

QUEENSLAND LAW REFORM COMMISSION

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A DRAFT ASSOCIATIONS INCORPORATION ACT

WORKING PAPER NO. 22

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A Working Paper of the Queensland Law Reform Commission

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QUEENSLAND

LAW REFORM COMMISSION

CONFIDENTIAL

WORKING PAPER ON A DRAFT ASSOCIATIONS
INCORPORATION ACT

Q.L.R.C.W. 22

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LAW REFORM COMMISSION

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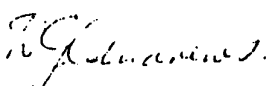
The second programme of the Law Reform Commission of Queensland as approved by the Governor in Council includes an examination of the law relating to incorporation and regulation of voluntary associations with a view to proposing a modern Associations Incorporation Act.

a/p.29
This working paper contains a commentary and a proposed Bill to consolidate and amend the law with regard to the above. Neither the proposed Bill nor the commentary represents the final views of the Commission. This material has been prepared for the Commission by Mr. R.W. Gotterson of Counsel. In the commentary Mr. Gotterson makes extensive reference to a draft bill prepared by the Department of Justice in 1975. For convenience we append a copy of this draft bill ~~after~~ the draft bill prepared by Mr. Gotterson.

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It is anticipated that the Commission will recommend certain amendments as to matters already discussed by it, but not yet drafted, which will be circulated separately in about mid-January.

The working paper is being circulated to persons and bodies known to be interested in these matters, from whom comment and criticism are invited. It is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law must have the approval of the Governor in Council before being laid before Parliament. No inferences should be drawn as to any Government Policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Queensland, 4000, so as to be received no later than Friday, 9th February, 1979.


(The Honourable Mr. Justice
D.G. ANDREWS)
(Chairman)

WORKING PAPER ON A DRAFT ASSOCIATIONS
INCORPORATION ACT

COMMENTARY

There are in the community many unincorporated associations. They are as diverse in their size as they are in the activities which their members pursue. In general, the membership may be as large or as small as the members desire and the members may pursue any lawful activity or activities they wish. Considered together, they play a very significant part in community life.

Notwithstanding, the law with respect to unincorporated associations has developed many uncertainties both substantive and procedural. Generally they stem from the failure of the common law to reconcile with facility the corporate nature of an association with its lack of legal personality. Given the importance of unincorporated associations, it is in the community's interest that the law pertaining to them be simplified. The Attorney-General desires to introduce legislation to effect this result.

It is proposed in this report to consider rather briefly the following and then to outline the draft legislation:-

1. The nature of an unincorporated association.
2. Uncertainties arising from the law with respect to unincorporated associations.
3. The desirability of provision for incorporation.
4. Existing legislation.

1. The nature of an unincorporated association.

An association of persons for any purpose is merely a physical fact and does not depend on the law for its existence. It has no inherent legal existence apart from those persons who are its members. It is, in the eyes of the law, unincorporated. This absence of a legal existence independent of its members is the hallmark of the unincorporated association. (See Wise v. Perpetual Trustee Company Limited (1903) A.C. 139 and Williams v.

Hursey (1959) 103 C.L.R. 30.).

Fullagar J. in Williams v. Hursey, supra, at p.54 isolated the most fundamental difference between a corporation and an unincorporated association in this way:-

"... a corporation has 'perpetual succession': it maintains its identity and its personality notwithstanding changes in its membership which may occur from day to day. Its property does not belong to its members. But the property of a 'society' does belong to its members from time to time and that property may be owned by entirely different persons at (different dates)."

The judgment stresses that the unincorporated association has no existence separate from its members and that it can remain in existence only so long as there are members.

An unincorporated association, in having no corporate personality as such, owes its existence purely to the agreement of its individual members and requires no specific authorisation. In legal theory the creation of such an association depends upon that branch of the law which deals with enforceable agreements, namely, the law of contract. In the same way the constitution of the association will only be enforceable insofar as it amounts to a binding agreement between the parties. (See Dawkins v. Antrobus 17 Ch. D. 615.). It is as a contract that the rules and regulations by which the association is to be governed will be binding on the members. It must, however, be remembered that it is usual in the case of unincorporated associations to vest the common property in trustees for the benefit of the members and where this is done the nature of the trust may also constitute part of the governing rules of the association. This will be so where the trust is declared to be for the maintenance of some particular purpose: in such a case, if the trust is binding it will amount to a positive obligation not to divert the property to some other purpose. The trust may thus virtually amount to a limitation on the constitution of the association itself, in as much as it will prevent the property subject to the trust being used for purposes other than

those originally laid down, even where the association has validly altered its rules and thereby changes its purposes. (See Overtoun v. Free Church of Scotland (1904) A.C. 515.). In other words, an association's constitution may be derived from both the terms of the contract between the members and the trust on which the property is held, and a change in the rules as laid down by the original contract may be valid according to its terms, but will not enable the trust property to be diverted to the changed purposes of the society unless the original terms of the trust itself allow for modification of this sort. (From Lloyd, Law of Unincorporated Associations, pp. 97-99).

2. Uncertainties arising from the law with respect to unincorporated associations

In recent years a number of decided cases have illustrated the uncertainties that confront members of unincorporated associations and those who deal with them. The uncertainties arise from the anomalies which flow from the operation of the present legal rules applicable to unincorporated associations. An appreciation of the extent of those uncertainties is readily gained by considering the following situations:-

(a) The devise of property to unincorporated associations

In Leahy v. Attorney-General (1959) 101 C.L.R. 611 the Privy Council concluded that a testamentary gift to an unincorporated association simpliciter is prima facie valid as a gift to its members at the date of the gift as joint tenants or tenants in common; but that the presumption was rebutted by considering: the form of the gift; the number and distribution of the members; the subject matter of gift; and the capacity of the members to put an end to the association and distribute the assets. These circumstances might indicate that the gift was in fact intended as a trust for both present and future members in which case the gift would fail as infringing the rule against perpetuities; or they might indicate that it was not a trust for the benefit of individuals at all but stood revealed as a trust for some purpose

or purposes disclosed by the terms of the bequest in which case the gift would fail unless the purpose was, in a legal sense, charitable. This decision was followed by the High Court in Bacon v. Pianta (1966) 114 C.L.R. 634, an appeal from a decision of Hart J. in the Supreme Court of Queensland. It is binding authority in Queensland.

The difficulty of the decisions for those who wish to devise property to an unincorporated association is that in the majority of instances the presumption will be rebutted and the gift fail because the testator will, in fact, have intended that the gift be used to further the objects of the association and that it benefit both present and future members. Such was the fate of the gifts in both these cases. In fact, since the decision in Lahey's Case there have been few, if any, successful defences to challenges made against bequests to unincorporated associations. (See (1966) 40 A.L.J. 283.).

Some judicial attempt to ameliorate this approach has been made in Re Goodson, deceased (1971) V.R. 801; but it has served to confuse rather than clarify the law.

The position that now pertains is that a person who wishes to devise property to an unincorporated association as "an entity", to further the objects of the association, where they are not charitable in the legal sense, faces great difficulty in so doing.

(b) The ability of associations to contract and hold property

A situation commonly encountered is where a voluntary association wishes to lease premises to carry on its activities. This poses the question whether such association simpliciter can hold property under a lease. The answer, in the negative, which is suggested by principle, was affirmed in Freeman v. McManus

(1958) V.R. 15, where a landlord, The Melbourne Trades Hall Council, sought to evict certain tenants from a building. To sustain the action under the relevant legislation the landlord had to show, inter alia, that there had been a lease or a letting of premises whereby the relationship of landlord and tenant was created. The alleged lease was with the Australian Labour Party, an unincorporated association. It was further contended that the tenants were the members for the time being of a fluctuating body of persons the existence of whose rights, obligations, powers and privileges as lessees of the premises would depend on whether they were members of the party. The action failed because "such a lease or tenancy is unknown to the law". (At p. 22.). A similar contention was rejected in Francis v. McKay (1967) Qd. R. 554.

The result is inconvenient to say the least. Generally, to avoid it, certain members of the association, often called "the trustees", enter into the lease or tenancy agreement personally with the landlord. This in itself is an inconvenient solution particularly where a "trustee" ceases to be a member of the association. In the case of sporting bodies, the Sporting Bodies' Property Holding Act 1975-76 attempts to obviate this difficulty by providing for a Register of Trustees; yet it underscores in its terms the complexity of the solution.

The powerless position in which a party and the members of an unincorporated association may find themselves when the party purports to enter into an agreement with the association simpliciter is illustrated in Carlton Cricket and Football Social Club v. Joseph (1970) V.R. 487 (followed in Amey v. Fifer (1971) 1 N.S.W.L.R. 685) and Banfield v. Wells-Eicke (1970) V.R. 481. In the former case the plaintiff, a company, purportedly entered into an agreement with the Fitzroy Football Club, an unincorporated association, whereby Fitzroy agreed to play a certain number of its home football games at the Carlton ground for a period of 21 years. The agreement was executed by the duly appointed

officers of Carlton and the President and Secretary of Fitzroy. It came to the notice of Carlton that officers of Fitzroy, not being those who had signed the agreement, intended to break it by entering an agreement with another cricket club and it sought interlocutory injunctions against Fitzroy. The plaintiff failed, inter alia, because even assuming that the word "Club" referred to all the members of the club from time to time, to find the contract existed at the time of the action required resort to "the fantastic notion" that each time a person ceased to be a member of Fitzroy "there is a novation of the contract ... and each time a new member is elected there is also a novation ...". (See p. 498.). In the latter case the facts were similar though both parties to the purported contract were unincorporated associations. The Plaintiff failed in an application for an interlocutory injunction on the basis that if the agreement for use of a football ground was made with the then members of a club, it could not be enforced later by a different group of members. The purported agreements in both cases were of a type that is of considerable commercial value and the result is cause for alarm because there probably are in existence numerous similar agreements which are completely unenforceable.

(c) The liability of committee members of associations

The common fund of an association is generally regarded as the limit of the liability of its members. It is clear from Wise v. Perpetual Trustee Company, supra, that no member is liable to an amount greater than his agreed subscription unless there is a contrary intention clearly expressed. An anomalous situation that is evident from certain reported cases arises where committeemen have been held liable to damages in tort and contract, notwithstanding that the liability goes beyond their own agreed subscription as members. The committeemen are held liable as principals. The cases are the product of a desire to find for a plaintiff by the pragmatic route of selecting some person or persons to shoulder responsibility.

In Bradley Egg Farm v. Clifford (1943) 2 All E.R. 378 the committee members of a poultry society were held liable, inter alia, in contract for damages. These damages flowed from the loss of fowls belonging to the plaintiffs who had on the invitation of the society allowed their birds to be tested for certain diseases. In addition a servant of the society was found to be negligent and the committee members were held to be vicariously liable. The committee members defended, denying that they were personally liable as the contracts were entered into on behalf of the society as a whole and the negligence of the servant was at the risk of the society as a whole. In each instance the committee members were held personally liable, the Court of Appeal holding that the fact that the members of the society by its constitution entrusted its affairs and management to a committee did not thereby give the committee authority to make contracts binding on them. Scott L.J. said at p. 386:-

"...(the intention) on the plaintiff's part (was) to make the contract with the person or persons responsible. That cannot be the society for it does not exist ... the businessmen who accept the office of being on the executive council, seem to me to be the persons whom the law must regard as pledging their own credit in order to perform the duties which they voluntarily undertake for their so-called society ..."

The decision was followed in Smith v. Yarnold (1969) 90 W.N. (Pt. 1) (N.S.W.) 316 where a committee of management in whom the management of a motor racing club was vested and who, as "trustees", had taken lease of land at which club race meetings were conducted were held liable in contract and in tort (as occupiers) to pay damages to a plaintiff, a paying spectator, who was injured when a grandstand on the land collapsed. An argument that the committee were acting on behalf of the members was rejected for the same reason that it was rejected in Bradley Egg Farm v. Clifford, supra.

Certain practical difficulties are revealed in these cases. Firstly, it seems that before any credit of the members of an association may be pledged (and this may extend even to the common fund), authority must be given by the members of the association. The problem is that it may well be impossible to further the objects of the association unless a committee is empowered, at the minimum, to undertake the objects of the association. Secondly, it follows as a corollary that, independent of special agreement, committee members who find themselves in such a situation are not entitled to indemnity from the members.

(d) The rights of members of associations to maintain legal actions against fellow members and/or committee members

The legal requirements necessary to give a member of an association standing to sustain an action against its committee is a matter which has troubled the courts over a number of years. Different views have been expressed leading to differing conclusions.

In Cameron v. Hogan (1934) 51 C.L.R. 358 the plaintiff who had not been endorsed for his State parliamentary seat by the executive branch of the Australian Labour Party sought, inter alia, an injunction or declaration against the executive. Any relief was denied to him on the ground that he lacked "some civil right of a proprietary nature proper" which, it was said, was the basis of the jurisdiction to grant an injunction. It was said that he lacked this right because of the nature of the association - one which had the general characteristics of a "voluntary association(s) ... without property and without giving to (its) member(s) any civil right of a proprietary nature" (at p. 370.). The Court classified social, sporting, political, scientific, religious, artistic and humanitarian associations as coming within this category. (at p. 371.). It differentiated associations which operate for private gain and material advantage.

The decision has not been overruled by the Court but has been so apparently ignored in that Court and other Courts that the true position is uncertain. In Stevens v. Keogh (1946) 72 C.L.R. 1 a plaintiff successfully claimed that the committee of a police officers' association of which he was a member had acted ultra vires in supporting a libel suit by one of its members, notwithstanding that the association rules did not confer upon the member a right to share in the property of the association either during its existence or upon winding up. Latham C.J. distinguished Cameron v. Hogan, supra, by isolating an action to restrain misapplication of funds as a proper case for a remedy to be granted to a member. Starke, Dixon and McTiernan JJ. did not mention the case. In Harrison v. Hearne (1972) 1 N.S.W.L.R. 428 a student member of a university council, an unincorporated association, sought to restrain alleged ultra vires actions by the Executive. It was argued that the plaintiff had no standing because he had no proprietary rights in the funds or property of the students' council and that there was no contractual relationship between the body of members or any member and the student council. Helsham J. refrained from dealing with Cameron v. Hogan, supra, which was cited in argument but applied the words of Fletcher Moulton L.J. in Osborne v. Amalgamated Society of Railway Servants (1911) 1 Ch. 540 at p. 562:

"There are many rights which in such a sense could not be called rights of property, which, nevertheless, the law will protect, as, for instance, if there was an association of men subscribing for a benevolent purpose, say for the endowment of a scientific institution, the whole funds of the association being dedicated to that charitable purpose on the terms that the administration should be under the control of the association, I can see no reason why membership of such an association should not have the same legal protection as would be given in the case of an association where the

"members had a beneficial interest in the funds."

A similar approach was taken in Re Sick and Funeral Society of St. John's Sunday School, Golcar (1972) 2 W.L.R. 962.

The classification of associations based on the existence of a proprietary right made in Cameron v. Hogan, supra, has not been adopted generally but rather has been avoided. It is a testament to the difficulties Courts have in dealing with the constitution of unincorporated associations. That it has not been laid to rest leaves uncertainty for those who are members of such associations.

Another kind of difficulty that confronts the member of an unincorporated association who wishes to proceed against other members is demonstrated in Serbian Orthodox Ecclesiastic School Community "Saint Nikolas" Queensland v. Vlislavljevic (1970) Qd. R. 386. In that case certain members of an association purported to adopt a new constitution and to exclude some of the other members from use of a church built on land of which the president of the association was registered proprietor in his capacity as a corporation created by letters patent. One of the members so excluded, obtained an ex parte order that the defendants as President and Secretary of the Free Serbians, as the breakaway group were known, represent themselves and other members of the Free Serbians Group in proceedings intended to be brought against them. In an action for recovery of possession of the land brought in the name of the corporation, the defendants applied to have the representation order discharged and for an order staying proceedings in the corporate name. In discharging the representation order W.B. Campbell J. held that the mere fact of being a Free Serbian did not mean that that member could properly be sued in an action to recover possession of land because there might be many who had not used the land for some time and might never wish to use it. It seems that the only correct way that the plaintiff

might have proceeded was to sue individually those persons who were refusing to deliver up possession of the land. Obviously this will be cumbersome where there are numerous defendants on whom originating process and orders must be served.

Yet another difficulty is that faced by a member of an unincorporated association who is injured on association premises and seeks to recover damages from other members for breach of duty as an occupier. There are a number of cases including Prole v. Allen (1950) 1 All E.R. 476 and Healey v. Ballarat East Bowling Club (1961) V.R. 206 which are authority for the proposition that a member will not succeed on the ground that as a member it is most improbable that he could be either an invitee or a licensee of the president, secretary, committee or members of the association. It is submitted that were the occupier a corporation and the member on the premises on corporation business or at the licence of the corporation, this difficulty would not arise.

The uncertainties to which reference has been made are by no means exhaustive. They are some that have been highlighted in recent decisions. Taken together, they illustrate the difficulties that daunt at almost every turn those who venture to advise on the law relating to unincorporated associations. (A more full discussion of this topic is contained in The Dilemma of the Unincorporated Association - (1973) A.L.J. 305 to which the author has made extensive reference.)

3. The desirability of provision for incorporation

It has been observed that generally these uncertainties stem from the failure of the law as developed by Courts to reconcile with facility the corporate nature of an association with its lack of legal personality.

It is submitted that the adoption of legislation of a general character which will in effect make it possible for various unincorporated associations to gain recognition as

legal entities by some process of registration or formalisation allowing such bodies to obtain legal status, will remove in a satisfactory way these uncertainties for those associations which do obtain legal status.

The essential purpose of the draft bill appended hereto is to provide a simple system of registration allowing unincorporated associations to incorporate. In substance the system is not a reform of the law relating to unincorporated associations but the provision of machinery to allow such associations to avoid that law. The law relating to unincorporated associations will continue to apply to those associations which do not incorporate. Thus to be effective, the system requires public acceptance and general adoption of its facilities.

It should be noted that the proposed system deliberately leaves to the members of the unincorporated association the choice whether they will take the steps to incorporate. What this system does not do is confer automatic incorporation on all unincorporated associations upon formation of the association. Since an unincorporated association is, after all, no more than a physical fact of the association of persons each of legal status, the effect of such an approach might well have the result that the formation of a cricket team or a car club or a choir, any one of which might have the most transient existence, would cast upon the members an obligation to file returns and otherwise to subject themselves to the provisions of the legislation. One can foresee that there would be many corporations that would come into existence but of which no formal record ever be kept because the members, through unawareness of the fact of incorporation or otherwise, would fail to file returns; and there would be many corporations that existed as a matter of law long after the association itself, as a physical fact, had ceased to exist. Seen in this light, that kind of approach is quite impractical and it is for this reason chiefly that it has been rejected in favour of the approach contained in the draft bill.

4. Existing legislation

Legislation of a general character allowing various unincorporated associations to obtain legal status has been

in force for some time in New Zealand, and certain Australian States (Tas.: Associations Incorporation Act 1964 (as amended); S.A.: Associations Incorporation Act, 1956 (as amended); W.A.: Associations Incorporation Act, 1895 (as amended); A.C.T.: Associations Incorporation Ordinance 1953 (as amended); N.T.: Associations Incorporation Ordinance 1963 (as amended); N.Z.: Incorporated Societies Act 1908-1976). While the various legislative measures have many similar features, they are far from uniform in text. There is no similar legislation in the other three States.

The absence of such legislation in Queensland has not meant that it has been impossible for the members of such associations to form a corporation to pursue its objects. They may now do so by virtue of the Companies Act 1961-76; or, if the nature and constitution of the association are appropriate, by virtue of the Religious, Educational and Charitable Institutions Acts 1861-1967, they may seek the incorporation of "any person or persons and their successors forever holding any religious or secular office or preferment ...".

If members of associations had to resort to the Companies Act to incorporate, it would inevitably add considerably to their expenses. It would also impose on them and their officers heavier duties and responsibilities than seem required having regard to the activities of most of them. Indeed, it is one of the objects of the proposed legislation to provide a system of registration and regulation which is less complex and onerous than the Companies Act.

DRAFT BILL

The draftsman of a bill to provide for incorporation of associations has three courses open to him, namely:-

- (i) to ignore the similar legislation in other jurisdictions by approaching the subject afresh;
- (ii) to develop and revise the R.E.C. Acts; or
- (iii) to repeal the R.E.C. Acts and adopt, so far as they are appropriate, the general features of similar legislation in other jurisdictions.

Given that it is desired to introduce legislation shortly and that a fresh approach would entail a rather special contribution to research on the subject, there is not really the time or the resources available to embark upon the first alternative. The essential feature of the similar legislation is that it permits incorporation of the members of an association. The property of the association vests in the corporation thus formed to be used in accordance with its rules. In contrast the R.E.C. Acts, in general, permit incorporation of a person or persons holding an office in an association. The property of the association vests in the corporation and is held on trust for the members of the association. Each system is relatively simple and could be used as a basis for litigation.

Bearing in mind that the R.E.C. Acts appear not to be generally well understood and that there is some advantage in uniformity of legislation with other States, it is submitted that the third alternative is to be preferred. It has been adopted as the basis of the draft bill herewith.

Several drafts for an Association Incorporation Bill have already been prepared in Queensland. I have been briefed with a copy of a bill prepared in 1972 by the Department of Justice. Following certain suggestions and review a further draft bill was prepared by the Department in 1975 to assist the Law Reform Commission to produce a formal bill. A copy of this draft has also been briefed to me. For convenience it is referred to as the 1975 draft. It contains the general features and texts of similar legislation in other jurisdictions. In many respects its provisions are useful and beneficial. I have adopted it as a basis for comment and for preparation of the draft bill herewith.

1. Definitions of "Association", "Charitable Association", "Educational Association", "Religious Association".

- (a) The definition of "Association" in S. 4 of the 1975 draft is unnecessarily narrow so far as it defines those associations which may take advantage of the provisions of the legislation without first having to approach the Minister. Apart from being much

narrower than corresponding definitions in similar legislation, it is in effect much narrower also than the like provisions of the R.F.C. Acts. (See Re McAuliffe (1944) St. R. Qd. 167.). If the definition stands as it is, it may have undesirable consequences. Firstly, it may discourage use of its provisions by those who would first have to approach the Minister before being in a position to apply for incorporation. Secondly, it is anomalous in that it leaves those who probably most desire the introduction of the legislation, namely, the members of sporting and recreation associations, in a situation where they do not know whether they may use its provisions. Thirdly, there would be many instances where a rather fine line would separate those associations entitled to apply for incorporation and those which would have to approach the Minister first. Most significantly it introduces unnecessary administrative inconvenience whereby the members of certain associations will have to apply to the Minister first to have the Act extended to their association and, second, for incorporation.

Two alternatives to this definition, both of which overcome these consequences in large measure, are, either, to provide that the provisions of the Act are to apply to an association formed for any purpose (except those formed for trading or to which other legislation specifically applies); or, to adopt a definition in the same terms as similar legislation - a definition which includes associations formed for a much wider range of purposes but including the requirement of Ministerial extension in the case of associations for purposes not specifically nominated.

Recently, the Full Court of Western Australia in R. v. Medcalf ex parte Conacher (1978) W.A.R. 53 decided that in exercising his power to approve the extension of the provisions of the Act, the Attorney-General exercised a discretion which was administrative in character and uncontrolled. A writ of certiorari was refused. This feature of the similar legislation

makes it strikingly different from the provisions of the Uniform Companies Acts whereunder any two or more persons associated for any lawful purpose may seek incorporation. A Report of the Law Reform Committee (Western Australia) (March 1972 - Project No. 21 at p. 3), which preceded this case recommended abolition of the requirement that the Attorney-General's approval be obtained in such cases.

In view of the foregoing it is submitted that the first alternative is better. The draft bill has been framed accordingly.

This wide definition, if adopted, would be unique to Australian legislation but has a precedent in the New Zealand legislation. (See s. 4.). The New Zealand provision also nominates 15 members as the minimum size of membership to entitle the members to apply for incorporation. This minimum has been adopted in the draft bill. It is conceded that there are arguments for a higher or a lower figure or no minimum above two. The figure of 15 is advanced on the basis that once the membership of an association has reached this number, it is probably sufficiently large enough and sufficiently likely to continue as to warrant incorporation.

- (b) Whatever definition of "association" is adopted, paragraph (e) of the definition of "association" should be omitted. The term "controversial nature" has not settled meaning at law. It is a concept to which it will obviously be difficult to ascribe any meaning capable of application to specific situations.
- (c) The definitions "charitable association", "educational association" and "show society" need not, therefore, be included.

2. Matters dealing with incorporation.

- (a) S. 5 (1) of the 1975 draft intends that the members of an association may by special resolution resolve that the association applied for incorporation and by

resolution appoint a person to make the application. It has been re-drafted and replaced with s. 5 (1) and (2). S. 5 (2) dispenses with s. 6 of the 1975 draft which, it is submitted, is unnecessary. A definition of "special resolution" has been incorporated into s. 4.

- (b) The second schedule has been re-drafted so as to set out all the matters to accompany the application for incorporation. The 1975 draft provided that the matters therein listed as 2 and 4 should not apply to "a religious association which is an integral part of a recognized denomination". The term "recognized denomination" is not defined. Nor is it clear what is meant by the term. If it is desired that provision be made for dispensing with these requirements in the case of certain associations formed for a religious purpose, it is submitted that a more effective measure is to provide that such an association upon application for incorporation may request the Minister to direct that the requirement not apply to the application.
- (c) The machinery for incorporation provided in the 1975 draft is that application is made to the Minister who may direct that the application be advertised. (S. 7.). The Minister is required to recommend to the Governor in Council whether the association be incorporated or not after making such enquiries as he thinks fit and consideration of any objections. (S. 8.). The Governor in Council may then direct whether the association be incorporated. (S. 9.).

This machinery differs in some respects from that provided in similar legislation in the way it deals with advertisement and incorporation.

It is submitted that provision for advertisement and the lodging of objections is not necessary. It is not a feature of the Companies Act or the R.E.C. Acts; nor does it appear in the New Zealand legislation. It has been excluded from the proposed legislation. If it is felt that for some reason this provision ought to be included in the legislation (as is the case in South

Australia, West Australia and Tasmania), then, firstly, it ought to apply to every application for incorporation and, secondly, further provision for hearing and determination of an objection in a judicial manner ought to be made. (For example, see Tas., ss. 5 and 6.).

A common feature of similar legislation is that a Registrar is empowered to grant a Certificate of Incorporation upon his being satisfied that the application is in proper form and complies with the Act. (For example, see Tas., s. 8; N.Z., s. 8.). The machinery in the 1975 draft, in comparison, invests the Governor in Council with ultimate power to determine whether the association should be incorporated. The manner of exercise of the power is wholly within the discretion of the Governor in Council and no appeal lies from it. In this respect it is no different from the machinery within the R.E.C. Acts. What kind of machinery is adopted is rather a matter of policy for the legislator rather than for the draftsman to determine. As a matter of principle one is not preferable to the other. The proposed legislation retains the machinery of the 1975 draft.

- (d) S. 10 of the 1975 draft has been omitted for two reasons: firstly because one would think that the rules of the association determine the purpose for which it is formed or carried on and, secondly, because no legal or practical consequence appears to derive from what the Governor in Council might determine. There is no corresponding section in the similar legislation.
- (e) S. 13 (1) of the 1975 draft has been amended in its terms to provide that it is the then members of the association that become the body corporate. In this regard the provision is similar to s. 16 (4) of the Companies Act and New Zealand, s. 10.
- (f) S. 12 and the remainder of s. 13 in the 1975 draft have been grouped in the one section, they both dealing with the name of the association; and s. 20 of the 1975 draft which deals with change of name has

been placed immediately following this section.

- (g) S. 20 of the 1975 draft contains the important features of the corresponding section of the Companies Act, s. 23. It has been amended to clarify by whom, when and how the application for approval is to be made to the Minister and what the Minister must do upon approval of such an application.

3. Powers of Unincorporated Associations.

S. 15 of the 1975 draft provides that the powers of an incorporated association include the powers set forth in the fourth schedule. That section and the schedule are identical with s. 4B and the schedule to the R.E.C. Acts. That schedule, in turn, consists of a selection of appropriate powers from the third schedule to the Companies Act. It is more comprehensive than corresponding provisions in similar legislation. The terms of s. 15 have been amended to provide that nothing in the section empowers an incorporated association to carry on trading or to secure pecuniary profit for its members. The fourth schedule also has been amended to include a power that an incorporated association can hold property on trust and exercise the powers given to a trustee under the Trusts Act 1973 except the power to carry on business.

4. Ultra Vires Transactions.

A corporation created pursuant to statute is subject to the ultra vires rule: see Bonanza Creek G.M. Co. v. R. (1916) A.C. 266. The confusion and hardship which this rule causes for those who deal with statutory corporations has been abolished in the case of companies incorporated pursuant to the Companies Act. (S. 20.). Since an association incorporated pursuant to the proposed legislation would otherwise be subject to the same rule, a provision similar to s. 20 is obviously desirable and has been included in the draft bill.

5. Vesting of Property.

- (a) Under the R.E.C. Acts the property of the community or institution, of which the incorporated person is an officer vests in the corporation. He (or if more

than one, they) hold the property on certain trusts in accordance with the constitution of the unincorporated body. The Acts do not incorporate the association but the office holder therein, who nevertheless holds the property which is vested in him upon trust for the members of the unincorporated association, the terms of the trust being constituted usually by the constitution or rules themselves.

(b) While the meaning is not clear, s. 14 of the 1975 draft seems to retain this system of trustee vesting: see s. 14 (4), although this may not have been intended. The same lack of clarity is evident in like provisions in similar legislation. (Compare Tas., s. 13 and S.A., s. 14.).

(c) Given that it is the members of the unincorporated association who are incorporated under the proposed legislation, it is submitted that the system of trustee vesting is unnecessary and serves only to complicate the situation. It is sufficient that the property vest in the corporation (the incorporated association) absolutely, to be used in accordance with its rules and subject to any special trusts, covenants, contracts or liabilities that affect it. This, of course, is the position that pertains generally to corporations aggregate. The draft bill contains clear provisions to this effect in s. 13.

6. Rules.

One of the very useful features of the 1975 draft is the provision of model rules in the third schedule. The intention expressed in s. 5 (3) is that an association (but, curiously, not an incorporated association) may adopt all or any of the causes in the model rules. However, it is submitted that the provisions relating to rules ought to be expanded to prescribe those matters to be stated or provided for in the rules of an association when application is made for incorporation and generally. These matters are set out in the third schedule Part A in the draft bill. (See N.Z., s. 6 and Tas., s. 17.). In addition they ought to enable an incorporated association

to adopt the model rules. Provisions to this effect and providing also for notification of adoption of the model rules or any alteration to them are included in the draft bill.

7. Alteration of Rules.

S. 19 of the 1975 draft permits the members of an incorporated association to order its rules by special resolution and with the approval of the Minister first obtained. This latter requirement for approval is administratively difficult and unnecessary. It would seem that before any resolution to alter the rules is put to the members, it would first have to be approved by the Minister. It is submitted that a requirement of ministerial approval, whether before or after the resolution is put to the members, is unnecessarily burdensome and serves no particular useful purpose. It is not a feature of similar legislation. It is suggested, however, that a special resolution to change the objects of an incorporated association be of no effect until it is approved by the Minister. (See Tas., s. 18.). The relevant provision in the draft bill has been worded accordingly.

8. Special Resolutions.

This term is used in the 1975 draft in relation to both an association whose members desire to apply for incorporation and to an incorporated association. Notwithstanding, the term is not defined in that draft. This omission has been rectified in the draft bill. It corresponds with like provisions in similar legislation. (For example, see Tas., s. 18.).

9. Management Committee.

(a) The 1975 draft leaves unanswered the important questions of where does the power to manage the incorporated association reside and who has the power to bind it. The general principle is that a corporation aggregate can only act by the authority of all of its members at the duly convened general meeting. The rules of the association may, however, invest a committee of members with some of these powers generally; alternatively, the members in general meeting may invest one or some of their number with some of these powers for a specific purpose. In any event, if before a transaction

can be safely entered into with an incorporated association, the rules of the association have to be examined in detail and compliance with those rules reviewed, then the resulting inconvenience both to members of the association and those who propose to deal with it demand some legislative provision to clarify the position.

- (b) The draft legislation provides for legislative recognition of a Management Committee which is akin to the Board of Directors of a Company.

- (c) The draft legislation has two significant features which are not found in the Companies Act or in the similar legislation of other jurisdictions. They are adopted from the Co-operative and Other Societies Act 1967 as amended Part VI. Both features are introduced to avoid the inconvenience to which reference has been made. Firstly, it makes it mandatory for the Management Committee to control the business and operation of the incorporated association and invests it with power to do so. Secondly, it deems every member of the Management Committee acting in the business or operations of the association, to be the agent of the association for all purposes within the objects of the association. It is submitted that these two features achieve their object and should be part of any legislation on the topic. Objection may be taken that they are too broad in that they "compulsorily" remove authority from the members in general meeting and place it in the hands of a powerful committee and "compulsorily" deem committee members to have a general power to bind the association. The objection, it is thought, is more theoretical than practical because it is a very common feature of the rules of associations that the power to manage its business and operations is vested in a committee and because it is probably the case, at least in that instance, that a committee member has apparent authority to bind the then members of the association in matters relating to the business and operations of the association.

- (d) The draft legislation also contains provisions in respect of the membership of the first Management Committee, election of members, tenure of the members, notification to the Minister of change of membership and meetings of the Management Committee.

10. Secretary/Public Officer

- (a) The term "secretary" has been used in the 1975 draft to denote what is customarily termed the office of "public officer". It is submitted that this latter term is preferable for two reasons; firstly, because the term "secretary" is used in the model rules to denote a quite different office filled by a member of the committee who, inter alia, is elected by the members generally and who retires from office annually; and, secondly, because it is consistent with similar legislation. An appropriate definition of "public officer" has been included in s. 4 of the draft legislation.
- (b) The relevant provisions in the 1975 draft have been amended to make it clear that it is the members of the committee who have the power and the duty to appoint the public officer.

11. Disposal of Trust Property

- (a) S. 24 of the 1975 draft permits an incorporated association to apply to the Minister for an order authorising the disposal of trust property where the trust has wholly or partly come to an end. When such application is made, the Minister may make an order to that effect or the Governor in Council may vest the property in the Public Curator to be dealt with under s. 35 of the Collections Act 1966-1975.
- (b) The section provides an inexpensive means for resolving a practical problem when, often, only property of a modest value will be involved. It has a predecessor in the similar legislation of other states. (Tas., s. 22; S.A., s. 23); however, in those states the application is made to a Court. It is submitted that the draft bill should contain

this facility but not in the form of s. 24.

- (c) Very often property held on trust by an incorporated association will be held on trusts that are charitable. According to principles of equity the Court has a general supervisory jurisdiction in respect of charitable trusts which includes the jurisdiction to order the cy pres application of trust funds in circumstances, inter alia, where the original purpose of the trust has come to an end. Part VIII of the Trusts Act. 1973 affirms the jurisdiction and contains certain statutory provisions with respect to its exercise.

- (d) It is submitted that the Court rather than the Minister should be the body empowered to deal with such application. Firstly, the Court is the traditional forum for resolution of questions concerning the administration of trusts and, further, has a general power to make an order for the disposal of trust property (See Trusts Act, s. 94.). Secondly, it is better equipped to hear argument if there is some dispute as to how the proceeds of the disposal should be applied. Thirdly, resort to s. 35 of the Collections Act really does not seem apposite given that that section is not concerned with the simple situation where the trustee desires to dispose of trust property.

- (e) A provision for disposal of trust property has been included in the draft bill. (S. 31.).

12. Amalgamation of Incorporated Associations.

- (a) The draft bill contains provision for the amalgamation of two or more incorporated associations. (S. 32.). The provision is, in all material respects, in the same form as like provisions in the 1975 draft (s. 25) and similar legislation. (Tas., s. 22; S.A., s. 23.).

- (b) It is clear from s. 13 of the draft legislation that, subject to special trusts, the property of the incorporated association vests in it absolutely to be used and applied in accordance with its rules. Given

that, provision for amalgamation by special resolution of members of the respective associations and the consequential merger of assets is not at odds with the well established principle in Overtoun v. Free Church of Scotland (1904) A.C. 515.

13. Audit and Balance Sheet.

- (a) The draft bill contains a provision which requires the Management Committee of an incorporated association to have both its financial affairs audited and a statement as to income and expenditure, assets and liabilities and securities over assets, be prepared at least annually. A copy of the statement certified by the auditor is to be lodged with the Minister within one month of its being prepared. The Minister is empowered at his discretion to direct that the statement published. (S. 33.).
- (b) A corresponding provision is found in the Tasmanian legislation (s. 24) and in the 1975 draft (s. 26).
- (c) S. 33 adopts the form of s. 26 in the 1975 draft with two exceptions. Firstly, it requires preparation of three documents, rather than a balance sheet alone. Secondly, those persons disqualified from holding an appointment as auditor are more widely defined. (See Tas., s. 24 as amended.). It retains the dispensation granted to religious associations from compliance with the requirement that a copy of the statement be lodged with the Minister.

14. Returns

- (a) There is provision in the 1975 draft for the lodging of an annual return with the Minister akin to the annual return required of companies under s. 158 of the Companies Act. (S. 27.). As drafted, the provision is principally designed to have the incorporated association lodge a statement as to the names, addresses and occupations of the members of the Management Committee and the Public Officer and its balance sheet certified by the auditor.

- (b) Given that the draft legislation in other provisions adequately provides for the prompt lodging of all this information with the Minister, the requirement of an annual return has been omitted from the draft legislation.
- (c) An annual return is not required under the similar legislation in other States.
- (d) (It should be noted in respect of the drafting of the fifth schedule to the 1975 draft (which sets out information to be included in an annual return), that there is a requirement that a copy of the chairman's report presented to the last preceding annual general meeting be included in the annual return. There is, however, no statutory requirement in that schedule or otherwise, that the chairman present a report.).

15. Winding up

- (a) In common with like provisions in the similar legislation in other States (Tas., s. 32; S.A., s. 24), s. 28 of the 1975 draft countenances the application of the machinery of Division 5 of Part X of the Companies Act (winding up of unregistered companies) has the machinery for the winding up of incorporated associations. Division 5, of course, prohibits the voluntary winding up of an unregistered company. (S. 315 (1) (b)).
- (b) It is submitted that the proposed legislation should provide for the winding up of an incorporated association both compulsorily and voluntarily. It may have been intended that s. 28 permit both kinds of winding up. However, the section is curiously drafted in that it provides only for voluntary winding up, and not for compulsory winding up, yet, permits the Minister to direct that the provisions of Division 5 Part X apply to such winding up.
- (c) The proposed legislation should make it clear that both kinds of winding up are permitted. It is further

submitted that in the case of a voluntary winding up, the provisions of the Companies Act relating to a voluntary winding up should be applied and that in the case of a compulsory winding up, the provisions of the Companies Act relating to the winding up of an unregistered company should be applied, in both cases so far as they are applicable or are modified. (Compare N.Z., ss. 24 and 25.).

16. Liability of Members

- (a) It is a common feature of similar legislation in other States that a member of an incorporated association is not liable to contribute in its winding up except as provided in its rules. (For example, see Tas., s. 27; S.A., s. 29.). This is a reflection of a well established principle of company law. Given that the rules of an incorporated association will almost invariably provide for the payment of the subscription, is a reflection also of the peculiar rules of the common law established in respect of clubs that the members are liable for club debts and liabilities only to the extent of their subscription.
- (b) A like provision occurs in s. 29 of the 1975 draft and has been retained in the draft bill. (S. 35.).

17. Distribution of Surplus Assets

- (a) According to the principles of company law any surplus assets on a winding up are distributed to company members as they are entitled to them. Because the members of an incorporated association have no right to share in the surplus, it is necessary that some appropriate provision be made.
- (b) Provision has been made in the draft legislation for this situation. (S. 36.). It is in a form similar to that found in the legislation of other States. (Tas., s. 33; N.Z., s. 27). The provision contemplates first that the members of the association will resolve in accordance with its rules how the surplus is to be distributed. If certain property in the surplus is held

by the association on trust, a Court is empowered to make orders with respect to its disposal. If no resolution is made, the Governor in Council is empowered to vest the surplus assets in the Public Curator to be dealt with under the provisions of s. 35 of the Collections Act.

18. Cancellation of Incorporation

The 1975 draft (ss. 31, 33, 34 and 35), in common with similar legislation in other States (Tas., ss. 34-36; S.A., ss. 25-27), contains provisions permitting the cancellation of incorporation of an incorporated association by the Minister in certain circumstances. The provisions are adopted from like provisions in the Companies Act empowering the Commissioner for Corporate Affairs to strike a defunct company off the Register. (S. 308). These provisions are retained in the draft bill. (Ss. 39-42 inclusive.).

19. Appointment of Inspector

- (a) One innovation of the 1975 draft not found in similar legislation is provision for the appointment of an inspector in circumstances akin to those in which an inspector may be appointed under s. 170 of the Companies Act. The inspector so appointed carries out a Special Investigation in accordance with Part VI A of that Act.
- (b) It is agreed that such a provision is useful and it is included in the draft legislation. (S. 43).

20. Corporation under Repealed Acts

- (a) The draft bill repeals the R.E.C. Acts. (S. 3).
- (b) The draft bill also, as it must do, makes provision for bodies corporate incorporated under the repealed Acts.
- (c) Essentially, the corporation formed under those Acts fall into two categories. Firstly, the corporation constituted by any person or persons holding any religious or secular office or preferment or exercising

any religious or secular function. Secondly, the corporation constituted by "a body or association of persons having for its principal object the holding and conducting at any city, town or place, of an annual or other periodical, agricultural, horticultural, pastoral or industrial show" (a show society).

- (d) The nature of the show society so formed is that it incorporates members of the society. In this important concept it is the same as the incorporated association for which the draft bill provides. S. 52 of the draft bill contains provision for the continuation of show societies upon the passing of the Associations Incorporation Act, notwithstanding the repeal of the R.E.C. Acts, and further provides that each show society is thereafter deemed to be an association incorporated under the new Act and to which, as a consequence, the provisions of the new Act apply. Subsidiary provisions in respect of the appointment of the Public Officer and Management Committee of a show society thus continued are also included in the draft bill.
- (e) Rather different provisions, in s. 53 of the draft bill, deal with corporations which fall into the first category. In concept, they are markedly different from the incorporated association for which the draft bill provides in that it is the office bearer of a community or institution which is incorporated and not the members of the community or institution themselves. Given that the draft bill provides only for the incorporation of members, it is submitted that the appropriate method for dealing with such corporations is to provide for two simultaneous events on the passing of the new Act; namely, the dissolution of such corporations and the incorporation of the members of the community or institution in respect of which they hold office. This is the method adopted in s. 53. It is intended that the provisions of the new Act apply to the corporation thus formed. S. 53 also provides for the vesting of the property of the dissolved corporation in the corporation thus formed and, generally, for the substitution of the new corporation for that dissolved.

A BILL

To provide for the incorporation of certain associations; to repeal The Religious Educational and Charitable Institutions Acts, 1861 to 1967; and for connected purposes

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short Title. This Act may be cited as the Associations Incorporation Act 1978.

2. Commencement of Act. This Act shall commence on a day to be fixed by Proclamation.

3. Repeals. The Acts specified in the First Schedule to this Act are repealed and in this Act are referred to as the repealed Acts.

4. Meaning of Terms. (i) In this Act, unless a contrary intention appears -

"association" means an association, society, institution or body or an integral part of an association, society, institution or body formed or carried on by any fifteen or more persons associated for any lawful purpose but does not include an association, society, institution or body -

(a) which is formed or carried on for the purpose of trading or securing pecuniary profit to its members; or

(b) which may be incorporated under the provisions of any Act which provides for the incorporation of a specific type or specific types of corporation other than the Companies Act 1961-1975;

"committee", in relation to an association which is not an incorporated association, means the committee of the association or, if there is no committee thereof, the persons, however, styled, having the management of the affairs of the

association: A committee shall consist of not less than three persons;

"Court" means the Supreme Court or a Judge thereof;

"incorporated association" means an association incorporated under this Act;

"Minister" means the Minister for Justice and the Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act: The term includes a Minister of the Crown temporarily performing the duties of Ministers;

"public officer", in relation to an incorporated association, means the public officer of that association appointed in pursuance of Section 28;

"religious association" means an incorporated association having as its principal object the propagation or advancement of religion;

"special resolution" means a special resolution within the meaning of Section 20;

"undesirable name" in relation to an association, means a name that -

- (a) is the same as a name by which another association is incorporated or deemed to be incorporated under this Act or a name that is registered or incorporated or by which any body or association of persons is registered or incorporated under any other Act or law of the State, or is so similar thereto, as, in the opinion of the Minister, to be mistaken therefor or confused therewith.
- (b) in the opinion of the Minister is undesirable or is a name, or a name of a kind, that pursuant to Section 22 of the Companies Act 1961-1975 or Section 9 of the Business Names Act 1962-1976, the

Commissioner for Corporate Affairs has been directed not to accept for registration.

(ii) A reference in this Act to the rules of an association includes a reference to the constitution, regulations, and by-laws, if any, of the association.

5. Application for incorporation. (1) The members of an association may by special resolution resolve to apply for incorporation of the association under this Act.

(2) Upon the members of an association so resolving to apply for incorporation, they shall by resolution appoint a person to prepare an application for that purpose. The person so appointed by virtue of his appointment shall be empowered to do all such acts and things as may be necessary for the securing of the incorporation of the association.

(3) The application shall be in writing, in the prescribed form, addressed to the Minister and shall be accompanied by such matters as are set out in the Second Schedule to this Act.

6. Minister to recommend to Governor in Council. The Minister shall, on receipt of an application for incorporation and after making such enquiries as he shall think fit, make his recommendation to the Governor in Council whether the association should be incorporated or not.

7. Direction by Governor in Council. The Governor in Council may direct whether the association should be incorporated or not and the Minister shall give notice thereof in writing to the person who made the application for incorporation. No appeal shall lie against a direction of the Governor in Council.

8. Certificate of incorporation. Upon a direction being given pursuant to Section 7 that an association shall be incorporated under this Act, the Minister shall issue to the association a certificate of incorporation in the prescribed form and shall, by notice published in the Gazette, give notice of the incorporation of the association.

9. Incorporation of association. Upon the issue of a certificate of incorporation to an association the persons who

are the members of the association together with such persons as may from time to time become members of it, shall become a body corporate by the name contained in the certificate of incorporation with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name and of doing and suffering all such other things as are necessary for the purpose of its constitution.

10. Name of association. (1) An association shall not be incorporated under a name that is an undesirable name.

(2) An incorporated association shall have the word "incorporated" or the abbreviation "inc." as part of and at the end of its name.

(3) It is sufficient if the abbreviation inc. is used in place of the word incorporated in the name of the association as appearing on its seal.

(4) When the name of an incorporated association is included in any document, it is sufficient if the abbreviation inc. is used in the place of the word "incorporated".

(5) Subject to this section, 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.

(6) If any person carries on business under any name or title of which the word "incorporated" or any abbreviation thereof is the final word or abbreviation the person shall unless duly incorporated under this Act be guilty of an offence against this Act.

11. Change of name. (1) An incorporated association may by special resolution with the approval of the Minister change its name to a name which is not an undesirable name.

(2) An application for the approval of the Minister to a change of name pursuant to this section -

(a) shall be in the prescribed form;

(b) shall be verified by the statutory declaration of the

public officer;

- (c) shall be made by the public officer within fourteen days after the date of the meeting at which the special resolution for the change of name was passed; and
- (d) shall be lodged with the Minister together with such other documents as may be prescribed.

(3) Before approving the change of name the Minister may make such enquiries as he thinks fit.

(4) If the Minister approves the change of name he shall issue a fresh certificate of incorporation in the new name upon the return of the old certificate or proof of its loss or destruction and shall, by notice published in the Gazette, give notice of the change of name. The Minister may direct such further notice of the change to be published in such manner as he thinks fit.

(5) If the name of an incorporated association is, whether through inadvertence or otherwise and whether originally or by change of name, a name by which the association could not be incorporated without contravention of section 10 the incorporated association may by special resolution change its name to a name by which the association could be incorporated without contravention of that section, and if the Minister so directs, shall so change it within six weeks after the date of direction unless where the direction is given by a delegate of the Minister, the Minister by written notice annuls the direction. If the incorporated association fails to comply with the direction it shall be guilty of an offence against the Act.

(6) Change of name pursuant to this Act shall not affect the identity of the association or any right or obligations of the association or render defective any legal proceedings by or against the association and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12. Name of incorporated association to appear on documents.

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.

13. Vesting of property in incorporated association.

(1) Upon the incorporation of an association under this Act, any personal property held by a person, in trust or otherwise, for or on behalf of the association or its objects, becomes, subject to this section, vested in the association.

(2) The public officer of an incorporated association may at any time after the incorporation of the association deliver or lodge with the Registrar of Titles (appointed pursuant to The Registrar of Titles Act of 1884), the Registrar of Dealings (within the meaning of the Land Act 1962-1975) or other person required by any Act or law to register, make or enter any note or memorial on or in respect of any instrument of title to land on receiving notice thereof, as the case requires, a memorial or notice in writing setting forth, in relation to any estate or interest in land held by any person in trust for or on behalf of the association or its objects, such particulars and other matters as may be prescribed and the Registrar of Titles, the Registrar of Dealings or other person as aforesaid, shall, subject to subsection (3), register the memorial or notice, or make or enter a note or memorial on or in respect of the instrument of title that the estate or interest in land is vested in the incorporated association, as the case requires.

(3) A memorial or notice delivered or lodged in accordance with subsection (2) shall be accompanied by -

- (a) the Certificate of Incorporation, or a copy thereof certified by the Minister or his delegate, and by a statutory declaration made by the public officer, and by a declaration made by the person or, where more than one, at least one of the persons in whom the estate or interest in land is held in trust for or on behalf of the association or its objects;
- and

- (b) any appropriate fee prescribed under The Real Property Act 1861-1976, the Land Act 1962-1975 or other Act under which registration is to be effected or a note or memorial is to be made or entered as referred to in subsection (2) as the case requires.

(4) Subject to subsection (5) of this section, any property vested pursuant to this section becomes vested absolutely to be used and applied in accordance with the rules of the incorporated association provided that the incorporated association shall not deal with any property so vested contrary to the provisions of any gift, grant or dedication of the original donor of the property or of any special trusts affecting the property.

(5) Any property vested pursuant to this section becomes vested subject to any covenant, contract or liability affecting the property.

(6) Except when otherwise expressly provided by this Act or by its rules, membership of an incorporated association shall not be deemed to confer upon the members any right, title or interest; either legal or equitable, in the property of the incorporated association.

14. Powers of incorporated associations. Unless expressly excluded or modified by its rules, the powers of an incorporated association include and shall be deemed always to have included the powers set forth in the Fourth Schedule to this Act but nothing in this section shall be taken -

- (a) to authorise or empower or to have authorised or empowered the incorporated association to deal with any property contrary to the provisions of any gift, grant or dedication of the original donor of the property or of any special trusts affecting property received, purchased or otherwise acquired by the incorporated association; or
- (b) to empower an incorporated association to carry on trading or to secure pecuniary profit for its members; or
- (c) to limit in any respect the nature or extent

Beyond the power.

of the powers conferred by this Act.

15. Ultra vires transactions. (1) No act of an incorporated association (including the entering into of an agreement by the incorporated association) and no conveyance or transfer of property, whether real or personal, to or by an incorporated association shall be invalid by reason only of the fact that the incorporated association was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in -

- (a) proceedings against the incorporated association by any member of the incorporated association to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the incorporated association;
- (b) any proceedings by the incorporated association or by any member of the incorporated association against the present or former officers of the incorporated association.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under paragraph (a) of subsection (2) of this section is being or ought to be performed or made pursuant to any contract to which the incorporated association is a party, the Court having jurisdiction in the matter may if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable set aside and restrain the performance of the contract and may allow to the incorporated association or to other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

16. Rules. (1) The rules of an incorporated association

shall at all times state or provide for the matters set forth in the Third Schedule Part A to this Act.

(2) The rules of an incorporated association may contain any other provisions which are not inconsistent with this Act or with law.

(3) The rules of an unincorporated association and any amendment of those rules shall be printed or typewritten.

17. Model rules. (1) The members of an association who have resolved to apply for incorporation under this Act or the members of an association incorporated under this Act may by special resolution adopt as its rules all or any of the model rules set forth in the Third Schedule Part B to this Act.

(2) Where the members of an incorporated association by special resolution adopt as its rules all or any of the model rules or any alteration thereto, the public officer shall within one month after the passing of the special resolution, lodge notice of the special resolution with the Minister.

(3) No alteration of the model rules pursuant to section 49 shall apply to an incorporated association unless the members by special resolution adopt the alteration as part of its rules.

18. Alteration of rules. (1) The members of an incorporated association may by special resolution alter its rules.

(2) The public officer of the association shall, within one month after the passing of a special resolution to alter the rules lodge with the Minister notice of the special resolution.

(3) An alteration of the rules of an incorporated association is of no effect until subsection (2) of this section has been complied with in respect of that alteration and, in the case of an alteration of such rule or rules of an incorporated association as relate to its objects, unless the alteration is approved by the Minister.

19. Rights not affected by alteration of rules. An

alteration of the rules of an incorporated association does not affect any right, liability or obligation of the incorporated association, or of any person, or any legal proceeding, existing or pending immediately before the alteration took place.

20. Special resolutions. (1) For the purpose of this Act, a resolution is a special resolution if it is passed by a majority of not less than three-quarters of such members entitled under the rules to vote as may be present in person at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.

(2) At a general meeting to which subsection (1) of this section relates, unless a poll is demanded, a declaration by the Chairman that the resolution has been carried is conclusive evidence of the fact.

21. Annual and special meeting. (1) A general meeting of an incorporated association shall be held once at least in every period of twelve months within three months after the close of its financial year and shall be called the annual general meeting.

(2) Special meetings of the association shall be held or may be called as prescribed by the rules of the association and shall be called general meetings.

(3) Unless otherwise provided by its rules at any meeting of an incorporated association no item of business shall be transacted unless a quorum of members entitled under those rules to vote is present when the meeting is considering that item. The quorum shall be as prescribed by those rules.

22. Contracts. (1) Contracts entered into by an incorporated association shall be made as follows:-

(a) A contract which, if made between private persons, would be required by law to be in writing and under seal shall be made in writing and under the common seal of the incorporated association;

(b) A contract which, if made between private persons, would be required by law to be in writing signed by the parties to be

charged therewith may be made in writing signed by any person acting under the express or implied authority of the incorporated association;

- (c) A contract which, if made between private persons, would be valid in law although made by parol only, and not reduced into writing may be made by parol on behalf of the incorporated association by any person acting under authority express or implied.

(2) All contracts made according to the provisions contained in this section shall be effectual in law and shall bind the incorporated association and its successors and all other parties thereto, and may be varied or discharged in the manner in which it is authorised to be made.

(3) A document or proceeding requiring authentication by the incorporated association may be signed by the public officer and need not be under its common seal.

23. Management Committee. (1) Subject to this Act, the business and operations of an incorporated association shall be controlled by a Management Committee.

(2) Every member of the Management Committee acting in the business or operations of the incorporated association shall be deemed to be the agent of the incorporated association for all purposes within the objects of the incorporated association.

(3) The acts of a member of the Management Committee shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualifications.

24. Election of Members of the Management Committee.

(1) The members of the Management Committee shall be elected at any annual general meeting or general meeting of the incorporated association in accordance with its rules:

Provided that upon incorporation of the incorporated association the members of the Management Committee shall be those persons who are members of the committee of the

association at the time when the application for incorporation is lodged with the Minister and whose names are set out in the list of members of the committee of the association accompanying the application.

(2) Notwithstanding the provisions of subsection (1) the rules of an incorporated association may permit the Management Committee to fill a casual vacancy on the Management Committee.

25. Meetings of Management Committee. Meetings of the Management Committee shall be held so often as may be necessary for properly conducting the business and operations of the incorporated association, but shall be held at least once in every two calendar months and a quorum for a meeting shall be prescribed by the rules of the incorporated association.

26. Tenure of Members of Management Committee. (1) The members of the Management Committee shall hold office and retire and may be removed from office as prescribed by the rules of the incorporated association.

(2) The office of a member shall be vacated in such circumstances, if any, as may be prescribed by the rules of the incorporated association and if the person holding that office:-

- (a) dies;
- (b) becomes bankrupt or compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (c) becomes mentally ill; or
- (d) is convicted of an offence under this Act, or if he is convicted of an indictable offence or of an offence punishable on summary conviction for which he is sentenced to imprisonment otherwise than in default of payment of a fine.

27. Notification of Change of Members of Management Committee.

The public officer shall, within 14 days after a change in the

membership of the Management Committee, give notice in writing to the Minister of the name, address and occupation of each person who has become a member of the management committee, or who has ceased to be a member of the Management Committee as the case may be.

28. Public Officer. (1) The Management Committee of an incorporated association shall within 14 days after incorporation appoint a natural person who is resident in the State to be the public officer of the association and, if that office at any time becomes vacant, shall, within 14 days after it becomes vacant, appoint a natural person who is resident in the State to fill that vacancy.

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

(3) Notwithstanding anything in the rules of an incorporated association, the Management Committee shall have power from time to time to appoint a public officer and to remove any person so appointed.

(4) The public officer may, unless the rules of the incorporated association otherwise provide, hold any other office in the incorporated association except the office of Auditor.

(5) The office of public officer shall become vacant if the person holding that office -

- (a) dies;
- (b) becomes bankrupt or compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (c) becomes mentally ill;
- (d) is convicted of any offence under this Act, or if he is convicted of any indictable offence or of any offence punishable on summary conviction for which he is sentenced to imprisonment otherwise than in default of payment of a fine;

(e) resigns his office by writing under his hand addressed to the Management Committee of the incorporated association;

(f) ceases to be resident in the State.

29. Notification of Appointment and Change of Address of Public Officer.

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

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

30. Power to Exempt from Compliance with Companies Act.

The Governor in Council may by Order in Council exempt an incorporated association either generally or in particular, and subject to such terms and conditions as are specified in the Order in Council, from complying with all or any of the provisions of the Companies Act 1961-1975 as may apply to such an incorporated association.

31. Disposal of Trust Property. (1) Where any property is held by an incorporated association upon trust then, notwithstanding that the Deed or other instrument creating the trust or the rules of the incorporated association do not contain any power to dispose of the property or forbid any such transaction, any person who is authorised so to do by the Management Committee of the incorporated association, may make application to the Court for an order authorising the disposal of the whole or any portion of the property where the trusts upon which it is held have come either wholly or partially to an end.

(2) Upon an application under this section, the Court may, in any case which it thinks proper so to do, make an order authorising the disposal of the property to which the application relates and directing the manner in which the proceeds arising from the disposal of the property, if any, shall be disposed of.

(3) Upon the making of an order under this section the incorporated association may, in accordance with

the terms of the order, dispose of the property freed from all trusts to which it was subject.

(4) The provisions of this section are in addition to and not in derogation of the provisions of the Trusts Act 1973.

32. Amalgamation of Incorporated Associations.

(1) Two or more incorporated associations may, by special resolution of both or all of those incorporated associations passed in accordance with the rules of each incorporated association respectively, amalgamate and become one incorporated association with or without a dissolution or division of the funds of those incorporated associations or any of them.

(2) The Public Officer of each of the incorporated associations to be amalgamated shall lodge with the Minister notice in the prescribed form of the passing of the special resolution and of the name of the incorporated association proposed to be created by the amalgamation.

(3) A notice under subsection (2) when lodged with the Minister shall be accompanied by such documents if any as may be prescribed, and those documents shall be verified as prescribed. The Minister may direct notice of the proposed amalgamation to be advertised.

(4) Upon receipt of a notice under subsection (2) and any company documents pursuant to subsection (3), the Minister, if satisfied that the incorporated association to be created by the amalgamation is desirable and is able to be incorporated under the name set out in the notice without contravention of section 10, may, with the approval of the Governor in Council, issue a certificate of incorporation in the prescribed form, upon return of the old certificates or proof of their loss or destruction and shall, by notice published in the gazette, give notice of the amalgamation of the associations.

(5) Upon the issue of a certificate of incorporation pursuant to subsection (4) the provisions of this Act shall apply to the incorporated association created by the amalgamation as they apply to an association incorporated pursuant to section 9, and, without limiting the generality of

the foregoing, all the property of the amalgamated incorporated associations vests in the incorporated association created by the amalgamation and the provisions of section 13, with necessary adaptations, apply to and in relation to that property accordingly.

(6) The amalgamation of two or more incorporated associations does not prejudice any right of a creditor of, or any person having a claim against, any of the amalgamated incorporated associations, and any such right or claim may be enforced against the incorporated association created by the amalgamation.

33. Audit and Statement. (1) The Management Committee of an incorporated association shall, once in each period of twelve months, or more frequently if the rules of the incorporated association so provide -

- (a) cause the financial affairs of the incorporated association to be audited by a person registered as a public accountant under the Public Accountants Registration Act 1946-1975 or approved by the Minister; and
- (b) prepare, or cause to be prepared, a statement containing the following particulars:
 - (i) the income and expenditure of the incorporated association during its last financial year;
 - (ii) the assets and liabilities of the incorporated association at the close of the said year; and
 - (iii) all mortgages, charges and securities of any description affecting any of the property of the incorporated association at the close of the said year.

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

(3) No person shall knowingly consent to be appointed, or knowingly act, as the auditor of an incorporated association, or prepare for or on behalf of such an incorporated association any financial statement or any report or certificate relating thereto that is required by or under this Act to be prepared by the auditor of such an incorporated association if he is -

- (a) the Public Officer, or a member of the Management Committee, of the incorporated association;
- (b) a servant of the incorporated association;
or
- (c) a partner, employer, or employee of the Public Officer, or of a member of the Management Committee, of the incorporated association.

(4) A firm shall not knowingly consent to be appointed, or knowingly act, as the auditor of an incorporated association or prepare for or on behalf of such an incorporated association any financial statement or any report or certificate required by or under this Act to be prepared by the Auditor of such an incorporated association, if any of the partners is disqualified under subsection (3) of this section from acting as auditor of the incorporated association.

(5) A person who or a firm which contravenes any of the provisions of subsection (3) or subsection (4) of this section is guilty of an offence.

(6) The Public Officer of an incorporated association other than a religious association shall, within one month after the preparation of the statement as required by subsection (1), lodge with the Minister a copy of that statement certified to be correct by the person who audited the financial affairs of the incorporated association.

(7) The Minister may, in any case where he considers it desirable so to do, direct in writing an incorporated association to publish in such manner and within such time as is set out in the direction a copy of the statement certified to be correct referred to in subsection (6)

and the Management Committee of the incorporated association shall comply in all respects with the terms of such direction.

(8) If the Management Committee of an incorporated association fails to comply with subsection (7) each member of the Management Committee is guilty of an offence.

34. Voluntary Winding Up. (1) An incorporated association may be wound up by special resolution of the members passed at a general meeting called for that purpose. A copy of the special resolution shall be lodged with the Minister forthwith.

(2) Subject to this Act and to any regulations made under the authority thereof, the provisions of the Companies Act 1962-1975 relating to the voluntary winding up of companies apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the voluntary winding up of incorporated associations.

35. Winding up by the Court. (1) An incorporated association may be wound up by the Court under the following circumstances, that is to say:

- (a) if the incorporated association suspends its operations for the space of a whole year; or
- (b) if the members of the incorporated associations are reduced in number to less than 15; or
- (c) if the incorporated association is unable to pay its debts; or
- (d) if the incorporated association carries on any operation whereby any member thereof makes any pecuniary gain contrary to the provisions of this Act; or
- (e) if the Court is of the opinion that it is just and equitable that the incorporated association should be wound up.

(2) Any application to the Court for the winding up of an incorporated association shall be by petition presented either by the incorporated association, or by a member thereof, or by a creditor thereof, or by the Minister.

(3) Subject to this Act and to any regulations made under the authority thereof, the provisions of the Companies Act 1962-1975 relating to the winding up of unregistered companies apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the winding up of incorporated associations by the Court.

36. Meaning of Terms in Winding Up. For the purposes of Sections 34 and 35 -

- (a) a reference in the Companies Act to an unregistered company shall be read as a reference to an incorporated association;
- (b) a reference in the Companies Act to the directors of a company shall be read as a reference to the members of the Management Committee of such an incorporated association;
- (c) a reference in the Companies Act to the secretary of a company shall be read as a reference to the Public Officer of such an incorporated association; and
- (d) a reference in the Companies Act to the principal place of business of the company shall be read as a reference to the place where the Public Officer of such an incorporated association resides.

37. Liability of Members. A member of an incorporated association is not liable, except as provided in the rules of the incorporated association, to contribute towards the payment of the debts and liability of the incorporated association or the costs, charges and expenses of a winding up of the incorporated association.

38. Distribution of Surplus Assets. (1) Where, upon the winding up of an incorporated association, a special resolution relating to the distribution of the surplus assets of the incorporated association has been passed by its members

in accordance with its rules, all surplus assets shall, subject to any trust affecting the same, be disposed of in the manner so resolved.

(2) If the surplus assets are subject to any trust, they shall be disposed of as the Court directs.

(3) Where no such special resolution has been passed the Governor in Council may by Order in Council vest all or any of the surplus assets of the association in the Public Curator of Queensland to be dealt with under the provisions of section 35 of the Collections Act 1966-1975.

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

39. Cancellation of Incorporation. (1) In any case where the Minister has reasonable cause to believe that an incorporated association has ceased to exist or that its transactions are such that it is not, or has ceased to be, an incorporated association within the meaning of this Act, or that it is desirable that its incorporation be cancelled he may serve, by pre-paid registered post, on the person appearing to him from records kept under this Act to be the Public Officer of the incorporated association a notice requiring him, within the period of one month from the date thereof, to satisfy the Minister that the incorporated association has not ceased to exist or, as the case may be, that its transactions are not such that it is not, or has ceased to be, an incorporated association within the meaning of this Act, or, that it is not desirable that its incorporation be cancelled, and stating that, unless cause is shown to the contrary within that period, a notice will be published in the Gazette cancelling the incorporation of the incorporated association.

(2) If cause is not shown as provided in subsection (1) within the time specified therein, the Minister may publish in the Gazette and serve, by pre-paid registered post, on the person appearing pursuant to subsection (1) to be

the Public Officer of the incorporated association a notice that, at the expiration of three months from the date of publication of the notice in the Gazette, the incorporation of the incorporated association will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the period of three months referred to in subsection (2) the Minister may, unless cause to the contrary is previously shown, cancel the incorporation of the incorporated association and publish notice of the cancellation in the Gazette.

40. Appeal against Cancellation of Incorporation. (1) The Public Officer of an incorporated association or a creditor or member of an incorporated association, the incorporation of which is cancelled pursuant to section 39, may, within three months after the cancellation, appeal by notice in writing to the Minister setting out therein the grounds of appeal and his full name, address and occupation.

(2) The Minister shall consider the matter and shall refer it to the Governor in Council who shall make his decision in respect of the appeal and, if satisfied that the incorporated association has not ceased to exist or, as the case may be, that its transactions are not such that it is not or has ceased to be an incorporated association within the meaning of this Act or, that it is not desirable that its certificate of incorporation be cancelled, and that it is just so to do, may order that the incorporation be restored, and thereupon the incorporation shall be deemed to have continued as if it had never been cancelled and the Minister shall give notice thereof in writing to the person who made the appeal and to any person who, in the opinion of the Minister, has a valid interest in the decision. No appeal shall lie against a decision of the Governor in Council.

41. Liability of Incorporated Association on Cancellation of Incorporation.

Notwithstanding the cancellation of the incorporation of an incorporated association pursuant to section 39, the incorporated association is liable to be sued and proceeded against as a corporation, and all dealings and transactions between the incorporated association and any person are valid against the incorporated association and all persons claiming

under the incorporated association.

42. Vesting of Property on Cancellation. Where the incorporation of an incorporated association is cancelled pursuant to section 39, the Governor in Council may by Order in Council vest all or any property of such association in The Public Curator of Queensland to be dealt with under the provisions of section 35 of the Collections Act 1966-1975.

43. Appointment of Inspector. (1) Where it appears to the Governor in Council that -

- (a) it is desirable for the protection of the public or of members or other persons interested in an incorporated association;
- or
- (b) it is in the public interest,

to appoint an inspector to investigate the affairs of the incorporated association he may by instrument in writing appoint an inspector.

(2) The provisions of Part VIA Special Investigations of the Companies Act 1961-1975, shall, mutatis mutandis, apply to such an investigation.

44. Evidentiary Provisions. (1) The Minister 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
- (b) that, on a date specified in the certificate, a person so specified was, or was not, the Public Officer of an incorporated association so specified,

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

(2) In any legal proceedings, a copy of any rules or trusts of an incorporated association or other document lodged with him certified by the Minister to be a true copy thereof, shall be evidence that the rules or trusts were rules or trusts, as the case may be, of the incorporated association therein mentioned, in force on the date mentioned in the certificate of the contents of the document lodged

with the Minister.

(3) Judicial notice shall be taken of the signature of the Minister appearing on a certificate under this section and of the fact that the person by whom the certificate purports to have been signed is the Minister.

45. Delegation of Powers. (1) The Minister may from time to time, in relation to any matters or class of matters, by instrument in writing under his hand delegate all or any of his powers, authorities, functions and duties under this Act as may be specified in the instrument other than this power of delegation to any person or the holder of any office so that any delegated power, authority, function or duty may be exercised or, as the case may be, shall be performed by the delegate with respect to the matters or class of matters specified in the instrument.

(2) The Minister may subject any such delegation to such conditions or limitations as he thinks fit.

(3) The Minister may, at his discretion, revoke a delegation made by him under this section.

(4) No delegation shall prevent the exercise of any power, authority, function or duty by the Minister.

46. Proceedings for Offences. (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act.

(2) A person guilty of an offence against this Act is liable, if no specific penalty is provided for that offence, to a penalty not exceeding \$100.

(3) All offences against this Act may be prosecuted and any fees or other monies due and payable under this Act may be recovered in a summary way under the Justices Act 1886-1978

47. Limitation of Actions. No matter or thing done by the Minister or by any other person in good faith and without negligence for the purpose of executing this Act or in the execution or performance of his powers, authorities, functions and duties under this Act shall subject the Crown, the Minister or any other person as aforesaid to any liability in respect thereof.

48. Extension of Time. (1) Subject to subsection (2) of

this section where under this Act an act or thing is required to be performed or done within a specified time the Minister may, if he thinks fit, if in his opinion there are special circumstances, extend the time for the performance or doing of that act or thing.

(2) Subsection (1) of this section does not authorise the Minister to extend the time for the making of an appeal under section 40 beyond six months after the cancellation of the incorporation of an incorporated association.

49. Amendment etc. of Schedules. The Governor in Council may from time to time by Order in Council amend all or any of the schedules to this Act by revoking, amending, altering or otherwise modifying any of the provisions thereof, or by inserting therein or adding thereto new provisions, and thereupon the said schedules as so amended for the time being shall become and be the schedules to this Act.

50. Fees. There shall be paid to the Minister such fees as are set out in the Fifth Schedule to this Act.

51. Service. Unless otherwise provided in this Act, a document may be served on an incorporated association by leaving it at or sending it by post to the Public Officer at the address notified under section 29.

52. Saving of Show Societies. (1) For the purposes of this and the next following sections "show society" shall mean a body or association incorporated under the repealed Acts having as its object the holding and conducting at any city, town or place, of an annual or other periodical agricultural, horticultural, pastoral or industrial show.

(2) A show society in existence immediately prior to the commencement of this Act continues in existence with the name under which it was incorporated, and on and from the date of commencement of this Act is deemed to be an incorporated association incorporated under this Act.

(3) This Act applies, subject to this section, to a show society in the same manner and to the same extent as it would if the show society had been incorporated under this Act.

(4) A reference in any certificate or writing

to the date of incorporation of a show society shall be a reference to the date upon which the show society was incorporated under the repealed Acts.

(5) For the purposes of this Act, the members of the committee of the show society at the commencement of this Act shall be deemed to constitute the Management Committee of the show society.

53. Dissolution of Certain Corporations incorporated under Repealed Acts.

(1) A corporation incorporated under the repealed Acts other than a "show society" and in existence immediately prior to the commencement of this Act shall be dissolved on the commencement of this Act and thereupon the members of the community, institution, body or association of persons in respect of which the person or persons incorporated under the repealed Acts held office or preferment or exercised any religious or secular functions, shall be deemed to constitute a body corporate as if they had been incorporated under section 9 of this Act and shall be an incorporated association for the purposes of this Act.

(2) An incorporated association incorporated pursuant to subsection (1) of this section shall, subject to section 10, have the same name as the dissolved corporation.

(3) This Act applies, subject to this section, to an incorporated association incorporated pursuant to subsection (1) of this section.

(4) All real and personal property, and every right, title, estate or interest therein that immediately before the commencement of this Act was vested in or belonged to a corporation dissolved under this section shall, without any transfer, assignment or conveyance or notice other than this Act, vest in and belong to the incorporated association incorporated pursuant to subsection (1) of this section, that replaces it.

(5) All monies and liquidated and unliquidated claims that immediately before the commencement of this Act were payable to or recoverable by the corporation dissolved by this section shall be monies and liquidated and unliquidated claims payable to or recoverable by the incorporated association

incorporated pursuant to subsection (1) of this section, that replaces it.

(6) All suits, actions and proceedings and all causes of action pending or existing immediately before the commencement of this Act by or against a corporation dissolved by this section may be carried on and prosecuted by or against the incorporated association incorporated pursuant to subsection (1) of this section, that replaces it, and no such suit, action or proceedings shall abate or be prejudicially affected by this Act.

(7) All contracts, agreements and undertakings entered into with, and all securities lawfully given to or by a corporation dissolved by this section shall be deemed to be contracts, agreements and undertakings entered into with, and securities given to or by the incorporated association incorporated pursuant to subsection (1) of this section, that replaces it.

(8) All debts due and monies payable by a corporation dissolved by this section and all claims liquidated or unliquidated recoverable against such corporation shall be debts due and monies payable by and claims recoverable against the incorporated association incorporated pursuant to subsection (1) of this section, that replaces it.

54. Recall of Letters Patent. The Minister at his discretion may recall any Letters Patent issued under the repealed Acts and issue a certificate of incorporation under this Act in lieu thereof.

55. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to -

- (a) the keeping of any register under and for the purposes of this Act, the circumstances and manner in which and the person by whom such register shall be kept, and the transfer or custody of a register kept under this Act or under the repealed Acts;
- (b) records to be kept for the purposes of this Act, the manner of keeping such records, and the transfer of custody

of records kept under this Act or under the repealed Acts;

- (c) the inspection by members of the public of any register or document kept pursuant to this Act relating to incorporated associations;
- (d) the issuing of a certificate of incorporation of an association or any other certificate or of a copy or extract of any document or part of a document kept pursuant to this Act;
- (e) forms to be used under this Act, the prescribing of forms and the respective purposes for which any such forms shall be used;
- (f) the form of, and the matters or certain specified matters to be provided for in, the rules of incorporated associations;
- (g) the prescribing of penalties, not exceeding a fine of \$50.00 for offences against the regulations;
- (h) all matters required or permitted by this Act to be prescribed where the method of prescription is not otherwise provided;
- (i) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

56. Publication of Orders in Council. (1) Every Order in Council made under this Act shall -

- (i) be published in the Gazette;
- (ii) upon its publication in the Gazette, be judicially noticed and such publications shall be conclusive evidence of the matters contained therein;
- (iii) take effect from the date of such

publication;

- (iv) be laid before the Legislative Assembly within fourteen sitting days after such publication, if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Order in Council has been laid before it disallowing the same or part thereof, that Order in Council, or part thereof shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Order in Council.

FIRST SCHEDULE

(S. 3)

The Religious Educational and Charitable Institutions Act of 1861	25 Vic. No. 19
The Religious, Educational, and Charitable Institutions Act of 1861 Amendment Act of 1895	59 Vic. No. 4
The Religious Educational and Charitable Institutions Acts Amendment Act of 1959	8 Eliz. II No. 52
The Religious Educational and Charitable Institutions Acts Amendment Act of 1967	No. 31 of 1967

SECOND SCHEDULE

(S. 5)

Matters to accompany an application for incorporation of an association:-

1. A copy of the special resolution to apply for incorporation signed by the chairman of the meeting at which the resolution was passed.
2. A copy of the resolution appointing a person to prepare the application for incorporation signed by the chairman of the meeting at which the resolution was passed.
3. A copy of the rules of the association verified by the statutory declaration of the applicant. Such rules shall state or provide for the matters prescribed in the Third

Schedule Part A.

4. Particulars of the trusts, if any, relating to the association together with a copy of any instrument or instruments evidencing such trusts verified by the statutory declaration of the applicant.
5. A list of the names, addresses and occupations of members specifying those who are members of the committee of the association.
6. A statement as to the principal place where the business of the association is conducted.
7. A statement giving an outline of the work done, or in contemplation by the association.
8. Such other information as may be prescribed.

THIRD SCHEDULE - PART A

(S.16)

MATTERS TO BE PROVIDED FOR IN RULES:-

1. The name of the incorporated association.
2. The objects of the incorporated association.
3. The qualifications (if any) for membership of the incorporated association.
4. Termination of membership of the incorporated association.
5. The keeping of a Register of Members of the incorporated association.
6. The subscription (if any) to be made or paid by the members of the incorporated association.
7. The membership of the incorporated association and:-
 - (a) the election or appointment of members of the Management Committee;
 - (b) the terms of office of the members of the Management Committee;
 - (c) the resignation of members of the Management Committee;
 - (d) removal from office of members of the Management Committee;

- (e) the filling of casual vacancies occurring on the management committee; and
- (f) the quorum and procedure at meetings of the Management Committee.

8. The quorum and procedure at general meetings of members of the incorporated association.
9. The interval between general meetings of members of the incorporated association, the manner of calling general and special meetings, and the requisite notices of meetings of the incorporated association.
10. The manner of altering and rescinding the rules, and of making additional rules.
11. The purposes for which the income and property of the incorporated association shall be used and applied.
12. The manner in which the income and property of the incorporated association are to be managed, and in particular, the mode of drawing and signing cheques for and on behalf of the incorporated association.
13. The keeping of books of account of the incorporated association.
14. The closing date of the financial year of the incorporated association.
15. The preparation of a statement of income and expenditure and a balance sheet for each financial year and the presentation of the same to the members.
16. The frequency at which the financial affairs of the association are to be audited and the presentation of an auditor's report to the members.
17. The form custody and use of the common seal of the incorporated association.
18. The custody of the books, documents, instruments of title and securities of the association.
19. Distribution of surplus assets on winding up.

THIRD SCHEDULE - PART B

(S. 17)

Model Rules

NAME

1. The name of the association shall be

OBJECTS

2. The objects of the association shall be
(These should be set out fully)

CLASSES OF MEMBERS

3. The members of the association shall consist of ordinary members, life members and/or honorary members.
(Delete "Life members" and/or "Honorary members" if not applicable).

MEMBERSHIP

4. (a) The number of ordinary members and of life members shall be not less than fifteen.
(Delete from "and" to "members" if not applicable).
- (b) Subject to these rules any person who is not less than . . . years of age and
(insert qualifications, if any) shall be eligible to become a member of the association upon payment or tender to the association of the annual subscription for the current financial year.

LIFE MEMBERS

5. (a) The association may from time to time, at any annual or general meeting, determine the fee to be paid by any member desiring to compound for the annual subscription and to become a life member of the association.
- (b) Any ordinary member upon payment of the fee as determined by paragraph (a) shall be entitled to become a life member, having all the privileges appertaining to an ordinary member of the association without payment of the annual subscription. Save as aforesaid a life member shall be subject to all the provisions of these rules.
(If life membership is not allowed delete clause 5 (a) and (b)).

HONORARY MEMBERS

6. (If honorary membership is allowed in accordance with

clause 3 the conditions and qualifications attached to the conferring of such membership should be set out fully herein).

ANNUAL SUBSCRIPTIONS

7. (a) The annual subscription for each financial year shall be or such other sum in lieu thereof as the members at any annual or general meeting may from time to time determine.
- (b) The annual subscription shall be payable in advance on the First day of in every year after which no registration, termination or forfeiture of membership shall exempt a former member from payment of the current year's subscription.
- (c) Payment or tender of the annual subscription shall be made to the secretary personally or through the post addressed to the secretary.
- (d) A financial member at any material time is a member who is not then indebted to the association in respect of any annual subscription or levy or other payment whatsoever.
- (e) Only those members who are financial members at the time shall be entitled, subject to the lawful procedure of the meeting to speak or vote upon any motion at any annual or general meeting of the association.
- (f) A member who is in arrears with his annual subscription for calendar months shall be deemed to have forfeited his membership but the committee or, on appeal from an adverse decision of the committee, the members, may reinstate him on payment of the amount due.

ADMISSION AND REJECTION OF ORDINARY MEMBERS

8. (a) Admission to ordinary membership shall be by election

of the committee or, upon appeal, by the members. At the committee meeting next following the payment or tender to the secretary of the annual subscription for the current financial year as provided by these rules, the committee shall consider each application and shall elect or reject the applicant as a member.

- (b) Any applicant who receives a majority of the votes of the members of the committee present at the meeting at which the application is being considered shall be declared elected by the chairman as an ordinary member.
- (c) Upon the election or rejection of an application for membership the secretary shall forthwith give to the applicant notice in writing of such election or rejection.

APPEAL AGAINST REJECTION OF MEMBERSHIP

- 9. (a) A person whose application for membership has been rejected may, within one month after receiving written notification of such rejection, appeal against the decision of the committee to a general meeting of the members of the association held for the purpose of determining that appeal.
- (b) Notice in writing of intention to appeal shall be given to the secretary.
- (c) The committee shall convene such a general meeting so that the general meeting is held within three months of the date of receipt by the secretary of a notice of appeal, at a time suitable to the majority of members to attend thereat.
- (d) At such meeting the appellant shall be given the opportunity to fully present his case either orally or in writing or partly by one of these means and partly by the other and the committee or those members thereof who rejected the application shall subsequently

likewise have the opportunity of presenting its or their case. The appeal shall be determined by the vote of the majority of the financial members present at that meeting.

- (e) Where a person, whose application is rejected, does not within the time prescribed by these rules, appeal against the decision of the committee, or so appeals but the appeal is unsuccessful, the secretary shall refund the amount of the annual subscription paid to the secretary.

TERMINATION OF MEMBERSHIP

10. A member may resign from the association at any time by giving notice in writing to the secretary. Such resignation shall only take effect at the time such notice is received by the secretary unless a later date is specified in the notice when it shall take effect on that later date.

11. (a) If a member -

- (i) is convicted of an indictable offence; or
- (ii) fails to comply with any of the provisions of these rules; or
- (iii) conducts himself in a manner considered to be injurious or prejudicial to the character or interests of the association, the committee shall consider whether his membership shall be terminated.

(b) The member concerned shall be given a full and fair opportunity of presenting his case and if the committee resolves to terminate his membership it shall instruct the secretary to advise the member accordingly. The member may, within one month after receiving such written notification, appeal to a general meeting of members.

(c) Notice in writing of his intention to appeal shall be given to the secretary.

- (d) The committee shall convene a general meeting so that such meeting is held within three months of the date of receipt by the secretary of a notice of intention to appeal, at a time suitable to the majority of members to attend thereat.
 - (e) At such meeting the appellant shall be given the opportunity of fully presenting his case either orally or in writing or partly by either of these means and the committee or those members thereof who intend to terminate his membership shall subsequently likewise have the opportunity of presenting its or their case.
 - (f) The appeal shall be determined by the vote of a majority of the financial members present at that meeting.
 - (g) Where any person, whose membership the committee intends to terminate, does not appeal against the decision within the time provided by these rules, or so appeals but his appeal is unsuccessful, the membership of that person shall thereupon be deemed to be terminated.
12. (a) The committee shall cause a register to be kept in which shall be entered the names and residential addresses of all persons admitted to membership of the association and the dates of admission.
- (b) Particulars shall also be entered of resignations, terminations and reinstatement of membership and any further particulars as the committee or the members at any annual or general meeting may require from time to time.
 - (c) The register of members shall be open for inspection at all reasonable times by any financial member who previously applies

to the secretary for such inspection.

MANAGEMENT

13. The Management Committee of the association shall consist of a president, vice-president, secretary, treasurer and such number of committee members not being less than . . . nor more than . . . as the members of the association at any annual general meeting or general meeting may from time to time appoint.
14. At the annual general meeting of the association, all the members of the Management Committee for the time being shall retire from office, but shall be eligible for re-election.
15. (a) Any member of the Management Committee may resign at any time from membership of the committee by notice in writing delivered to the secretary but such resignation shall only take effect at the time when such notice is received by the secretary unless some later date is specified in the notice when it shall take effect on that later date or he may be removed from office at a general meeting of the association convened for that purpose.
- (b) At any such general meeting the member shall be given the opportunity to fully present his case either orally or in writing or partly by either of these means. The question of removal shall be determined by the vote of the majority of the financial members present at such general meeting.

VACANCIES ON MANAGEMENT COMMITTEE

16. (a) The Management Committee shall have power to appoint a financial member who may or may not then be a member of the Management Committee to fill any casual vacancy on the committee until the next annual general meeting.
- (b) Every member so appointed shall retire at the next annual general meeting but shall be eligible for election as a member of the

Management Committee at such meeting.

MEETINGS OF THE COMMITTEE

17. (a) The Management Committee shall meet at least once in every two calendar month(s) to exercise its functions.
- (b) A special meeting of the Management Committee shall be convened by the secretary on the requisition in writing of not less than members of the Management Committee, which requisition shall clearly state the reasons why such special meeting is being convened and the nature of the business to be transacted thereat.
- (c) At every meeting of the Management Committee members of the Management Committee shall constitute a quorum.
- (d) Subject as previously provided in this Rule, the Management Committee may meet together and regulate its proceedings as it thinks fit:

Provided that questions arising at any meeting of the Management Committee shall be decided by a majority of votes and in the case of equality of votes on any question or at any meeting of the Management Committee the question shall be deemed to be decided in the negative.

- (e) Not less than 14 days notice shall be given to members of the Management Committee of any special meeting of the Management Committee.

ANNUAL GENERAL MEETINGS OR GENERAL MEETINGS

18. (a) Subject to this constitution, the annual general meeting shall be held in the month of in each year.
- (b) The business to be transacted at every annual general meeting shall be:
- (i) the receiving of the Management

Committee's report and the balance sheet and statement of accounts for the preceding financial year;

(ii) the receiving of the auditor's report upon the books and accounts for the preceding financial year;

(iii) the election of members of the Management Committee;

(iv) the appointment of an auditor.

(c) At the annual meeting members shall constitute a quorum.

19. (a) The secretary shall -

(i) when directed to do so by the Management Committee; or

(ii) upon being given a requisition in writing signed by not less than members of the Management Committee or not less than ordinary members and clearly stating the purpose for which the general meeting is desired; or

(iii) upon being given a notice in writing of appeal against the decision of the Management Committee to reject an application for membership or of intention to terminate the membership of any person,

convene a general meeting of members.

(b) In the absence of a direction pursuant to subrule (a) (i) the secretary shall convene a general meeting once in every month(s).

(c) At every general meeting members shall constitute a quorum.

20. (a) If after the expiration of minutes from the notified time of commencement of any Management Committee meeting, annual general meeting or general meeting pursuant to rule 20 (b) a quorum is not present the meeting shall stand adjourned for week(s) to the same time and place. The secretary shall give notice of the adjournment to every member.
- (b) If after the expiration of minutes from the notified time of commencement of the adjourned meeting a quorum is not present the meeting shall proceed with those members present.
- (c) If after the expiration of minutes from the notified time of commencement of a general meeting pursuant to rule 20 (a) a quorum is not present the meeting shall lapse.
21. (a) The secretary shall convene all annual and general meetings of the association by giving not less than 14 days notice of such meeting.
- (b) The manner by which such notice is given shall be determined by the Management Committee.
22. Unless otherwise provided by these rules, at every annual and general meeting -
- (i) the president shall be chairman and in his absence a chairman shall be elected by resolution of a majority of the financial members present at the meeting.
- (ii) the chairman shall maintain order and conduct the meeting in a proper and orderly manner.
- (iii) every question, matter or resolution shall be decided by a majority of votes of the financial members present.
- (iv) every financial member present shall be

entitled to one vote and in the case of an equality of votes the chairman shall have a second or casting vote.

- (v) voting shall be by show of hands or a division of members, unless not less than financial members present demand a ballot, in which event there shall be a secret ballot.
- (vi) the chairman shall appoint two members to conduct the secret ballot in such manner as he shall determine and the result of the ballot as declared by the chairman shall be deemed to be the resolution of the meeting at which the ballot was demanded.
- (vii) the secretary shall cause full and accurate minutes of all questions, matters, resolutions and other proceedings of every Management Committee meeting, annual meeting and general meeting to be entered in a book to be provided for that purpose, such book to be open for inspection at all reasonable times by any financial member who previously applies to the secretary for that inspection.

BY-LAWS

23. The Management Committee may from time to time make, amend or repeal by-laws, not inconsistent with these rules, for the internal management of the association and any by-law may be set aside by a general meeting of members.

ALTERATION OF THESE RULES

24. These rules may be altered, rescinded or added to from time to time by a special resolution carried at any annual or general meeting.

COMMON SEAL

25. The Management Committee shall provide for a common seal and for its safe custody. It shall only be used by the authority of the Management Committee and every instrument to which the seal is affixed shall be signed by the president

and shall be countersigned by the secretary or by some other person appointed by the Management Committee for the purpose.

FUNDS

26. (a) The income and property of the association shall be applied in promotion of its objects.
- (b) The funds of the association shall be banked in the name of the association in such bank as the Management Committee may from time to time direct.
- (c) Proper books and accounts shall be kept and maintained showing correctly the financial affairs of the association and the particulars usually shown in books of a like nature.
- (d) All moneys shall be banked as soon as practicable after receipt thereof.
- (e) All amounts of \$20 or over shall be paid by cheque signed by any two of the president, secretary or treasurer.
- (f) Cheques shall be crossed "not negotiable" except those in payment of wages, allowances or petty cash recoupments which may be open.
- (g) The Management Committee shall determine the amount of petty cash which shall be kept on the imprest system.
- (h) Accounts for payment shall be presented and passed at a committee meeting.
- (i) As soon as practicable after the end of each financial year the treasurer shall cause to be prepared a statement of receipts and payments and income and expenditure and a balance sheet for the financial year just ended.
- (j) all such statements shall be examined by the auditor who shall present his report

upon such audit to the secretary prior to the holding of the annual general meeting next following the financial year in respect of which such audit was made.

- (k) No honorarium shall be granted to any person from the funds of the association and no dividend shall be paid to, and no income or property of the association shall be distributed amongst the members.

DOCUMENTS

27. The Management Committee shall provide for the safe custody of books, documents, instruments of title and securities of the association.

FINANCIAL YEAR

28. The financial year of the association shall close on in each year.

DISTRIBUTION OF SURPLUS ASSETS

29. If the association shall be wound up in accordance with the provisions of the Associations Incorporation Act 1978, the property and other assets of the association remaining after payment of all expenses and liabilities may be handed over to some other association having similar objects or in part similar objects as the members of the association in general meeting may by special resolution decide.

FOURTH SCHEDULE

(S.14)

POWERS

1. To accept and hold on trust real or personal property that is given to the incorporated association subject to any trust and to carry out any such trust.
2. To exercise all or any of the powers conferred on a trustee pursuant to the Trusts Act 1973, except the power to carry on business.
3. To take, or otherwise acquire, and hold shares, debentures or other securities of any company or body corporate.

4. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the association, or the dependents of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.

5. To take on lease or in exchange, hire, or otherwise acquire any real or personal property of any kind whatsoever or any rights or privileges which the association may think necessary or convenient for the furtherance of its objects.

6. To invest and deal with the money of the association not immediately required in such manner as may from time to time be thought fit.

7. In furtherance of its objects to lend and advance money or give credit to any person or body corporate; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or body corporate, and otherwise to assist any person or body corporate.

8. To borrow or raise money either alone or jointly with any other person or legal entity in such manner as may be thought proper and whether upon fluctuating advance account or overdraft or otherwise to represent or secure any moneys and further advances borrowed or to be borrowed alone or with others as aforesaid by notes secured or unsecured, debentures or debenture stock perpetual or otherwise, or by mortgage, charge, lien or other security upon the whole or any part of the association's property or assets present or future and to purchase, redeem or pay-off any such securities.

9. To remunerate any person or body corporate for services rendered, or to be rendered and whether by way of brokerage or otherwise in placing or assisting to place or guaranteeing the placing of any unsecured notes, debentures or other securities of the association, or in or about the association or promotion of the association or in the furtherance of its objects.

10. To draw, make, accept, endorse, discount, execute and

issue promissory notes, bills of exchange, bills of lading, and other negotiable or transferable instruments.

11. To take or hold mortgages, liens or charges, to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the association's property of whatsoever kind sold by the association, or any money due to the association from purchasers and others.

12. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the association.

FIFTH SCHEDULE

(S.50)

FEEES

On an application for incorporation, including the lodging of all necessary documents in support, and issue of certificate of incorporation	\$ 30.00
On an application for approval of amalgamation of incorporated associations, including the lodging of all necessary documents in support, cancellation of certificates of incorporation and issue of fresh certificate of incorporation	30.00
On an application for approval of change of name, including the lodging of all necessary documents in support, cancellation of certificate of incorporation and issue of fresh certificate of incorporation	30.00
On lodging notice of a special resolution	10.00
On lodging of annual return or any other document	5.00
On lodging of resolution for winding-up	5.00
For a copy or extract made and certified by the Minister of any document in his custody for each copy or extract not exceeding one page	3.00
For each additional page	1.00
For certifying by the Minister of a copy or extract of any document in his custody where a printed or typed copy is supplied for each copy or	
For each copy or extract not exceeding one page	2.00
For each additional page	1.00
For each search or inspection, in relation to an incorporated association, of the registers kept by or documents lodged with the Minister	2.00
For furnishing information at the request of a	

person made by post a further fee of	1.00
For late lodgment of annual return -	
(a) if lodged within one month after the period prescribed by law	1.00
(b) if lodged more than one month after the period prescribed by law but within two months after the period so prescribed	2.00
(c) if lodged more than two months after the period prescribed by law	10.00

Provided that the Minister may, if satisfied that just cause existed for the late lodgment, waive in whole or in part the additional fee under subparagraphs (a), (b) or (c) of this item.

Department of Justice

Draft No. 1

1975

A BILL

To provide for the incorporation of certain associations; to repeal The Religious Educational and Charitable Institutions Acts, 1861 to 1967; and for connected purposes

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows :-

1. Short title. This Act may be cited as the Associations Incorporation Act (1975)

2. Commencement of Act. This Act shall commence on a day to be fixed by Proclamation.

3. Repeals. The Acts specified in the First Schedule to this Act are repealed and in this Act are referred to as the repealed Acts.

4. Meaning of terms. (1) In this Act, unless the contrary intention appears -

"association" means -

- (a) an association, society, institution or body or an integral part of an association, society, institution or body formed or carried on for a religious, educational or charitable purpose;
- (b) a show society; or
- (c) an association, society, institution or body, not being one referred to in paragraph (a) or (b) declared by the Minister by notification published in the Gazette to be one to which this Act is extended,

but does not include an association, society, institution or body -

- (d) formed or carried on for the purpose of trading or securing pecuniary profit to its members; or
- (e) the objects of which are of a controversial nature;

Companies Act
(U.K.) Board
of Trade Rules
re Section 19
Collections
Act
Section 5

"charitable association" means an association having as its principal object a charitable purpose as defined in the Collections Act 1966-1975;

Collections Act
Section 29
4 (c)

"committee", in relation to an association, means the committee of the association or, if there is no committee thereof, the persons, however styled, having the management of the affairs of the association: A committee shall consist of not less than three persons;

"educational association" means an association having as its principal object the provision of systematic instruction in or the systematic promotion of arts and sciences useful to the community: The term includes an association established to provide a residence for scholars or pupils receiving such instruction affiliated with or attached to a university, college or school;

Collections Act
Section 5

"incorporated association" means an association incorporated under this Act;

"Minister" means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act: The term includes a Minister of the Crown temporarily performing the duties of the Minister;

"religious association" means an association having as its principal object the propagation or advancement of religion;

"secretary", in relation to an incorporated association means the secretary of that association appointed in pursuance of section 16 or section 45, as the case may be;

"show society" means an association having as its principal object the holding and conducting, at any city, town or place, of an annual or other periodical agricultural, horticultural, pastoral or industrial show or a rodeo;

"undesirable name", in relation to an association, means a name that -

Section 22
Companies Act

- (a) is the same as a name by which another association is incorporated or deemed to be incorporated under this Act or a name that is registered or incorporated or by which any body or association of persons is registered or incorporated under any other Act or law of the State, or is so similar thereto, as, in the opinion of the Minister, to be mistaken therefor or confused therewith;
- (b) in the opinion of the Minister is undesirable or is a name, or a name of a kind, that pursuant to section 22 of the Companies Act 1961-1974 or section 9 of the Business Names Act 1962-1971, the Commissioner for Corporate Affairs has been directed not to accept for registration.

(2) A reference in this Act to the rules of an association includes a reference to the constitution, regulations, and by laws, if any, of the association.

5. Application for incorporation. (1) An association may by special resolution resolve to apply for incorporation under this Act. The association may by the same or a subsequent resolution resolve that the application shall be made by a person appointed by the association for that purpose.

(2) The application shall be in writing, in the prescribed form, addressed to the Minister and shall be accompanied by such matters as are set out in the Second Schedule to this Act. It shall also be accompanied by a copy

of the rules of the association and particulars of, and a copy of any instrument evidencing the trusts, if any, relating to the association verified by the statutory declaration of the applicant.

Companies Act
Section 30(1)

(3) An association may adopt all or any of the clauses in the Model Rules set forth in the Third Schedule to this Act.

6. Power to take steps for incorporation. An association that proposes to apply for incorporation under this Act may by special resolution authorise the committee or a person to do all such acts and things as may be necessary for securing the incorporation of the association. A copy of the special resolution signed by the chairman of the meeting shall be lodged with the application.

7. Advertising of application and objection to incorporation
(1) On receipt of an application for incorporation the Minister may direct either generally or in a particular case that notice of the application be advertised in such form and in such manner and place as is prescribed or insofar as is not prescribed as the Minister thinks fit.

(2) The advertisement shall stipulate that any person may, within 14 days after the date of the last publication of the notice, object to such incorporation by notice of objection in writing given to the Minister and that the grounds of objection shall be set out in the notice of objection.

8. Minister to recommend to Governor in Council. The Minister shall, on receipt of an application for incorporation and after making such inquiries as he shall think fit and after consideration of any objection, make his recommendation to the Governor in Council whether the association should be incorporated or not.

9. Direction by Governor in Council. The Governor in Council may direct whether the association should be incorporated or not and the Minister shall give notice thereof in writing to the person who made the application for incorporation and to any objector. No appeal shall lie against a direction of the Governor in Council.

10. Governor in Council to determine classification.
(1) At the time a direction is given that an association shall be incorporated under this Act, the Governor in Council shall determine whether that association is formed or carried on for a religious, educational or charitable purpose or is a show society or other declared association.

(2) The Governor in Council may alter the classification of an incorporated association at any time.

11. Certificate of incorporation. Upon a direction being given pursuant to section 9 that an association shall be incorporated under this Act, the Minister shall issue to the association a certificate of incorporation in the prescribed form and shall, by notice published in the Gazette, give notice of the incorporation of the association.

Companies'
Practice -
Ryan

12. Name of association. An association shall not be incorporated under a name that is an undesirable name.

Companies Act Section 16 (4)

13. Incorporation of association. Upon the issue of a certificate of incorporation to an association it shall become a body corporate by the name contained in the certificate of incorporation with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name and of doing and suffering all such other things as are necessary for the purposes of its constitution.

(2) An incorporated association shall have the word "Incorporated" or the abbreviation "Inc." as part of and at the end of its name.

Companies Act Section 22(3)

(3) It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated" in the name of the association as appearing on its seal.

(4) When the name of an incorporated association is included in any document, it is sufficient if the abbreviation "Inc." is used in the place of the word "Incorporated".

(5) Subject to this section, 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

Companies Act Section 377

(6) If any person carries on business under any name or title of which the word "Incorporated" or any abbreviation thereof is the final word or abbreviation the person shall unless duly incorporated under this Act be guilty of an offence against this Act.

Penalty \$100 - Default penalty

14. Vesting of property in incorporated association. (1) Upon the incorporation of an association under this Act, any property held by a person, in trust or otherwise, for or on behalf of the association becomes, subject to this section, vested in the association.

(2) Any property vested pursuant to this section becomes vested subject to any trust, covenant, contract or liability affecting the property.

Religious, Educational & Charitable Institutions Amendment Act 1967

15. Powers of incorporated associations. Unless expressly excluded or modified by the rules of the association, the powers of an incorporated association include and shall be deemed always to have included the powers set forth in the Fourth Schedule to this Act but nothing in this section shall be taken -

Companies Act Section 19

- (a) to authorize or empower or to have authorized or empowered the association to deal with any property contrary to the provisions of any gift, grant or dedication of the original donor of the property or of any special trusts affecting property received, purchased or otherwise acquired by the association; or
- (b) to limit in any respect the nature or extent of the powers conferred by this Act.

16. Secretary. (1) An incorporated association shall within 14 days after incorporation appoint a natural person who is resident in the State 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 who is resident in the State to fill that vacancy.

Companies Act
Section 132

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

(3) Notwithstanding anything in the rules of an incorporated association, the association shall have power from time to time to appoint a secretary and to remove any person so appointed.

(4) The secretary may, unless the rules of the association otherwise provide, hold any other office in the association except the office of auditor.

(5) The office of secretary shall become vacant if the person holding that office -

- (a) dies;
- (b) becomes bankrupt or compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (c) becomes mentally ill;
- (d) resigns his office by writing under his hand addressed to the committee of the association; or
- (e) ceases to be resident in the State.

(6) This section shall not apply to a corporation sole.

17. Notification of appointment and change of address of secretary. (1) A secretary shall, within 14 days after his appointment, give notice in writing to the Minister 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 Minister of the change.

18. Annual and special meetings. (1) A general meeting of an incorporated association shall be held once at least in every period of twelve months, within three months after the close of the association's financial year and shall be called the annual general meeting.

(2) Special meetings of the association shall be held or may be called as prescribed by the rules of the association and shall be called general meetings.

Co-operative
and Other
Societies
Act of 1967

(3) Unless otherwise provided by the rules of the association at any meeting of the association no item of business shall be transacted unless a quorum of members entitled under the rules of the association to vote is present when the meeting is considering that item. The quorum shall be as prescribed by the rules of the association.

(4) This section shall not apply to a corporation sole.

Companies Act
Section 21
Section 31
19. Alteration of rules. (1) An incorporated association may by special resolution and with the approval of the Minister first obtained alter its rules.

Companies Act
Section 146
(1)
(2) The secretary of the association shall within one month after the passing of the special resolution for alteration of the rules lodge a copy of the special resolution with the Minister.

Companies Act
Section 23
20. Change of name. (1) An incorporated association may by special resolution and with the approval of the Minister change its name to a name which is not an undesirable name.

(2) Upon the lodging of the special resolution the Minister may issue a fresh certificate of incorporation in the new name upon the return of the old certificate or proof of its loss or destruction and shall, by notice published in the Gazette, give notice of the change of name of the association.

(3) Before approving the change of name and issuing the fresh certificate the Minister may make such inquiries as he thinks fit and may direct such notice of the change to be published in such manner as he thinks fit.

(4) If the name of an incorporated association is whether through inadvertance or otherwise and whether originally or by change of name a name by which the association could not be incorporated without contravention of section 12 the association may by special resolution change its name to a name by which the association could be incorporated without contravention of that section, and if the Minister so directs, shall so change it within six weeks after the date of direction unless where the direction is given by a delegate of the Minister, the Minister by written notice annuls the direction and if the association fails to comply with the direction it shall be guilty of an offence against the Act.

(5) A change of name pursuant to this Act shall not affect the identity of the association or any rights or obligations of the association or render defective any legal proceedings by or against the association and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

21. Name of incorporated association to appear on documents. 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.

Companies Act
Section 35

22. Contracts. (1) Contracts entered into by an incorporated association shall be made as follows -

- (a) a contract which, if made between private persons, would be required by law to be in writing and under seal shall be made in writing and under the common seal of the association;
- (b) a contract which, if made between private persons, would be required by law to be in writing signed by the parties to be charged therewith may be made in writing signed by any person acting under the express or implied authority of the association;
- (c) a contract which, if made between private persons, would be valid in law although made by parol only, and not reduced into writing may be made by parol on behalf of the association by any person acting under authority express or implied.

(2) All contracts made according to the provisions contained in this section shall be effectual in law and shall bind the association and its successors and all other parties thereto, and may be varied or discharged in the manner in which it is authorised to be made.

(3) A document or proceeding requiring authentication by the association may be signed by the secretary and need not be under its common seal.

23. Power to exempt from compliance with Companies Act. The Governor in Council may by Order in Council exempt an incorporated association either generally or in particular, and subject to such terms and conditions as are specified in the Order in Council, from complying with all or any of the provisions of the Companies Act 1961-1975 as are applicable to such an association.

24. Disposal of trust property. Where any 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 Minister for an order authorising the disposal of the whole or part of the property. The Minister may make an order for distribution or the Governor in Council may by Order in Council vest all or any of the property in The Public Curator of Queensland to be dealt with under the provisions of section 35 of the Collections Act 1966-1975.

25. Amalgamation of incorporated associations. (1) Two or more incorporated associations may, by special resolution of both or all of those associations passed in accordance with the rules of each association respectively, amalgamate and become one association with or without a dissolution or division of the funds of those associations or any of them.

(2) The secretary of each of the associations to be amalgamated shall lodge with the Minister notice in the prescribed form of the passing of the special resolution and of the name of the association proposed to be created by the amalgamation.

(3) A notice under subsection (2) when lodged with the Minister shall be accompanied by such documents if any, as may be prescribed, and those documents shall be verified as prescribed. The Minister may direct notice of the proposed amalgamation to be advertised.

(4) Upon receipt of a notice under subsection (2) and any accompanying documents pursuant to subsection (3), the Minister, if satisfied that the association to be created by the amalgamation is desirable and is able to be incorporated under the name set out in the notice without contravention of section 12, may, with the approval of the Governor in Council, issue a certificate of incorporation in the prescribed form, upon return of the old certificates or proof of their loss or destruction and shall, by notice published in the Gazette, give notice of the amalgamation of the associations.

(5) Upon the issue of a certificate of incorporation pursuant to subsection (4) the provisions of this Act shall apply to the association created by the amalgamation as they apply to an association incorporated pursuant to section 13, and, without limiting the generality of the foregoing, all the property of the amalgamated associations vests in the association created by the amalgamation and the provisions of section 14, with necessary adaptations, apply to and in relation to that property accordingly.

(6) The amalgamation of two or more incorporated associations does not prejudice any right of a creditor of, or any person having a claim against, any of the amalgamated associations, and any such right or claim may be enforced against the association created by the amalgamation.

26. Audit and balance sheet. (1) An incorporated association shall, once in each period of twelve months, or more frequently if the rules of the association so provide -

- (a) cause the financial affairs of the association to be audited by a person who is not a member, or the secretary, of the association, but who is a person registered as a public accountant under the Public Accountants Registration Act 1946-1975 or approved by the Minister; 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 the association fails to comply with subsection (1), each member of the committee is guilty of an offence.

(3) The secretary of an association other than a religious association shall, within one month after the preparation of a balance-sheet as required by subsection (1), lodge with the Minister a copy of that balance-sheet certified to be correct by the person who audited the financial affairs of the association.

(4) The Minister may, in any case where he considers it desirable so to do, direct in writing an association to publish in such manner and within such time as is set out in the direction a copy of the balance-sheet certified to be correct referred to in subsection (3) and the committee of the association shall comply in all respects with the terms of such direction.

(5) If the committee of the association fails to comply with subsection (4), each member of the committee is guilty of an offence.

Companies Act
Section 158

27. Returns. (1) An incorporated association shall within four months after the close of the association's financial year lodge with the Minister a return made up to that date containing the following particulars -

- (a) a list of the names, addresses and occupations of the members of the committee and of the secretary for the year then current; and
- (b) such other particulars as are set out in the Fifth Schedule to this Act.

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

(3) The annual return shall be signed by the president or secretary of the association.

28. Winding-up. (1) An incorporated association may be wound up by special resolution of the members passed at a general meeting called for the purpose. A copy of the special resolution shall be lodged with the Minister forthwith.

(2) The Minister may in any particular case direct that the provisions of the Companies Act 1961-1975 relating to the winding up of unregistered companies apply, so far as applicable and with such modifications as are prescribed, to and in relation to the winding-up of an incorporated association and, in that application -

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

29. Liability of members. 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.

30. Distribution of surplus assets. (1) Where, upon the winding-up of an incorporated association, a special resolution relating to the distribution of the surplus assets of the association has been passed by the association a copy of the resolution shall be lodged with the Minister forthwith and the Minister may, subject to subsection (2), approve the distribution of those assets in accordance with the resolution.

(2) Where the Minister considers that a distribution of the surplus assets of the association in accordance with a resolution of the kind referred to in subsection (1) would not be just, the Minister may make an order determining the distribution of these assets as, having regard to the objects and purposes of the association being wound up, he considers just.

(3) Where no such resolution has been passed the Governor in Council may by Order in Council vest all or any of the property of the association in the Public Curator of Queensland to be dealt with under the provisions of section 35 of the Collections Act 1966-1975.

(4) In this section, "surplus assets" means, in relation to the 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.

(5) Upon proof being made to the Minister that the assets have been distributed to his satisfaction he may declare the association dissolved and call in and cancel the certificate of incorporation.

31. Cancellation of incorporation. (1) In any case where the Minister has reasonable cause to believe that an incorporated association has ceased to exist or that its transactions are such that it is not, or has ceased to be, an association within the meaning of this Act, or that it is desirable that its incorporation be cancelled he may serve, by prepaid registered post, on the person appearing to him from records or returns kept or made under this Act to be the secretary of the association a notice requiring him, within the period of one month from the date thereof, to satisfy the Minister that the association has not ceased to exist or, as the case may be, that its transactions are not such that it is not, or has ceased to be, an association within the meaning of this Act, or, that it is not desirable that its certificate of incorporation be cancelled, and stating that, unless cause is shown to the contrary within that period, a notice will be published in the Gazette cancelling the incorporation of the association.

Companies Act
Section 308

(2) If cause is not shown as provided in subsection (1) within the time specified therein, the Minister may publish in the Gazette and serve, by prepaid registered post, on the person appearing pursuant to subsection (1) to be the secretary of the association a notice that, at the expiration of three months from the date of the publication of the notice in the Gazette, the incorporation of the association will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the period of three months referred to in subsection (2) the Minister may, unless cause to the contrary is previously shown, cancel the incorporation of the association and publish notice of the cancellation in the Gazette.

Companies Act
Section 170

32. Appointment of inspector. (1) Where it appears to the Governor in Council that -

- (a) it is desirable for the protection of the public or of members or other persons interested in an incorporated association;
- (b) it is in the public interest,

to appoint an inspector to investigate the affairs of the association he may by instrument in writing appoint an inspector.

(2) The provisions of Part VIA Special Investigations of the Companies Act 1961-1975 shall, mutatis mutandis, apply to such an investigation.

33. Appeal against cancellation of incorporation.

(1) The secretary of an association or a creditor or member of an association the incorporation of which is cancelled pursuant to section 31 may, within three months after the cancellation, appeal by notice in writing to the Minister setting out therein the grounds of appeal and his full name, address and occupation.

(2) The Minister shall consider the matter and shall refer it to the Governor in Council who shall make his decision in respect of the appeal and, if satisfied that the association has not ceased to exist or, as the case may be, that its transactions are not such that it is not or has ceased to be an association within the meaning of this Act or, that it is not desirable that its certificate of incorporation be cancelled, and that it is just so to do, may order that the incorporation be restored, and thereupon the incorporation shall be deemed to have continued as if it had never been cancelled and the Minister shall give notice thereof in writing to the person who made the appeal and to any person who, in the opinion of the Minister, has a valid interest in the decision. No appeal shall lie against a decision of the Governor in Council.

34. Liability of association on cancellation of incorporation. Notwithstanding the cancellation of the incorporation of an association pursuant to section 31, the association is liable to be sued and proceeded against as a corporation, and all dealings and transactions between the association and any person are valid against the association and all persons claiming under the association.

35. Vesting of property belonging to incorporated association where incorporation cancelled. Where the incorporation of an incorporated association is cancelled pursuant to section 31, the Governor in Council may by Order in Council vest all or any property of the cancelled association in The Public Curator of Queensland to be dealt with under the provisions of section 35 of the Collections Act 1966-1975.

36. Evidentiary provisions. (1) The Minister 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
- (b) that, on a date specified in the certificate, a person so specified was, or was not, the secretary of an incorporated association so specified,

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

(2) In any legal proceedings, a copy of any rules or trusts of an incorporated association or other document lodged with him certified by the Minister to be a true copy thereof, shall be evidence that the rules or trusts were rules or trusts, as the case may be, of the association therein mentioned, in force on the date mentioned in the certificate or the contents of the document lodged with the Minister.

(3) Judicial notice shall be taken of the signature of the Minister appearing on a certificate under this section and of the fact that the person by whom the certificate purports to have been signed is the Minister.

Land Act
Section 23
(4)

37. Delegation of powers. (1) The Minister may from time to time, in relation to any matters or class of matters, by instrument in writing under his hand delegate all or any of his powers, authorities, functions and duties under this Act as may be specified in the instrument other than this power of delegation to any person or the holder of any office so that any delegated power, authority, function or duty may be exercised or, as the case may be, shall be performed by the delegate with respect to the matters or class of matters specified in the instrument.

(2) The Minister may subject any such delegation to such conditions or limitations as he thinks fit.

(3) The Minister may, at his discretion, revoke a delegation made by him under this section.

(4) No delegation shall prevent the exercise of any power, authority, function or duty by the Minister.

38. Proceedings for offences. (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act.

(2) A person guilty of an offence against this Act is liable, if no specific penalty is provided for that offence, to a penalty not exceeding \$100.

(3) All offences against this Act may be prosecuted and any fees or other moneys due and payable under this Act may be recovered in a summary way under the Justices Act 1886-1975.

39. Limitation of actions. No matter or thing done by the Minister or by any other person in good faith and without negligence for the purpose of executing this Act or in the execution or performance of his powers, authorities, functions and duties under this Act shall subject the Crown, the Minister or any other person as aforesaid to any liability in respect thereof.

40. Extension of time. (1) Subject to subsection (2) where under this Act an act or thing is required to be performed or done within a specified time the Minister may, if he thinks fit, if in his opinion there are special circumstances, extend the time for the performance or doing of that act or thing.

(2) Subsection (1) does not authorize the Minister to extend the time for the making of an appeal under section 33 beyond six months after the cancellation of the incorporation of the association.

41. Amendment etc. of Schedules. The Governor in Council may from time to time by Order in Council amend all or any of the Schedules to this Act by revoking, amending, altering or otherwise modifying any of the provisions thereof, or by inserting therein or adding thereto new provisions, and thereupon the said Schedules as so amended for the time being shall become and be the Schedules to this Act.

42. Fees. There shall be paid to the Minister such fees as are set out in the Sixth Schedule to this Act.

43. Recall of Letters Patent. The Minister at his direction may recall any Letters Patent issued under the repealed Acts and issue a certificate of incorporation under this Act in lieu thereof.

44. Service. Subject to section 31 a document may be served on an incorporated association by leaving it at or sending it by post to the secretary at the address notified under section 17, or by such other means as the Minister thinks fit.

45. Savings. (1)(a) A corporation incorporated under the repealed Acts and in existence immediately prior to the commencement of this Act continues in existence with the name under which it was incorporated, and on and from the day of commencement of this Act is deemed to be an association incorporated under this Act.

(b) A reference hereafter in this section to an incorporated association is a reference to a corporation continued in existence pursuant to this subsection.

(2) This Act applies, subject to this section, to an incorporated association in the same manner and to the same extent as it would if the incorporated association had been incorporated under this Act.

(3) (a) The committee of an incorporated association shall, not later than one month after the commencement of this Act, appoint a person who is a resident in the State 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 who is resident in the State to fill the vacancy.

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

(c) This subsection shall not apply to a corporation sole.

(4) A reference in any certificate or writing to the date of incorporation of an incorporated association shall be a reference to the date upon which the incorporated association was incorporated under the repealed Acts.

(5) In any case where the Minister has reasonable cause to believe that a corporation incorporated under the repealed Acts was not in existence immediately prior to the commencement of this Act he may take action to cancel its incorporation as if it were an incorporated association and the provisions of this Act shall, mutatis mutandis, apply as if that corporation was incorporated under this Act.

46. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to -

- (a) the keeping of any register under and for the purposes of this Act, the circumstances and manner in which and the person by whom such register shall be kept, and the transfer of custody of a register kept under this Act or under the repealed Acts;
- (b) records to be kept for the purposes of this Act, the manner of keeping such records, and the transfer of custody of records kept under this Act or under the repealed Acts;
- (c) the inspection by members of the public of any register or document kept pursuant to this Act relating to incorporated associations;
- (d) the issuing of a certificate of incorporation of an association or any other certificate or of a copy or extract of any document or part of a document kept pursuant to this Act;
- (e) forms to be used under this Act, the prescribing of forms and the respective purposes for which any such forms shall be used;

- (f) the form of, and the matters or certain specified matters to be provided for in, the rules of incorporated associations;
- (g) the prescribing of penalties, not exceeding a fine of \$50.00 for offences against the regulations;
- (h) all matters required or permitted by this Act to be prescribed where the method of prescription is not otherwise provided;
- (i) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

47. Publication of Orders in Council. (1) Every Order in Council made under this Act shall -

- (i) be published in the Gazette;
- (ii) upon its publication in the Gazette, be judicially noticed and such publications shall be conclusive evidence of the matters contained therein;
- (iii) take effect from the date of such publication;
- (iv) be laid before the Legislative Assembly within fourteen sitting days after such publication, if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Order in Council has been laid before it disallowing the same or part thereof, that Order in Council, or part thereof shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Order in Council.

FIRST SCHEDULE

(S. 3)

The Religious Educational and Charitable Institutions Act of 1861	25 Vic. No. 19
The Religious, Educational, and Charitable Institutions Act of 1861 Amendment Act of 1895	59 Vic. No. 4
The Religious Educational and Charitable Institutions Acts Amendment Act of 1959	8 Eliz. II No. 52
The Religious Educational and Charitable Institutions Acts Amendment Act of 1967	No. 31 of 1967

SECOND SCHEDULE

(S. 5)

Matters to accompany an application for incorporation of an association :-

Company Law -
Ryan

1. A list of the names, addresses and occupations of members specifying those who are members of the committee of the association.
2. An estimate of the income (showing the sources from which it will be derived) and expenditure of the association. This shall not apply to a religious association which is an integral part of a recognised denomination.
3. Where the association is an integral part of an association the consent of the official head of the parent association
4. If the association will absorb an existing incorporated association, a copy of the balance sheet for the last year and copies of any reports as to its working during that period together with a statement showing in detail the assets with estimated values and liabilities to be taken over by the association. This shall not apply to a religious association which is an integral part of a recognised denomination.
5. If the association is a religious association an estimate of the number of members and adherents over each of the last two years.
6. A statement giving an outline of the work done, or in contemplation, with the grounds upon which the application is put forward.
7. The place where the association is situated or established
8. Such other information as may be prescribed.

THIRD SCHEDULE

Model Rules

(S. 5)

NAME

1. The name of the association shall be

OBJECTS

2. The objects of the association shall be
(These should be set out fully)

CLASSES OF MEMBERS

3. The members of the association shall consist of ordinary members, life members and/or honorary members.
(Delete "Life members" and/or "Honorary members" if not applicable).

MEMBERSHIP

4. (a) The number of ordinary members and of life members shall be unlimited.
(Delete from "and" to "members" if not applicable.)

- (b) Subject to this constitution any person who is not less than years of age and (insert qualifications, if any) shall be eligible to become a member of the association upon payment or tender to the association of the annual subscription for the current financial year.

LIFE MEMBERS

- 5. (a) The association may from time to time, at any annual or general meeting, determine the fee to be paid by any member desiring to compound for the annual subscription and to become a life member of the association.
- (b) Any ordinary member upon payment of the fee as determined by paragraph (a) shall be entitled to become a life member, having all the privileges appertaining to an ordinary member of the association without payment of the annual subscription. Save as aforesaid a life member shall be subject to all the provisions of this constitution.
(If life membership is not allowed delete clause 5(a) and (b)).

HONORARY MEMBERS

- 6. (If honorary membership is allowed in accordance with clause 3 the conditions and qualifications attached to the conferring of such membership should be set out fully herein).

ANNUAL SUBSCRIPTIONS

- 7. (a) The annual subscription for each financial year shall be or such other sum in lieu thereof as the members at any annual or general meeting may from time to time determine.
- (b) The annual subscription shall be payable in advance on the First day of in every year after which no registration, termination or forfeiture of membership shall exempt a former member from payment of the current year's subscription.
- (c) Payment or tender of the annual subscription shall be made to the secretary personally or through the post addressed to the secretary.
- (d) A financial member at any material time is a member who is not then indebted to the association in respect of any annual subscription or levy or other payment whatsoever.
- (e) Only those members who are financial members at the time shall be entitled, subject to the lawful procedure of the meeting to speak or vote upon any motion at any annual or general meeting of the association.
- (f) A member who is in arrears with his annual subscription for calendar months shall be deemed to have forfeited his membership but the committee or on appeal from an adverse decision of the committee the members, may reinstate him on payment of the amount due.

ADMISSION AND REJECTION OF ORDINARY MEMBERS

8. (a) Admission to ordinary membership shall be by election of the committee or, upon appeal, by the members. At the committee meeting next following the payment or tender to the secretary of the annual subscription for the current financial year as provided by this constitution, the committee shall consider each application and shall elect or reject the applicant as a member.
- (b) Any applicant who receives a majority of the votes of the members of the committee present at the meeting at which the application is being considered shall be declared elected by the chairman as an ordinary member.
- (c) Upon the election or rejection of an application for membership the secretary shall forthwith give to the applicant notice in writing of such election or rejection.

APPEAL AGAINST REJECTION OF MEMBERSHIP

9. (a) A person whose application for membership has been rejected may, within one month after receiving written notification of such rejection, appeal against the decision of the committee to a general meeting of the members of the association held for the purpose of determining that appeal.
- (b) Notice in writing of intention to appeal shall be given to the secretary.
- (c) The committee shall convene such a general meeting so that the general meeting is held within three months of the date of receipt by the secretary of a notice of appeal, at a time suitable to the majority of members to attend thereat.
- (d) At such meeting the appellant shall be given the opportunity to fully present his case either orally or in writing or partly by one of these means and partly by the other and the committee or those members thereof who rejected the application shall subsequently likewise have the opportunity of presenting its or their case. The appeal shall be determined by the vote of the majority of the financial members present at that meeting.
- (e) Where a person, whose application is rejected, does not within the time prescribed by this Constitution, appeal against the decision of the committee, or so appeals but the appeal is unsuccessful, the secretary shall refund the amount of the annual subscription paid to the secretary.

TERMINATION OF MEMBERSHIP

10. A member may resign from the association at any time by giving notice in writing to the secretary. Such resignation shall only take effect at the time such notice is received by the secretary unless a later date is specified in the notice when it shall take effect on that later date.

11. (a) If a member -

- (i) is convicted of an indictable offence; or
- (ii) fails to comply with any of the provisions of this constitution; or
- (iii) conducts himself in a manner considered to be injurious or prejudicial to the character or interests of the association,

the committee shall consider whether his membership shall be terminated.

- (b) The member concerned shall be given a full and fair opportunity of presenting his case and if the committee resolves to terminate his membership it shall instruct the secretary to advise the member accordingly. The member may, within one month after receiving such written notification, appeal to a general meeting of members.
- (c) Notice in writing of his intention to appeal shall be given to the secretary.
- (d) The committee shall convene a general meeting so that such meeting is held within three months of the date of receipt by the secretary of a notice of intention to appeal, at a time suitable to the majority of members to attend thereat.
- (e) At such meeting the appellant shall be given the opportunity of fully presenting his case either orally or in writing or partly by either of these means and the committee or those members thereof who intend to terminate his membership shall subsequently likewise have the opportunity of presenting its or their case.
- (f) The appeal shall be determined by the vote of a majority of the financial members present at that meeting.
- (g) Where any person, whose membership the committee intends to terminate, does not appeal against the decision within the time provided by this constitution, or so appeals but his appeal is unsuccessful, the membership of that person shall thereupon be deemed to be terminated.

REGISTER OF MEMBERS

- 12. (a) The committee shall cause a register to be kept in which shall be entered the names and residential addresses of all persons admitted to membership of the association and the dates of admission.
- (b) Particulars shall also be entered of resignations, terminations and reinstatement of membership and any further particulars as the committee or the members at any annual or general meeting may require from time to time.
- (c) The register of members shall be open for inspection at all reasonable times by any financial member who previously applies to the secretary for such inspection.

MANAGEMENT

13. The general control and management of the administration of the association shall be by a "Committee of Management" consisting of a president, vice-president, secretary, treasurer and such number of committee members not being less than nor more than as the members of the association at any annual general meeting may from time to time appoint.
14. At the annual general meeting of the association, all the members of the committee for the time being shall retire from office, but shall be eligible for re-election.
- 15.(a) Any member of the committee may resign at any time from membership of the committee by notice in writing delivered to the secretary but such resignation shall only take effect at the time when such notice is received by the secretary unless some later date is specified in the notice when it shall take effect on that later date or he may be removed from office at a general meeting of the association convened for that purpose.
- (b) At any such general meeting the member shall be given the opportunity to fully present his case either orally or in writing or partly by either of these means. The question of removal shall be determined by the vote of the majority of the financial members present at such general meeting.

VACANCIES ON COMMITTEE

- 16.(a) The committee shall have power to appoint a financial member who may or may not then be a member of the committee to fill any casual vacancy on the committee until the next annual general meeting.
- (b) Every member so appointed shall retire at the next annual general meeting but shall be eligible for election as a member of the committee at such meeting.

FUNCTIONS OF THE COMMITTEE

17. Except as otherwise provided by this constitution and subject to resolutions of the members of the association carried at any annual or general meeting the committee -
 - (i) shall have the general control and management of the administration of the affairs, property and funds of the association; and
 - (ii) shall have authority to interpret the meaning of this constitution and any matter relating to the association on which this constitution is silent.

MEETINGS OF THE COMMITTEE

- 18.(a) The committee shall meet once in every month(s) to exercise its functions.
- (b) A special meeting of the committee shall be convened by the secretary on the requisition in writing of not less than members of the committee, which requisition shall clearly state the reasons why such special meeting is being convened and the nature of the business to be transacted thereat.

- (c) At every meeting of the committee members of the committee shall constitute a quorum.
- (d) Subject as previously provided in this Rule, the committee may meet together and regulate its proceedings as it thinks fit :

Provided that questions arising at any meeting of the committee shall be decided by a majority of votes and in the case of equality of votes on any question or at any meeting of the committee the question shall be deemed to be decided in the negative.

- (e) Not less than 14 days notice shall be given to members of the committee of any special meeting of the committee.

ANNUAL GENERAL MEETINGS OR GENERAL MEETINGS

- 19.(a) Subject to this constitution, the annual general meeting shall be held in the month of in each year.

- (b) The business to be transacted at every annual general meeting shall be :

- (i) the receiving of the committee's report and the balance sheet and statement of accounts for the preceding financial year;

- (ii) the receiving of the auditor's report upon the books and accounts for the preceding financial year;

- (iii) the election of members of the committee;

- (iv) the appointment of an auditor.

- (c) At the annual general meeting members shall constitute a quorum.

- 20(a) The secretary shall -

- (i) when directed to do so by the committee; or

- (ii) upon being given a requisition in writing signed by not less than members of the committee or not less than ordinary members and clearly stating the purpose for which the general meeting is desired; or

- (iii) upon being given a notice in writing of appeal against the decision of the committee to reject an application for membership or of intention to terminate the membership of any person,

convene a general meeting of members.

- (b) In the absence of a direction pursuant to subrule (a)(i) the secretary shall convene a general meeting once in every month(s).

- (c) At every general meeting members shall constitute a quorum.

- 21.(a) If after the expiration of minutes from the notified time of commencement of any committee meeting, annual general meeting or general meeting pursuant to rule 21(b) a quorum is not present the meeting shall stand adjourned for week(s) to the same time and place. The secretary shall give notice of the adjournment to every member.
- (b) If after the expiration of minutes from the notified time of commencement of the adjourned meeting a quorum is not present the meeting shall proceed with those members present.
- (c) If after the expiration of minutes from the notified time of commencement of a general meeting pursuant to rule 21(a) a quorum is not present the meeting shall lapse.
- 22.(a) The secretary shall convene all annual and general meetings of the association by giving not less than 14 days notice of such meeting.
- (b) The manner by which such notice is given shall be determined by the committee.
23. Unless otherwise provided by this constitution, at every annual and general meeting -
- (i) the president shall be chairman and in his absence a chairman shall be elected by resolution of a majority of the financial members present at the meeting.
 - (ii) the chairman shall maintain order and conduct the meeting in a proper and orderly manner.
 - (iii) every question, matter or resolution shall be decided by a majority of votes of the financial members present.
 - (iv) every financial member present shall be entitled to one vote and in the case of an equality of votes the chairman shall have a second or casting vote.
 - (v) voting shall be by show of hands or a division of members, unless not less than financial members present demand a ballot, in which event there shall be a secret ballot.
 - (vi) the chairman shall appoint two members to conduct the secret ballot in such manner as he shall determine and the result of the ballot as declared by the chairman shall be deemed to be the resolution of the meeting at which the ballot was demanded.
 - (vii) the secretary shall cause full and accurate minutes of all questions, matters, resolutions and other proceedings of every committee meeting, annual meeting and general meeting to be entered in a book to be provided for that purpose, such book to be open for inspection at all reasonable times by any financial member who previously applies to the secretary for that inspection.

BY-LAWS

24. The committee may from time to time make, amend or repeal by-laws, not inconsistent with this constitution, for the internal management of the association and any by-law may be set aside by a general meeting of members.

ALTERATION OF CONSTITUTION

25. This constitution may be amended from time to time by a resolution carried at any annual or general meeting.
26. The committee shall provide for a common seal and for its safe custody. It shall only be used by the authority of the committee and every instrument to which the seal is affixed shall be signed by the president and shall be countersigned by the secretary or by some other person appointed by the committee for the purpose.

FUNDS

27. (a) The income and property of the association shall be applied in promotion of its objects.
- (b) The funds of the association shall be banked in the name of the association in such bank as the committee may from time to time direct.
- (c) Proper books and accounts shall be kept and maintained showing correctly the financial affairs of the association and the particulars usually shown in books of a like nature.
- (d) All moneys shall be banked as soon as practicable after receipt thereof.
- (e) All amounts of \$20 or over shall be paid by cheque signed by any two of the president, secretary or treasurer.
- (f) Cheques shall be crossed "not negotiable" except those in payment of wages, allowances or petty cash recoupments which may be open.
- (g) The committee shall determine the amount of petty cash which shall be kept on the imprest system.
- (h) Accounts for payment shall be presented and passed at a committee meeting.
- (i) As soon as practicable after the end of each financial year the treasurer shall cause to be prepared a statement of receipts and payments and income and expenditure and a balance sheet for the financial year just ended.
- (j) All such statements shall be examined by the auditor who shall present his report upon such audit to the secretary prior to the holding of the annual general meeting next following the financial year in respect of which such audit was made.
- (k) No honorarium shall be granted to any person from the funds of the association and no dividend shall be paid to, and no income or property of the association shall be distributed amongst the members.

FINANCIAL YEAR

28. The financial year of the association shall close on in each year.

DISSOLUTION

- 29(a) The association shall be dissolved -
- (i) if the membership is less than three persons; or
 - (ii) if a special resolution to that effect is carried by a vote of a three-fourths majority of the financial members present at a general meeting convened to consider the question.
- (b) Where a special resolution is carried pursuant to sub-rule (a)(ii) the property and other assets of the association remaining after the payment of all expenses and liabilities may, subject to the approval of the Minister, be handed over to some other association having similar objects or in part similar objects as the majority of members present at such general meeting, by special resolution, may decide.
- (c) Where subrule (a)(i) applies or no special resolution is carried the provisions of section 30(3) of the Associations Incorporation Act 1975 shall apply.

FOURTH SCHEDULE

(S. 15)

POWERS

1. To take, or otherwise acquire, and hold shares, debentures or other securities of any company or body corporate.
2. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the association, or the dependants of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.
3. To take on lease or in exchange, hire, or otherwise acquire any real or personal property of any kind whatsoever or any rights or privileges which the association may think necessary or convenient for the furtherance of its objects.
4. To invest and deal with the money of the association not immediately required in such manner as may from time to time be thought fit.
5. In furtherance of its objects to lend and advance money or give credit to any person or body corporate; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or body corporate, and otherwise to assist any person or body corporate.

6. To borrow or raise money either alone or jointly with any other person or legal entity in such manner as may be thought proper and whether upon fluctuating advance account or overdraft or otherwise and to represent or secure any moneys and further advances borrowed or to be borrowed alone or with others as aforesaid by notes secured or unsecured, debentures or debenture stock perpetual or otherwise, or by mortgage, charge, lien or other security upon the whole or any part of the association's property or assets present or future and to purchase, redeem or pay-off any such securities.

7. To remunerate any person or body corporate for services rendered, or to be rendered and whether by way of brokerage or otherwise in placing or assisting to place or guaranteeing the placing of any unsecured notes, debentures or other securities of the association, or in or about the association or promotion of the association or in the furtherance of its objects.

8. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, and other negotiable or transferable instruments.

9. To take or hold mortgages, liens or charges, to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the association's property of whatsoever kind sold by the association, or any money due to the association from purchasers and others.

10. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the association.

FIFTH SCHEDULE

(S. 27)

RETURNS

The annual return of an incorporated association shall, in addition to the particulars requires by Section 27, include -

- (a) in the case of all associations the address of the principal office of the association; and
- (b) in the case of a charitable association or show society or any association which makes an appeal to the public for support or which is directed by the Minister so to do either generally or in a particular case -

Companies Act
Section 159(2)

- (i) particulars of the total amount of the indebtedness of the association in respect of all charges registered or exempted from registration over the assets of the association;
- (ii) a copy of the last balance sheet prepared in accordance with section 26;
- (iii) a copy of the chairman's report presented to the last preceding annual general meeting.

SIXTH SCHEDULE

(S. 42)

FEEES

	\$
On an application for incorporation, including the lodging of all necessary documents in support, and issue of certificate of incorporation	30.00
On an application for approval of amalgamation of incorporated associations, including the lodging of all necessary documents in support, cancellation of certificates of incorporation and issue of fresh certificate of incorporation	30.00
On an application for approval of change of name, including the lodging of all necessary documents in support, cancellation of certificate of incorporation and issue of fresh certificate of incorporation	30.00
On application for approval of alteration of rules, including lodgment of special resolution	10.00
On lodging of annual return or any other document	5.00
On lodging of resolution for winding-up	5.00
For a copy or extract made and certified by the Minister of any document in his custody for each copy or extract not exceeding one page	3.00
For each additional page	1.00
For certifying by the Minister of a copy or extract of any document in his custody where a printed or typed copy is supplied for each copy or	
For each copy or extract not exceeding one page	2.00
For each additional page	1.00
For each search or inspection, in relation to an incorporated association, of the registers kept by or documents lodged with the Minister	2.00
For furnishing information at the request of a person made by post a further fee of	1.00
For late lodgment of annual return -	
(a) if lodged within one month after the period prescribed by law	1.00
(b) if lodged more than one month after the period prescribed by law but within two months after the period so prescribed	2.00
(c) if lodged more than two months after the period prescribed by law	10.00
Provided that the Minister may, if satisfied that just cause existed for the late lodgment, waive in whole or in part the additional fee under subparagraphs (a), (b) or (c) of this item.	