

Associations Incorporation And Other Legislation Amendment Bill 2006

Explanatory Notes

Title of the Bill

Associations Incorporation and Other Legislation Amendment Bill 2006.

General Outline

Background

The *Associations Incorporation and Other Legislation Amendment Bill 2006* (the Bill) amends the *Associations Incorporation Act 1981* (the AI Act) and the *Classification of Computer Games and Images Act 1995* (the CCGI Act) and the *Classification of Publications Act 1991* (the CP Act).

The AI Act, which commenced in 1982, provides a simple and inexpensive mechanism for non-profit groups to incorporate. In Queensland, there are now approximately 20,000 registered associations. These include social and sporting clubs, artistic societies, groups with religious, patriotic and political interests, professional associations, charitable organisations and youth, voluntary and community groups. They range from small, locally based organisations comprised entirely of volunteers, to licensed clubs staffed by professional managers with annual financial turnover of close to \$30M.

While incorporation under the AI Act is not compulsory, those organisations which elect to incorporate obtain a number of benefits. For example, an association incorporated under the Act is a separate legal entity and therefore it has all the powers of an individual and is legally able to do things in its own name such as own property, enter a lease or sue or be sued. The personal liability of the association's members and management committee is also limited.

However in addition to the benefits that can be gained from incorporation, there are a number of corresponding obligations. For example, application

fees must be paid, and associations must provide the Office of Fair Trading (OFT) with annual returns and audited financial statements. Associations must also comply with various provisions in the AI Act which regulate their administration, and are required to take out public liability insurance.

Review of the AI Act

The review of the AI Act commenced in 2003. In February 2005, a public consultation paper titled “Review of the *Associations Incorporation Act 1981*” was released. Some 280 stakeholders responded to an invitation to express their views on a wide range of issues facing non-profit organisations in Queensland.

The review found that while incorporation under the AI Act has been popular, and the number of associations has steadily increased, there are concerns with aspects of the AI Act’s operation.

These include:

- (1) eligibility for incorporation - issues arise in determining whether associations are genuinely established for non-profit purposes;
- (2) types of associations - the changing profile of associations means those with significant financial turnover require increased monitoring and regulation beyond the scope of the current Act;
- (3) dispute resolution - associations and their members often experience difficulty in resolving internal disputes. (Resolving issues in the Supreme Court which has jurisdiction to deal with such disputes can be expensive);
- (4) conflicts of interest – issues arise with committee members voting on contracts which benefit them directly;
- (5) public liability insurance – some associations find it difficult to obtain insurance due to the cost of premiums or cover no longer being available; and
- (6) reporting and auditing requirements - reporting requirements can impose an unjustifiably heavy burden on smaller associations.

Because of the complexity associated with issues (1) to (4), amendments to the AI Act are being progressed in two stages. This will facilitate the earlier passage of amendments in relation to issues (5) and (6) together with other minor amendments.

Policy Objectives of the Bill

The key policy objectives of the Bill are to address:

- Mandatory public liability insurance – some associations are unable to obtain public liability insurance due to the cost of premiums, or cover no longer being available.
- This is addressed by removing the mandatory requirement for associations to take out public liability insurance. As a safeguard associations will be required to investigate the need to take out public liability insurance and report their decision to all members and inform other parties that might be affected.
- The mandatory public liability insurance requirement has been retained for associations that hold land on trust under the *Land Act 1994* because this requirement was key to the basis upon which such land was granted. It has also been retained for associations that own or lease land. These associations are generally larger associations which would be likely to take out public liability insurance as a result of conducting a risk assessment of the need for such cover.
- Reporting and auditing requirements - smaller associations are experiencing high costs in complying with the reporting and auditing requirements under the AI Act.
- This is addressed by introducing a ‘tiered system’ of reporting relieving associations with total income and current assets of less than \$100,000 from full audit and reporting requirements. Some 15,000 community based associations are likely to benefit from reduction of the current requirements of the AI Act.

The Bill is considered to be a reasonable and appropriate way of achieving the objectives and will reduce the financial burden on smaller associations.

Other amendments

The remaining amendments will have the potential to reduce disputes between members of an association, improve compliance with the Act and address simple anomalies in the Act.

Classifications Acts

Amendments to the Classifications Acts will address an incorrect reference in the CCGI Act as a result of amendments to Commonwealth legislation and allow for evidentiary certificates in certain circumstances under the CP Act.

Consistency with Fundamental Legislative Principles

The proposal to allow delegation of the chief executive's power to grant or refuse an application to use an unsuitable name or to exempt an association from using the word 'incorporated' allows the delegation of legislative power. This delegation of legislative power is justified as it will significantly simplify the operation of the Act. There is also no intention to waiver from present Departmental policy to recommend the granting of an exemption only in limited circumstances.

The proposal to amend section 32 of the *Classification of Publications Act 1991* to allow evidentiary certificates to be used where a publication was not classified prior to the date of its sale may be interpreted as having some retrospective effect. The *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995* already allows evidentiary certificates to state that a film or computer game would, if classified, have been classified as a stated classification. The amendment is justified because it corrects an anomaly in that many publications may also be classified after the date of an offence, (ie after being seized by inspectors) and simply allows the use of evidentiary certificates in such circumstances.

Administrative cost to Government

It is not expected that the proposed amendments will create any additional costs in administering the AI Act.

Consultation

Government

All agencies were sent a copy of the consultation paper. Agencies were also provided with copies of the policy submission prior to Cabinet consideration in April 2006. Targeted consultation with key agencies was undertaken during the drafting of the Bill.

Community

A public consultation paper released in February 2005 provided an opportunity for stakeholders to express their views about a wide range of issues facing non-profit organisations in Queensland. The consultation paper attracted some 280 submissions which have been analysed and considered as part of the review of the AI Act. The AI Act review has also been informed by a range of other correspondence and representations from stakeholders on issues facing associations.

Targeted consultation with the key stakeholder groups was undertaken during the drafting of the Bill. These groups included: Clubs Queensland, Queensland Council of Social Service Inc., Surf Life Saving Queensland, the Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology and the Queensland Law Society.

Results of Consultation

The key stakeholder groups generally support the Bill.

Notes on Provisions

Part 1 Preliminary

Clause 1 short title

Clause 1 is the short title of the *Associations Incorporation and Other Legislation Amendment Act 2006*.

Clause 2 Commencement

Clause 2 provides that the Act will commence on proclamation.

Part 2 *Amendment of Associations Incorporation Act 1981*

Clause 3 Act amended in pt 2 and schedule

Clause 3 identifies the AI Act as the Act being amended by part 2 and the schedule.

Clause 4 Insertion of new s 1B

1B Act prevails if association's rules are inconsistent with Act

Clause 4 amends Part 1 Division 2 **Interpretation** by inserting a new *section 1B* to make it clear that if a rule of an association is inconsistent with the AI Act the AI Act prevails to the extent of the inconsistency.

This provision has been inserted as changes to the AI Act may mean that some associations have rules that are inconsistent with new provisions in the AI Act. For example, Schedule 3 of the *Associations Incorporation Regulation 1999* requires the rules of an association to prescribe the quorum size for a general meeting, and such rules may be inconsistent with the minimum quorums for general meetings prescribed in the new *section 57A*.

Clause 5 Amendment of s 2 (Definitions)

Clause 5 amends the definitions section of the AI Act by relocating definitions to the Schedule to the AI Act and providing for the following new definitions:

- Accountant;
- Approved person;
- Auditor;
- Current assets;
- End date;
- Financial document;
- Financial statement;
- Financial year;

Level 1 incorporated association;
Level 2 incorporated association;
Level 3 incorporated association;
Nominated address;
Reportable financial year; and
Total revenue.

Clause 6 **Amendment of s 6 (Association may resolve to incorporate and adopt proposed rules)**

Clause 6 amends *section 6* which provides that an association may resolve to incorporate and adopt proposed rules.

New *section 6(1)* is amended by deleting ‘special resolution’ and providing that an association may decide to incorporate under the AI Act by passing a resolution by the votes of at least $\frac{3}{4}$ of the association’s members who are present and entitled to vote on the resolution.

This amends an anomaly. A decision to incorporate requires the passing of a simple resolution, however special resolutions can not be passed until an association is incorporated. Once incorporated, if an association wishes to pass a special resolution, the provisions of *section 3* of the AI Act must be complied with.

Clause 7 **Amendment of s 12 (Chief executive to make decision about application)**

Clause 7 amends *section 12* which gives the chief executive the power to make a decision about an application by an association for incorporation.

New *subsection (2)* to *section 12* makes it clear that the chief executive may refuse an application for incorporation if the chief executive is satisfied that the proposed rules of the association do not comply with the AI Act. This clarifies uncertainty on this point.

Clause 8 **Amendment of s 16 (Register of incorporated associations)**

Clause 8 amends *section 16* which provides for the keeping of a register by the chief executive of incorporated associations.

The amendment to *section 16* removes the requirement for the register to include the address of the association's registered office in *section 16(2)(b)*. Instead the register is to contain the association's nominated address. The need for a registered office is unnecessary as there is no requirement in the AI Act that documents be served at the registered office of an association, nor that any of the association's documentation must be kept there.

New *section 16(3)* provides that the register must include copies of the association's financial documents as lodged pursuant to an association's financial reporting requirements under new part 6 division 2 of the AI Act. This will clarify that these documents will be available in the register for inspection under *section 18* of the AI Act.

Clause 9 Insertion of new s 16A (Use of information on register)

Clause 9 amends *section 16* which provides for the keeping of a register by the chief executive of incorporated associations by inserting a new *section 16A*.

New *section 16A(1)* prevents the use of information obtained from the register to contact or send material to an association or member or to disclose such information to someone else, knowing that it is likely to be used in advertising for political, religious, charitable or commercial purposes.

An example for *subsection (1)* is putting a person's name and address on a mailing list for advertising material.

New *section 16A(2)* states that *subsection (1)* does not apply if the use or disclosure of the information is approved by the association.

The amendment is aimed at prohibiting access to the register for direct marketing purposes.

Clause 10 Amendment of s 17 (Registered office)

New heading (Nominated address for service)

Clause 10 amends *section 17(1)* which provides that associations must have a registered office. This requirement has been replaced by a requirement to nominate an address for the service of documents. The requirement to have a registered office is considered an unnecessary burden

as no documents are required by the Act to be kept there and the current service provision in *section 138* of the Act makes no reference to service at a registered office.

New *section 17(1)* provides that the management committee of an association must ensure the association has a ‘nominated address’ for service of documents and must give the chief executive written notice of the nominated address.

Section 17(2) and the example have been amended by replacing ‘registered office’ with ‘nominated address’.

Section 17(4) has been amended to provide that members of the management committee may change the association’s nominated address by giving the chief executive notice in the approved form.

Clause 11 Amendment of s 18 (Inspecting register)

Clause 11 amends *section 18* which provides for inspection of the register on payment of a fee by inserting a new *subsection (2A)*.

New *section 18(2A)* allows the chief executive to withhold information about the association or a member if the chief executive has reasonable grounds for believing the disclosure would put the association or member at risk of harm.

Examples of such information are: the address of a women’s refuge or the address of a member of an association who is a party to a domestic violence order.

The amendment will enable the chief executive to withhold information about the association or a member in certain circumstances.

New *section 18(2A)* has been renumbered as *section 18(3)* and *section 18(3)* has been renumbered *section 18(4)*.

Clause 12 **Amendment of s 29 (Name of incorporated association to include ‘incorporated’ etc.)**

New heading (Incorporated association’s name to include ‘incorporated’ and be in English characters)

Clause 12 amends *section 29* which provides that an incorporated association must have the word ‘incorporated’ or ‘inc’ as part of and at the end of its name.

Section 29 has been amended to provide a new *subsection (3)* requiring the association’s name to be in English characters. This amendment will ensure that persons dealing with an association understand which association they are in fact dealing with.

Clause 13 **Amendment of s 32 (Name of incorporated association to appear on documents)**

Amended heading (Registered name of incorporated association to appear on documents)

Clause 13 amends the heading of *section 32* by inserting the word ‘registered’ before the word ‘name’ and by providing that an association must ensure that documents which the association endorses or issues have the association’s name in legible English characters. Currently some associations choose to use a name other than the one registered. To ensure that persons dealing with the association are not misled, the registered name in legible English characters must appear on any official documents.

Clause 14 **Replacement of s 54 (Form in which rules must be kept)**

Clause 14 replaces *section 54* which provides for the form in which rules must be kept.

New *section 54(1)* provides that an association’s rules, as lodged with the chief executive or a copy given to someone must be set out in printed legible form.

New *section 54(2)* provides that if an association’s rules are not written in the English language, a translation of the rules into English, certified by a

person to be a correct translation, must accompany any copy of the rules given to someone.

New *section 54(3)* provides that no offence is committed against *subsection (2)* if a translation of the rules is not required.

The amendment is consistent with the *Corporations Act 2001*, and with court requirements that documents written in a language other than English must be accompanied by a certified translation. The amendment also complements the amendment to section 130 of the Act.

Clause 15 Replacement of ss 55 and 56

New headings

s 55 (Annual general meetings)

s 56 Rules may allow meetings using communication technology)

Clause 15 replaces *section 55* and *section 56*. *Section 55* provides that the first annual general meeting of an association must be held within 18 months and *section 56* provides for subsequent annual general meetings.

New *section 55* provides that an association must hold an annual general meeting within 6 months after the end of the association's reportable financial year.

New *section 56* provides that an association may make rules regarding the holding of meetings by the use of any technology that reasonably allows members to hear and take part in discussions as they happen, for example, by the use of teleconferencing technology. A person who participates in such a meeting is taken to be present at the meeting.

New *section 55* simplifies and consolidates both *section 55* and *section 56* by providing in one provision when annual general meetings are to be held. The amendment of *section 55*, together with a definition for *reportable financial year* will clarify when financial statements must be lodged.

New *section 56* takes into account improvements in technology and enables associations to take advantage of modern means of communication.

Clause 16 **Amendment of s 57 (General meetings)**

**New heading (Management committee to
ensure association complies with its rules
for meetings)**

Clause 16 provides a new heading for *section 57* and deletes *section 57(3)* which provides that if an association makes decisions in breach of its rules about quorums for the meeting, the decisions have no effect. The provision simply provides a new heading for *section 57* to reflect the obligations of the management committee in relation to the calling and holding of meetings which must comply with the association's rules. *Section 57(3)* has been reworded and inserted into new *subsection 57A(3)* and minimum quorums are provided for in new *subsections 57A (1)* and *57A(2)*.

Clause 17 **New subsection 57A (Minimum quorum for
general meetings)**

Clause 17 amends *section 57*, which makes provisions in relation to general meetings, by inserting two new subsections.

New *subsection 57A (1)* provides a minimum quorum for a general meeting of at least the number of members elected or appointed to the association's management committee at the close of the association's last general meeting plus one.

New *subsection 57A(2)* provides that if all members of the association are members of the association's management committee, the quorum is the total number of members less one.

New *subsection 57A(3)* provides that if a decision is made at a general meeting for which there is no quorum the decision has no effect.

These amendments are intended to address the inadequacy of existing provisions concerning quorums at general meetings. The Model Rules prescribe the quorum for a general meeting to be double the number of members of the association who are on the management committee plus one other member (clause 28 of the Model Rules). The review of the Act revealed that in many cases where an association has a small number of members, the majority of those members are on the association's management committee, and as such the association is unable to make up the prescribed quorum.

New *subsection 57A(1)* will overcome this problem. In addition new *subsection 57A(2)* will accommodate situations where not all the members are able to attend a general meeting.

New *subsection 57A(3)* provides that any decisions made at a general meeting for which there is no quorum will have no effect.

New subsection 57B (Inspection of minutes)

New *subsection 57B(1)* provides for inspection of minutes for a particular general meeting. The association's secretary must, within 28 days after a request by a member is made, make the minute book for a particular meeting available for inspection at a mutually agreed time and place and give the member copies of the minutes.

New *subsection 57B(2)* provides that the association may require the member to pay the reasonable costs of providing the material.

As access to minutes of meetings can be a cause of disputes within associations this new provision will enable members to access minutes of general meetings and obtain copies of those minutes.

Clause 18 Replacement of pt 6, div 2 (Audits)

Division 2 Financial reporting for incorporated associations

Clause 18 replaces Part 6 division 2 with new financial reporting requirements.

Section 58 Definitions for div 2

New *section 58* contains the following definitions for Division 2:

- Accountant;
- Approved person;
- Auditor;
- Current assets;
- End date;

Level 1 incorporated association;

Level 2 incorporated association;

Level 3 incorporated association; and

Total revenue.

Definition of *current assets*

Current assets of an association are defined to mean the assets held by the association as at the end of the association's last financial year, other than real property or assets capable of depreciation, and includes amounts held in financial institutions, stocks and debentures.

Examples of assets capable of depreciation are vehicles and office equipment.

The intention of this section is to only capture assets that are readily realisable.

Definition of *total revenue*

Total revenue of an association is defined to mean the association's total income during the last financial year from all the association's activities before any expenses, including the cost to the association of goods sold by the association, are deducted.

The intention of this section is to take into account all income of the association without deducting any expenses such as the cost to the association of acquiring goods sold by the association or any other expenses associated with generating the association's income, for example rent. The term 'total income' has been used instead of the term 'gross income' as 'gross income' is often understood to mean "sales revenue less cost of goods sold" and this is not the intention of the definition.

Section 58A Meaning of *reportable financial year*

New *section 58A* provides the meaning for an association's reportable financial year as being calculated either from the time of incorporation or from the time an association changes its financial year. A reportable financial year will never be less than 3 months or more than 15 months.

Section 59 **Level 1 incorporated associations and particular level 2 and 3 incorporated associations**

New *section 59(1)* states that the section applies to a level 1 incorporated association and particular level 2 and 3 incorporated associations. The particular level 2 and 3 associations are those that are required to have an audit conducted under the *Collections Act 1966*, the *Gaming Machine Act 1991* or under any law for any other purpose.

New *section 59(2)* provides that within six months after the end of each financial year the management committee of a level 1 incorporated association and a level 2 and 3 association to which new *section 59* applies must prepare a financial statement for its last reportable financial year (see *section 58A* for meaning of *reportable financial year*). A level 1 association must have that statement audited by an auditor or an accountant. A level 2 or 3 association can have their financial statement audited by either an auditor, an accountant or an approved person (see *section 58* for definition of *accountant*, *approved person* and *auditor*). All associations must present the financial statement and the signed report on the audit to the association's annual general meeting for adoption.

New *section 59(3)* provides that within one month after the financial statement and the signed report on the audit are presented to the association's annual general meeting, a copy of the financial statement (as adopted, signed and dated by the president or treasurer of the association) must be lodged with the chief executive. If the financial statement is not adopted then the statement as presented to the meeting (signed and dated by the president or treasurer of the association) must be lodged. In addition, a copy of the signed auditor's report, a return in the approved form and the fee prescribed under a regulation must also be lodged.

New *section 59(4)* provides that if *subsection (3)* is not complied with, the secretary, president and treasurer of the association commit an offence.

New *section 59(5)* provides that a person must not audit a financial statement if the person is (a) the secretary or a member of the management committee, (b) an employee of the association, (c) a partner, employer, or employee of the secretary, or a partner, employer or employee of a member of the management committee, of the association, (d) a spouse of a person mentioned in (a), (b) or (c), or a person who is wholly dependent on a person mentioned in (a), (b) or (c).

New *section 59(6)* provides that a person who is a partner in an unincorporated body must not audit a financial statement if *subsection (4)* prohibits any of the partners of the unincorporated body from auditing the financial statement.

Example for *section 59(6)*

“A” and “B” are partners in an accounting firm. “A” can not conduct an audit because, under *subsection (4)(a)*, “A” is a member of the association’s management committee. “B” also can not conduct an audit because of *subsection (5)*.

The requirement for level 1 associations to provide audited financial statements continues current requirements under the AI Act with some minor changes to detail. Because some government agencies rely on associations to provide audited financial statements to qualify for assessment under funding programs, associations which would otherwise fall under the lesser reporting requirements for level 2 and 3 associations will be required to also provide audited statements. These include associations that are required to have an audit conducted under the *Collections Act 1966*, the *Gaming Machine Act 1991* or under any law for any other purpose. Any law for any other purpose would normally be to satisfy a requirement under a funding agreement with another government agency, for example, the Department of Local Government, Planning, Sport and Recreation, the Department of Housing and the Department of Emergency Services.

The current discretion in the AI Act allowing the chief executive to approve a person with the necessary experience and qualifications to conduct the audit has been retained. This will enable the Office of Fair Trading to continue to approve such persons who will otherwise be qualified but may no longer be a member of the different accounting bodies under the definition of an “approved accountant.”

Section 59A Other level 2 incorporated associations

New *section 59A(1)* states that the section applies to a level 2 association that is not required to have an audit conducted under the *Collections Act 1966*, the *Gaming Machine Act 1991* or under any law for any other purpose.

New *section 59A(2)* provides that within six months after the end of each financial year, a level 2 incorporated association must prepare a financial statement for its last reportable financial year (see *section 58A* for meaning

of *reportable financial year*) and present that statement to the association's annual general meeting for adoption, together with a further statement signed by an auditor, an accountant or an approved person (see *section 58* for definition of *accountant*, *approved person* and *auditor*) that states that the person has sighted the association's financial records and the records show the association has bookkeeping processes in place to adequately record the association's income and expenditure and dealings with its assets and liabilities.

New *section 59A(3)* provides that within one month after the financial statement and the statement signed by an auditor or an approved accountant or a person approved by the chief executive (as required under new *subsection 59A(2)(b)*) are presented to the association's annual general meeting, a copy of the financial statement (as adopted, signed and dated by the president or treasurer of the association) must be lodged with the chief executive. If the financial statement is not adopted then the statement, as presented to the annual general meeting (signed and dated by the president or treasurer of the association), must be lodged. In addition a copy of the statement signed by the registered auditor or the approved accountant, or a person approved by the chief executive as having the necessary experience or qualifications to provide the statement, (as required under new *subsection 59A(2)(b)(ii)*) a return in the approved form, and the fee prescribed under a regulation must be lodged.

New *section 59A(4)* provides that if *subsection (3)* is not complied with the secretary, president and treasurer of the association commit an offence.

New *section 59A (5)* provides that a person must not sign the statement if the person is (a) the secretary or a member of the management committee, (b) an employee of the association, (c) a partner, employer, or employee of the secretary, or a partner, employer or employee of a member of the management committee, of the association, (d) a spouse of a person mentioned in (a), (b) or (c), or a person who is wholly dependent on a person mentioned in (a), (b) or (c).

The lesser reporting requirements for other level 2 associations means they will not have to provide audited financial statements. They will only have to provide a statement signed by an auditor or an approved accountant (as defined in the AI Act) or by a person approved by the chief executive as having the necessary experience or qualifications, stating that the person has sighted the association's financial records which show that the association has bookkeeping processes in place to adequately record the

association's income and expenditure and dealings with its assets and liabilities.

Again the chief executive will have discretion to approve a person with the necessary experience and qualifications to provide the statement. This will enable the Office of Fair Trading to continue to approve such persons who will otherwise be qualified but may no longer be a member of the different accounting bodies under the definition of an "approved accountant."

Section 59B Other level 3 incorporated associations

New *section 59B(1)* states that the section applies to a level 3 association that is not required to have an audit conducted under the *Collections Act 1966*, the *Gaming Machine Act 1991* or under any law for any other purpose.

New *section 59B(2)* provides that within six months after the end of each financial year a level 3 incorporated association must prepare a financial statement for its last reportable financial year (see *section 58A* for meaning of *reportable financial year*) and present that statement to the association's annual general meeting for adoption together with a further statement, signed by the association's president or treasurer, that the association keeps financial records in a way to properly record the association's income and expenditure and dealings with its assets and liabilities.

New *section 59B(3)* provides that within one month after the financial statement and the statement signed by the association's president or treasurer (as required under new *subsection 59B(2)(b)*) are presented to the association's annual general meeting, a copy of the financial statement (as adopted, signed and dated by the president or treasurer of the association) must be lodged with the chief executive. If the financial statement is not adopted then the statement, as presented to the meeting (signed and dated by the president or treasurer of the association) must be lodged. In addition, a copy of the statement signed by the association's president or treasurer (as required under new *subsection 59B(2)(b)(ii)*), a return in the approved form, and the fee prescribed under a regulation must be lodged.

New *section 59A(4)* provides that if *subsection (3)* is not complied with the secretary, president and treasurer of the association commit an offence.

The lesser reporting requirements for other level 3 associations means they will not have to provide audited financial statements. They will only have to provide a statement signed by the association's president or treasurer that states the association keeps financial records so as to properly record the

association's income and expenditure and dealings with its assets and liabilities. As there is no mandatory involvement of an auditor or an approved accountant for other level 3 associations there is no need for any discretion in the chief executive to approve a person who would otherwise be qualified to perform that work.

Section 59C Inspection of financial documents

New *section 59C* makes provision for inspection of financial documents by a member of an association. New *section 59C(1)* provides that the association's secretary must, within 28 days after a request by a member of the association, make the association's financial documents available for inspection at a mutually convenient time and place and give the member copies of the documents.

New *subsection 59C(2)* provides that the association may require the member to pay the reasonable costs of providing copies of the documents.

As access to financial documents can be a cause of disputes within associations this new provision will enable members to access and obtain copies of those documents directly from their association rather than having to resort to inspecting the register under *section 18* of the AI Act, although that will still be possible.

Section 59D Defence

New *section 59D* provides a defence to a prosecution for an offence against a provision in respect of the financial reporting requirements. The defence enables a member to prove that the member took all reasonable steps to ensure the provision was complied with.

As some associations may occasionally find it difficult to determine which level they come within to comply with the new 'tiered reporting' requirements, this provision has been inserted to provide protection to a member in the event of a prosecution for failing to comply with the reporting requirements. The section gives a member the opportunity to prove that he/she took all reasonable steps to ensure the provision in respect of the financial reporting requirements was complied with.

Section 59E Approved person

New *section 58* defines an *approved person* to mean a person approved by the chief executive under section 59E.

New *section 59E* provides that the chief executive may approve a person as an approved person if satisfied the person has the necessary experience or qualifications to conduct an audit under new *section 59* or to provide a signed statement mentioned in new *section 59A(2)(b)(ii)*.

**Clause 19 Amendment of s 62 (Election of
management committee)**

Clause 19 amends *section 62* which provides for the election of members of the management committee and that the rules of an association may permit the management committee to fill a casual vacancy on the management committee, by adding a new *subsection (3)*.

New *section 16 (3)* defines ‘casual vacancy’ to mean a vacancy which happens when an elected member of the management committee resigns, dies or otherwise stops holding office.

This amendment has been made to clarify the circumstances in which a ‘casual vacancy’ may arise.

**Clause 20 Amendment of s 63 (Meetings of
management committee)**

Clause 20 amends *section 63*, which provides for meetings of the management committee, by deleting *subsection (2)* which provides for the holding of meetings by telephone, video link or another form of communication.

Clause 21 Insertion of new s 63A

**63A Meetings by using communication
technology**

Clause 21 amends *section 63*, which provides for meetings of the management committee, by inserting a new *section 63A*.

New *section 63A(1)* provides that the management committee may hold meetings, or permit members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen and provides the example of ‘teleconferencing’.

New *section 63A(2)* provides that a member of the management committee who participates in a meeting under *subsection (1)* is taken to be present at the meeting.

This new section clarifies that the rules of an association may now provide for meetings by using technology such as teleconferencing to facilitate holding, and voting at general meetings.

Clause 22 Amendment of s 66 (Management committee to ensure association has appropriate individual as secretary)

Clause 22 amends *section 66*, which provides the requirements for ensuring the management committee has an appropriate individual as a secretary, by inserting a new *subsection (3)*.

New *subsection (3)* clarifies when a secretary is taken to be a member of the management committee and, therefore, entitled to vote. A secretary, who is a member of the association and elected by the association as a secretary (pursuant to *subsection (1)(a)*) or, who is a member of the association's management committee and is appointed by the committee as secretary (pursuant to *subsection (1)(b)*), is a member of the management committee. A secretary who is appointed by the management committee as secretary (pursuant to *subsection (1)(c)*) is not a member of the management committee and is therefore not entitled to vote.

Clause 23 Replacement of s 67 (Secretary may be appointed or removed at any time)

s 67 Management committee may appoint or remove secretary at any time

Clause 23 replaces *section 67* to provide for the appointment or removal by the management committee of the association's secretary at any time. If the management committee removes a secretary who was appointed pursuant to *section 66(1)(b)* of the AI Act the removal does not affect the person's membership of the management committee and hence the person's entitlement to vote.

Clause 24 Insertion of new s 69A

69A Functions of secretary

Clause 24 inserts a new section which sets out the functions of the association's secretary. These functions include:

- calling meetings of the association, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the president of the association;
- keeping minutes of each meeting;
- keeping copies of all correspondence and other related documents; and
- maintaining the association's register of members.

These functions do not limit any other function the secretary has under any other provision of the AI Act and does not prevent an association's rules from stating other functions for the secretary.

Clause 25 Replacement of s 70 (Insurance)

s 70 Public liability insurance generally

Clause 25 replaces the existing *section 70* insurance requirements and provides a *new section 70A* in relation to associations that hold trust land under the *Land Act 1994* and associations that own or lease land.

The requirement under the existing *section 70* to take out insurance is replaced with other requirements for the management committee in relation to insurance. The requirements mandate the steps the management committee must take to consider the issue of public liability insurance and import a rigorous level of accountability regarding public liability insurance. In addition, the association will be put on notice at each annual general meeting of the association's public liability insurance status. These requirements will have the effect of raising association members' awareness of public liability insurance issues.

The new requirements of *section 70* are set out below:

- (1) The management committee of an incorporated association must, at least annually, consider whether there is a need for the incorporated association to take out public liability insurance.

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- (2) The management committee must report its decision about the need for public liability insurance for the association to the association's members at the association's next annual general meeting.
- (3) If the management committee decides there is no need to take out public liability insurance, the committee must, at the annual general meeting –
 - (a) give the association's members reasons for the committee's decision; and
 - (b) advise the members that the failure to take out public liability insurance means that the association's assets would be at risk if there was a successful claim against the association.
- (4) The management committee must ensure that -
 - (a) as soon as practicable after a person applies to become, but before the person becomes, a member of the association, the person is advised –
 - (i) whether or not the association has public liability insurance; and
 - (ii) if the association has public liability insurance – the amount of the insurance; and
 - (b) before a person is elected or appointed as a member of the association's management committee, the person is advised –
 - (i) whether or not the association has public liability insurance; and
 - (ii) if the association has public liability insurance – the amount of the insurance.
- (5) The management committee must ensure that any person or entity with whom the association may have dealings, and which could be expected to have an interest in knowing whether or not the association has public liability insurance, is advised if the association does not have public liability insurance.
- (6) This section is subject to section 70A.

Note –

This section imposes obligations on a management committee but does not impose any criminal penalties in relation to breaches of those obligations.

70A Particular incorporated associations must have public liability insurance

Where an association elects not to take out public liability insurance, a successful claim against the association may result in the association's assets being at risk. Under the *Land Act 1994* some associations hold land on trust, on the basis that the association has public liability insurance. The mandatory public liability insurance requirement has therefore been retained in respect of such associations because this requirement was key to the basis upon which such land was granted. It has also been retained for associations that own or lease real property. These associations are generally larger associations which would be likely to take out public liability insurance as a result of conducting a risk assessment of the need for such cover.

The provision expressly applies the mandatory public liability insurance requirement to associations which lease real property. The term “lease” is not defined in the Act, and therefore takes its ordinary meaning – being an agreement for exclusive possession of real property. A licence to occupy real property is therefore not a “lease”. Examples of a licence arrangement would include the ongoing hire of a hall for one day per week, or the one-off hire of a sports field for a day. In other words, a periodic occupancy of real property is unlikely to fall within the meaning of a “lease”, although the distinction between a “lease” and a “licence” may depend on a case-by-case examination of the facts as they arise.

The new requirements of *section 70A* are set out below:

- (1) This section applies if an incorporated association is –
 - (a) an owner of land; or
 - (b) a lessee of land; or
 - (c) trustee of trust land under the *Land Act 1994*.
- (2) The members of the management committee of the incorporated association must ensure –

- (a) the association takes out public liability insurance in relation to the land in an amount decided by the management committee; and
- (b) the insurance cover is kept current at all times.

Maximum penalty for each member of the management committee – 2 penalty units.

(3) It is a defence to a prosecution of a member of a management committee for an offence against subsection (2) for the member to prove the member took all reasonable steps to ensure the association complied with subsection (2).

Clause 26 Amendment of s 91 (Declaration of applied Corporations legislation)

Clause 26 amends *section 91(3)(d)* which provides a reference to the principal place of business of a company to be read as a reference to the registered office of an association by replacing the words ‘registered office’ with ‘the address nominated for service’.

Clause 27 Amendment of s 93 (Cancellation of incorporation)

Clause 27 amends *section 93* which provides the grounds for cancellation of the incorporation of an association by inserting a new *subsection (1)(f)*.

New *section 93(1)(f)* provides for cancellation of an association that has not lodged with the chief executive documents required to be lodged under part 6, division 2 (financial documents).

Clause 27 amends *section 93 subsections (1) and (2)* by omitting the words ‘by prepaid registered post’. It is considered that service of notices under *section 93* can effectively be given by ordinary pre-paid mail in the same way that all other notices are served under the Act (see *section 138*).

Clause 28 Amendment of s 113 (Who may make an appeal?)

Clause 28 amends *section 113* which provides for an appeal by a person affected by a decision of the chief executive under the AI Act, by replacing the words ‘this Act’ with the words ‘section 112’ to correct a drafting error. This clarifies that a person whose interests are affected by a decision of the

chief executive under *section 112* (Decision on reconsideration) may appeal to the District Court.

Clause 29 Insertion of new s 119A

**119A Chief executive may ask for
information or documents**

Clause 29 provides for the insertion of a new *section 119A*.

New *section 119A (1)* provides that the section applies on receipt of a complaint about a possible contravention of the AI Act.

New *section 119A(2)* provides that the chief executive may give notice to a *relevant person* (see new *subsection 6* for a definition of *relevant person*) requiring that person to give the chief executive information in the person's knowledge, or documentation in the person's possession or control, relating to an association, within a reasonable time and in a reasonable way.

New *section 119A(3)* provides that the chief executive must warn the person it is an offence to fail to give the information or to produce the document, unless the person has a reasonable excuse.

New *section 119A(4)* provides that the person must comply with a requirement under subsection (2) unless the person has a reasonable excuse.

New *section 119A(5)* provides that it is a reasonable excuse if complying with the requirement might tend to incriminate the individual.

New *section 119A(6)* defines *relevant person* to mean:

(a) a person who is, or was, a member of the management committee;
or

(b) a person who is, or was, an auditor, an accountant or an approved person who the chief executive believes, on reasonable grounds in the circumstances, has information or documents relevant to the matter of complaint.

Clause 30 Amendment of s 126 (Evidence)

Clause 30 amends section 126(3) by replacing the word 'actuary' with 'approved accountant'.

Clause 31 Amendment of s 127 (Evidentiary provisions)

Clause 31 amends *section 127 (1)(a), (b) and (c)* by replacing the word ‘specified’ with the word ‘stated’ and by providing a new *section 127(1)(d)*.

New *section 127(1)(d)* provides that on a date stated in the certificate, a financial document required to be given to the chief executive under part 6, division 2 has, or has not, been received by the chief executive.

This new section accommodates the changes made in relation to the financial reporting provisions under new part 6, division 2 of the AI Act and will enable the chief executive to provide a certificate in writing for evidentiary purposes stating that a financial document required to be given under part 6, division 2 has, or has not, been received.

Clause 32 Amendment of s 129 (Delegation)

Clause 32 amends *section 129* which provides for delegation of the chief executive’s powers by omitting *subsection (2)*. This will allow delegation of the chief executive’s powers under section 33(3) in relation to an application for exemption from use of the word ‘incorporated’, and section 45(4) in relation to an application for the use of an ‘unsuitable name’.

Clause 33 Insertion of new s 130A

130A Documents not in English language

Clause 33 provides for a new *section 130A*.

New *section 130A(1)* provides that documents required to be lodged under the AI Act, which are in a language other than English, must be accompanied by a translation into English certified by a person to be a correct translation.

New *section 130A(2)* provides that, for the purposes of the administration of the AI Act, the English version of a document prevails over a non English version.

The amendment is consistent with the Corporations Act 2001, and with court requirements that documents written in a language other than English must be accompanied by a certified translation. The amendment also complements the amendment to section 54 of the Act.

Clause 34 **Amendment of s 138 (Service)**

Clause 34 amends *section 138* which provides for the service of documents by adding that service of documents on the association may now be made at an association's nominated address. (See new requirement for associations to have a 'nominated address' under *section 17*).

Clause 35 **Insertion of new pt 16, div 1 hdg**

Division 1 **Transitional provision for Audit
Legislation Amendment Act 2006**

Clause 36 **Amendment of s 145 (Transitional provision
for Audit Legislation Amendment Act 2006)**

145 **Audits**

Clause 36 amends the heading of *section 145* to read **Audits**

Clause 37 **Insertion of new pt 16, div 2 and schedule**

Division 2 **Transitional provisions for
Associations Incorporation and Other
Legislation Amendment Act 2006**

146 **Nominated address**

New *section 146* provides that if, immediately before the section commences, an association had a registered office complying with *section 17(2)*, as in force immediately before the commencement, the association's registered office is taken to be the association's nominated address.

147 **Association's name**

New *section 147* provides that if on commencement of the section an association's name does not comply with *section 29(3)*, in that the association's name is not in English characters, the association is not required to comply with *section 29(3)* until 3 months after the next annual

general meeting of the association after the commencement. This will give those associations time to comply with the new section.

Associations would have to comply with *section 35(3)* of the AI Act and make an application to the chief executive to change its registered name within 3 months of the passing of a special resolution to change its registered name.

148 Insurance

New *section 147(1)* provides that *section 147* applies if an association has an annual general meeting within 3 months of the commencement of this section. New *section 147(2)* provides that the management committee of the association is not required to comply with *section 70(2)* and (3) until its second annual general meeting after the commencement.

149 Financial reporting

New *section 148* provides that the new provisions in relation to financial reporting only apply to an association if the end date of the association's reportable financial year happens after the commencement of this section.

See *section 58* for the definition of 'end date'. The end date means the date stated in the association's rules to be the end date or closing date of the association's financial year.

150 Approved persons

New *section 149(1)* provides that the section applies if immediately before the section commences, a person was approved by the chief executive under *section 59(1)(b)(v)* of the AI Act.

New *section 149(2)* provides that on commencement, the person is taken to be an approved person for the incorporated association.

Schedule Dictionary

Section 2

Part 3 Amendment of Classification of Computer Games and Images Act 1995

Clause 38 Act amended in pt 3

Clause 38 states that pt 3 amends the *Classification of Computer Games and Images Act 1995*.

Clause 39 Amendment of s 5 (Classification of computer games by computer games classification officer)

Clause 39 amends *section 5(3)* by replacing the word ‘schedule’ in the fifth dot point with ‘the National Classification Code, to the extent it relates to computer games’ and adds subsection (4) to provide that the *National Classification Code* means the Code under the *Classification (Publications, Films and Computer Games) Act 1995 (Cwlth)*.

Part 4 Amendment of Classification of Publications Act 1991

Clause 40 Act amended in pt 4

Clause 40 states that this part amends the *Classification of Publications Act 1991*.

Clause 41 Amendment of s 32 (Evidentiary provisions)

Clause 41 amends *section 32(1)(c)* by renumbering it as *section 32 (1)(d)*. Section 32(1)(c) is reworded to allow a certificate to be used in evidence

which states that a publication would, if classified on a certain date, have held a stated classification.

Schedule Minor amendments to the *Associations Incorporation Act 1981*

Clause 42 Section 31, heading

Clause 42 provides for the renaming of the heading to read 'Registered name on seal'.

Clause 43 Sections 31, (second and third mention), 35(1), 36(1) and (2), 37, 38, 46(2)(a) and 78, before 'name' -

Clause 43 provides for insertion of the word 'registered' before 'name' in each of the above sections.

Clause 44 Sections 35 and 36, heading, before 'name' -

Clause 44 provides for insertion of the word 'registered' before 'name' in the headings of each of the above sections.