creditor of the association may, within 28 days of publication of the resolution under subsection (2), apply to the Supreme Court for an order prohibiting the association from transferring its property, and the Supreme Court shall have full power and authority to determine the matters in question, but the only ground on which a creditor may apply for an order shall be that his debt has not been paid.

(4) An association shall not transfer its property until the expiration of 28 days after the publication of the last notice which it has given, nor, where an application to the Supreme Court has been made under subsection (3), until the Supreme Court so orders but, notwithstanding the foregoing provisions of this subsection, nothing in this subsection shall affect the title of any bona fide transferee under any transfer of any such property.

(5) When an association has completed the transfer of all its property the secretary thereof shall immediately file notice thereof with the Registrar and, on the expiration of 3 months after the filing of such notice, the association shall be deemed to be dissolved.

(6) Nothing contained in this section shall be deemed to prevent an association making, in accordance with its objects or rules, gifts which do not constitute the whole or the greater part of the property of the association.

Power to sell trust property

28. (1) Where property is held by an incorporated association upon trust and the trust has come either wholly or partly to an end, the secretary of the association may, with the authority of the committee of the association, apply to the Judge for an order authorising the disposal of the whole or a part of the property.

(2) At the hearing of the application, the Judge may, if he thinks it proper so to do and notwithstanding that the provisions of the deed or other instrument creating the trust, or the rules of the association, forbid or do not authorise the disposal of the property, make an order —

- (a) authorising the disposal of the whole or a part of the property; and
- (b) directing the manner in which the proceeds arising from the disposal of the property, or the part of the property, are to be disposed of or dealt with.

Dissolution of incorporated associations

29. (1) Where the Registrar has reasonable cause to believe that an incorporated association is not carrying out its objects or is not in operation, he may send to the secretary of the incorporated association by post a letter to that effect stating that, if an answer showing cause to the contrary is not received within one month from the date thereof, a notice will be published in the Gazette with a view to the dissolution of the incorporated association.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the incorporated association is carrying out its objects or is in operation, he may publish in the Gazette and send to the secretary of the incorporated association by registered post a notice that, at the expiration of 3 months from the date of that notice, the incorporated association will, unless cause is shown to the contrary, be dissolved.

(3) At the expiration of the time mentioned in a notice given by the Registrar under subsection (2), the Registrar may, unless cause to the contrary is previously shown, publish in the Gazette a notice that the incorporated association is dissolved, and, on the publication in the Gazette of that last-mentioned notice, the dissolution of the incorporated association takes effect, but the liability, if any, of every officer and member of the incorporated association continues and may be enforced as if the incorporated association had not been dissolved.

(4) If a person feels aggrieved by the dissolution of the incorporated association under this section, the Supreme Court on application made by the person at any time within 2 years after the incorporated association has been dissolved may, if the court is satisfied that the incorporated association was, at the time of the dissolution, carrying out its objects or otherwise it is just that the dissolution of the incorporated association be annulled, order that the dissolution of the incorporated association be annulled and, upon an office copy of the order being lodged with the Registrar, the incorporated association shall be deemed to have continued in existence as if it had not been dissolved and the Court may, by the order, give such directions and make such provisions as seem just for placing the incorporated association and all other persons in the same position as nearly as may be as if the incorporated association had not been dissolved.

Registrar may act administratively for dissolved incorporated association

30. (1) Where, after an incorporated association has been dissolved under section 29, it is proved to the satisfaction of the Registrar —

- (a) that the incorporated 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 thereto, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the incorporated association, or, if the incorporated association still existed, should be done by or on behalf of the incorporated association,

the Registrar may, as representing the incorporated association under the provisions of this section, do or cause to be done any such act.

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

Property of dissolved incorporated association will vest in Registrar

31. Where, after an incorporated association has been dissolved under section 29, there remains any outstanding property,

- (a) real or personal, including things in action and whether within or outside Norfolk Island;
- (b) which was vested in the incorporated association; or
- (c) to which it was entitled; or
- (d) over which it had a disposing power at the time it was dissolved,

but which was not got in, realised upon or otherwise disposed of or dealt with by the incorporated association, such property shall —

- (e) for the purposes of the provisions of sections 32, 33 and 34; and,

(f) notwithstanding any enactment or rule of law to the contrary, by the operation of this section, be and become vested in the Registrar for all the estate and interest therein legal or equitable of the incorporated association at the date the incorporated association was dissolved, together with all claims, rights and remedies which the incorporated association then had in respect thereof.

Registrar may sell property vested in him

32. (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 31 or any corresponding previous law of Norfolk Island, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Registrar may, subject to section 50, sell or otherwise dispose of, or deal with, such estate or interest or any part thereof as he sees fit.

(2) Subject to section 50, the Registrar may sell or otherwise dispose of, or deal with, such property either solely or in concurrence with any other person by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The Registrar shall apply any moneys received by him in the exercise of any power conferred on him by this section in defraying the costs and expenses of and incidental to the exercise of that power and in making payments authorised by this section and shall pay the remainder, if any, of the moneys to an accounting officer.

(5) The accounting officer shall pay all moneys paid to him under this section into the Public Account.

(6) A person claiming to be entitled to any money paid to an accounting officer under this section may apply to the Court for an order for payment to him of a sum due to him and the Court, if satisfied that the person claiming is entitled to the payment of that sum, shall make an order for the payment accordingly.

(7) Upon the making of an order under subsection (6) for payment of any money to a person, or where he is otherwise satisfied that a person is entitled to any money paid to an accounting officer under this section, an accounting officer shall pay an amount equal to that money to that person.

(8) The provisions of this section do not deprive a person of another right or remedy to which he is entitled against another person.

Property vested in Registrar subject to all charges, etc

33. Property vested in the Registrar by operation of section 31, or by operation of any corresponding previous law of Norfolk Island, is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any law as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the incorporated association, but there shall not be imposed on the Registrar any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the incorporated association so far as they are, in the opinion of the Registrar, properly available for and applicable to such payment.

Registrar to keep records, etc

34. The Registrar shall —

- (a) record a statement of any property coming to his hand, under his control or to his knowledge vested in him by operation of section 31, and of his dealings therewith;
- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

Court may declare dissolution void

35. (1) Where an incorporated association has been dissolved, the Supreme Court may at any time within 2 years after the date of the dissolution, on the application of any person who appears to the Court to be interested, make an order, upon such terms as to the Court seem fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the incorporated association had not been dissolved.

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar an office copy of the order.

Penalty: 1 penalty unit.

Service on associations and notices and demands by associations

36. (1) A notice, demand, summons, writ or other document or process may be served on an incorporated association by serving it personally on the secretary of the association or by sending it by post to him at his last-known address.

(2) An incorporated association may give a notice or make a demand by writing under the hand of the secretary of the association.

Audit and balance sheet

37. (1) Unless permitted otherwise under subsection (3) the committee of an incorporated association shall, at least once in each period of 12 months —

- (a) cause the financial affairs of the association to be audited by a person who either —
 - (i) is a member of the association other than the secretary of that association and who has been approved for that purpose by the Registrar; or
 - (ii) is not a member of the association; and
- (b) prepare, or cause to be prepared, a balance sheet setting out the assets and liabilities of the association.

(2) If the committee of an association fails to comply with subsection (1), each member of the committee is guilty of an offence. Penalty: 5 penalty units.

(3) The secretary of an incorporated association shall, within one month after the preparation of a balance sheet in respect of the association under subsection (1), table a certified correct copy of it at a meeting of members of the association and within 2 months thereafter file with the Registrar a copy of that balance sheet certified to be correct by the person who audited the financial affairs of the association.

Penalty: 5 penalty units.

(4) The Registrar may, upon application by the secretary of an association, exempt the association from the requirement to have its accounts audited if satisfied that the association has an annual income of less than \$10,000 or a membership of fewer than 100 persons and that at a general meeting or at the annual general meeting before the application is made, the members present passed a resolution requesting that the association's accounts not be required to be audited.

(5) An exemption granted under sub-section (4) continues so long as the association is eligible and until such time, if any, that at an annual general meeting or a general meeting the members present pass a resolution that the accounts are required to be audited in accordance with this Act.

PART 4 — INVESTIGATION AND JUDICIAL MANAGEMENT OF ASSOCIATIONS

Interpretation

38. In this Part, unless the contrary intention appears —

“association” means an incorporated association;

“Court” means the Supreme Court;

“judicial manager”, in relation to an association, means the judicial manager appointed under subsection 43(2) to manage the affairs of that association.

Investigation of association's affairs

39. (1) Where the Minister or the Registrar has in his possession any information that he considers calls for an investigation under this section into the affairs of an association, he may serve on the secretary of the association a notice in writing calling upon the association to show cause within such period, being not less than 6 weeks, as is specified in the notice, why the conduct of the affairs of the association should not, on the ground specified in the notice, be investigated.

(2) If an association fails, within the period specified in a notice under subsection (1), to show cause —

- (a)** to the satisfaction of the Minister, where the notice was served by the Minister; or
- (b)** to the satisfaction of the Registrar, where the notice was served by the Registrar,

the Minister may cause the Registrar to, or the Registrar himself may, as the case may be, make the investigation referred to in the notice.

(3) For the purposes of an investigation under subsection (2), the Registrar may, by notice in writing given to a person whom the Registrar believes to have some knowledge of the affairs of the association, require that person to attend before him at the time and place specified in the notice and there to answer questions relating to the affairs of the association.

(4) A person is not excused from answering a question when required to do so under subsection (3) on the ground that the answer to the question might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in any proceedings, other than proceedings for an offence against subsections 40(1) or 40(2).

Offences

40. (1) A person shall not, without reasonable excuse, refuse or fail —

- (a)** to attend before the Registrar; or
- (b)** to answer a question put to him by the Registrar,

when so required in pursuance of subsection 39(3).

Penalty: 20 penalty units.

(2) A person shall not, when appearing before the Registrar for examination in pursuance of subsection 39(3), make a statement that he knows to be false or misleading in a material particular.

Penalty: 50 penalty units.

Entry on premises

41. (1) Where the Registrar believes on reasonable grounds that it is necessary for the purposes of his investigation of the affairs of an association to enter land or premises occupied by the association, he may, at all reasonable times, enter the land or premises and may —

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

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

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

(2) The Registrar is not entitled to refuse to permit a person to inspect books referred to in subsection (1) that are in the possession of the Registrar under that subsection if the person would be entitled to inspect those books if the Registrar had not taken possession of them.

(3) A person shall not obstruct or hinder the Registrar in the exercise of his powers under this section.

Penalty: 50 penalty units.

Application for judicial management of association

42. (1) Where the Registrar, having regard to the results of an investigation made by him under section 39 into the conduct of the affairs of an association, is of the opinion that it is necessary or proper to do so, he may apply to the Court for an order that the association be placed under judicial management.

(2) An application to the Court under subsection (1) shall ask that, if the application is granted, the Registrar or a person included in a panel of 3 persons nominated by the Registrar for the purpose shall be appointed as the judicial manager of the association.

(3) The association whose affairs have been investigated is entitled to be heard on any application made to the Court under this section.

Judicial management

43. (1) An order for the judicial management of an association on an application under section 42 is subject to the provisions of this section and of sections 44 to 48 inclusive.

(2) The Court shall, in an order for the judicial management of an association, appoint as judicial manager the Registrar or one of the panel nominated by the Registrar in the application for the order.

(3) The Court may, at any time, cancel the appointment of a person as a judicial manager and appoint in his stead any other person.

(4) A judicial manager shall receive such remuneration, if any, as the Court directs.

(5) The Court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the association in such order of priority in relation to any existing charges on that property as it thinks fit.

(6) The conduct of the affairs of an association shall, on and after a date specified in an order of the Court, vest in the judicial manager appointed by the Court and, on and after that date, no person not so appointed shall have the conduct of those affairs while the association continues to be under judicial management.

(7) The judicial manager shall act as the secretary of the association and the person who was the secretary of the association immediately before the appointment of the judicial manager ceases to be the secretary of the association.

(8) The Court shall issue such directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case, including directions as to the making of reports to the Court from time to time on the conduct of the affairs of the association.

(9) The judicial manager shall act under the control of the Court and may apply to the Court at any time for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(10) The judicial manager shall give to the Minister such information as the Minister from time to time requires and shall report to the Minister whenever he intends to apply to the Court for instructions and shall, at the same time, furnish to the Minister particulars of the application.

(11) The Minister is entitled to be heard on any application under subsection (9) and may himself make application to the Court with reference to the conduct of the judicial management.

Order declaring all offices of committee vacant

44. At any time after the making of an order on an application under section 42 for the judicial management of an association, the Court may declare vacant all executive offices of the association and all offices of the committee of the association.

Indemnity

45. The judicial manager is not subject to any action, claim or demand by, or liable to, any person in respect of anything done, or omitted to be done, in good faith in the exercise, or in connection with the exercise, of the powers conferred on the judicial manager by this Act.

Cancellation of certain contracts

46. The Court may, either of its own motion or on the application of the judicial manager, at any time while an order for judicial management is in force with respect to an association, after hearing all persons who, in the opinion of the Court, are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the Court thinks fit, any contract or agreement between the association and any other person, being a contract or agreement entered into before the management of the association was vested in the judicial manager.

Order for election of committee

47. Before cancelling, in accordance with section 48, an order for judicial management in relation to an association in respect of which a declaration has been made under section 44 declaring vacant all executive offices of the association and all offices of the committee of the association, the Court shall direct the Registrar to conduct an election, as specified in the direction, to fill the vacancies.

Cancellation of order for judicial management

48. (1) If, at any time, on the application of the judicial manager or of any other person interested, it appears to the Court that the purpose of the order for the judicial management of an association has been fulfilled or that for any reason it is undesirable that the order should remain in force, the Court may cancel the order and, thereupon, the judicial manager shall be divested of the conduct of the affairs of the association, which shall again vest in the committee of the association.

(2) Section 12 applies in relation to incorporated associations as if the office of secretary of the association had become vacant on the date of the cancellation of the order of judicial management of the association.

PART 5 — MISCELLANEOUS

Evidentiary provisions

- 49. (1)** The Registrar may, by writing under his hand, certify —
- (a) that, on a date specified in the certificate, an association so specified was, or was not, an incorporated association or incorporated trading association, as the case may be; or
 - (b) that, on a date specified in the certificate, a person so specified was, or was not, the secretary of an incorporated association or incorporated trading association, as the case may be, so specified,

and such a certificate is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(2) Judicial notice shall be taken of the signature of the Registrar appearing on a certificate under subsection (1) and of the fact that the person by whom the certificate purports to have been signed is the Registrar.

Prescribed property

50. (1) An incorporated association must not dispose of, charge or otherwise deal with prescribed property other than by way of —

- (a) a disposal to, or a charge as security for a loan or other benefit by, the Administration; or
- (b) a lease, including a sublease, for a term of 12 months or less (including any right of extending or renewing the term),

except with the consent in writing of the Minister and in accordance with the conditions, if any, that the Minister imposes on the consent.

(2) Where prescribed property is a lease from the Administration, an incorporated association must not dispose of, charge or otherwise deal with the property, except with the consent and in accordance with the conditions, if any, that the Minister imposes on the consent.

(3) It is a condition of every consent given under subsection (1) that, except as otherwise authorised in writing by the Minister —

- (a) property exchanged for prescribed property; or
- (b) property acquired wholly or partly from funds realised on the sale or other disposal of prescribed property,

is prescribed property.

(4) Subject to subsections (11) and (12), a dealing with prescribed property in contravention of subsection (1) or (2) is void and of no effect.

(5) Where prescribed property was acquired wholly or partly from or using funds obtained under a grant from the Commonwealth, the Minister cannot give his or her consent under subsection (1), (5) or (6) until he or she —

- (a) has given the Commonwealth reasonable notice of his or her intention to give consent; and
- (b) has considered any submissions made by the Commonwealth within the time specified in that notice.

(6) An incorporated association must keep and maintain a register of prescribed property.

(7) The Minister may under subsection (1) consent to a disposal of, charge on or dealing with prescribed property after the disposal, charge or dealing purported to take place, but only where he or she is of the opinion that to fail to consent would, in all the circumstances, be unjust to all parties to the purported disposal, charge or dealing.

(8) Where consent is given under subsection (1) in accordance with subsection (7), the purported disposal, charge or dealing is deemed to have been, on and from the day on which it purported to take place, as valid and effectual as it would have been if the Minister's consent had been given on that day.

Extension of time

51. Where, under this Act or the Regulations, an act or thing is required to be performed or done within a specified time, the Registrar may, in special circumstances, if he thinks fit, extend the time for the performance or doing of that act or thing.

Conversion of companies registered under the *Companies Act 1985*

52. (1) If before the commencement of this Act an association has become incorporated under the *Companies Act 1985* the company so incorporated may apply to the Registrar for conversion of its incorporation to incorporation under this Act.

- (2) If a company incorporated under the *Companies Act 1985*—
 - (a) has by special resolution resolved to convert its incorporation to this Act; and
 - (b) has authorised a person to apply for the conversion of incorporation of the company to incorporation under this Act,

that person may give notice that the company intends to apply for the conversion of incorporation of the company.

- (3) A notice given under subsection (2) shall —
 - (a) be in the prescribed form; and
 - (b) be approved by the Registrar before publication.
 - (c) be published in the prescribed form in the *Gazette*.

(4) Any person may, within 21 days after the publication of a notice under section (3) of intention to apply for the conversion of incorporation of a company, apply to the Supreme Court for an injunction to restrain the person who gave the notice, or any other person, from applying, or proceeding with an application, for the conversion of incorporation of the company.

(5) The Supreme Court may grant an injunction for which application is made under subsection (4) —

- (a) on the ground that —
 - (i) the company is not carrying out the functions of an association; or
 - (ii) the company is in significant breach of provisions of the *Companies Act 1985*; or
 - (iii) the incorporation of the association is against the public interest; or
- (b) on any other ground which the Supreme Court considers just.

(6) The Supreme Court may determine an application under this section notwithstanding that all the parties interested are not parties to the proceedings.

(7) Subject to any injunction granted under section (5), a person who gives notice under section (2) of intention to apply for the conversion of incorporation of a company may, after the expiration of a period of 28 days, and within a period of 180 days, after the publication of the notice, apply in writing to the Registrar, in the prescribed form for the conversion of incorporation of the company.

- (8) An application under subsection (7) shall state that —
 - (a) the principal purpose of the company is and has been to carry on an activity of an association;
 - (b) the members of the company have resolved to convert incorporation to this Act;
 - (c) the members of the company have resolved that if the incorporation of the company is converted to this Act the Model Rules will be adopted in lieu of the memorandum and articles of association of the company; and
 - (d) the company is not in default of any of the provisions of the *Companies Act 1985*.

(9) If the Registrar is satisfied that the application complies with this section and section 11, he shall inform the Registrar of Companies under the *Companies Act 1985* that he intends to issue the company with a certificate of incorporation under this Act.

(10) Upon the issue of a certificate of incorporation under section 11, the Registrar shall so notify the Registrar of Companies whereupon the incorporation of the company under the *Companies Act 1985* shall cease and its name removed from the register of companies and the company shall be an association incorporated under and subject to this Act.

- (11) Upon its incorporation under this Act —
 - (a) all of the assets and liabilities of the company shall vest in the association; and

- (b) any legal proceedings against the company before its incorporation under this Act shall continue against the association.

(12) This section applies despite anything to the contrary in the *Companies Act 1985*.

Regulations

53. The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular —

- (a) providing for or in relation to the cancellation, and matters arising out of the cancellation, of the incorporation of incorporated associations that have ceased to exist or to be associations, as the case may be, for the purposes of this Act;
 - (b) providing for the issue of certified copies of certificates of incorporation;
 - (c) providing for the inspection of documents filed with the Registrar under this Act or the Regulations;
 - (d) prescribing the form in which any application, notice, declaration or certificate shall be made, given, published, issued or filed under this Act or the Regulations;
 - (e) providing the form of model rules that may be adopted by an incorporated association
 - (f) providing for the form of, and the matters to be provided for in, the rules of incorporated associations that do not adopt the model rules;
 - (g) prescribing the fees to be paid on the making, giving, publishing, issuing, filing or inspecting of any application, notice, declaration, certificate or other document under this Act or the Regulations; and
 - (h) prescribing penalties, not exceeding a fine of 50 penalty units, for offences against the Regulations.
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NOTES

The *Associations Incorporation Act 2005* as shown in this consolidation comprises Act No. 21 of 2005 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Associations Incorporation Act 2005</i>	21, 2005	30.9.05	
<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
3	am 14, 2012
4	am 14, 2012
5	am 14, 2012
11	am 14, 2012
21	am 14, 2012
26	am 14, 2012
39	am 14, 2012
43	am 14, 2012
50	am 14, 2012

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