



TASMANIA

ASSOCIATIONS INCORPORATION AMENDMENT ACT 1993

No. 13 of 1993

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**ASSOCIATIONS INCORPORATION AMENDMENT ACT
1993**

No. 13 of 1993

AN ACT to amend the *Associations Incorporation Act 1964*

[Royal Assent 12 May 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Associations Incorporation Amendment Act 1993*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Associations Incorporation Act 1964** is referred to as the Principal Act.

Section 2 amended (Interpretation)

4—Section 2 (1) of the Principal Act is amended as follows:—

(a) by omitting the definition of “applicant for incorporation” and substituting the following definition:—

“**applicant for incorporation**” means the person who makes an application for the incorporation of an association under section 7;

(b) by omitting the definition of “objector”;

(c) by omitting “appointed in pursuance of section 14” from the definition of “public officer”.

Section 3 repealed

5—Section 3 of the Principal Act is repealed.

Section 5 repealed

6—Section 5 of the Principal Act is repealed.

Section 6 repealed

7—Section 6 of the Principal Act is repealed.

Section 7 amended (Application for incorporation of association)

8—Section 7 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

*No. 64 of 1964. For this Act, as amended to 1 May 1986, see the continuing Reprint of Statutes. Subsequently amended by No. 99 of 1986 and Nos. 43 and 46 of 1991.

(1) Where the committee of an association authorizes a person to apply for the incorporation of the association under this Act, that person may apply in writing to the Commissioner in a form approved by the Commissioner for the incorporation of the association.

(b) by omitting subparagraphs (iii) and (iv) of subsection (2) (a) and substituting the following subparagraphs:—

(iii) that the applicant is authorized by the committee of the association to make an application for the incorporation of the association; and

(iv) the name and address of the public officer of the association if the public officer is a person other than the applicant for incorporation.

Section 14 amended (Public officer of incorporated association)

9—Section 14 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsections:—

(1) Unless the committee has appointed another person as public officer, the first public officer of an incorporated association is to be the person who applied for incorporation of the association.

(1A) The committee of an association may, before an application is made under section 7 for the incorporation of the association, appoint a person to be the public officer of the association on its incorporation.

(1B) If the office of public officer of an association at any time becomes vacant, the committee of the association must, within 14 days after it becomes vacant, appoint a person to fill the vacancy.

(1C) A person is not eligible to be appointed as a public officer of an incorporated association unless the person has attained the age of 18 years and is resident in the State.

(b) by omitting from subsection (2) “(1) (b)” and substituting “(1B)”.

Section 15 amended (Notification of appointment or change of public officer)

10—Section 15 of the Principal Act is amended by omitting subsection (1).

Section 18 amended (Alteration of rules, objects, &c., of incorporated association)

11—Section 18 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (4) “rules,” before “objects” (first occurring);
- (b) by omitting from subsection (4) “rules, objects,” and substituting “objects”;
- (c) by omitting subsection (5A) and substituting the following subsection:—

(5A) An alteration to the rules of an incorporated association which purports to have the effect of enabling alterations to its rules to be carried out otherwise than in accordance with subsection (1) is of no effect.

Section 24 amended (Accounts and audit)

12—Section 24 (1) of the Principal Act is amended as follows:—

- (a) by omitting “The” and substituting “Unless an incorporated association is exempted under subsection (1B), the”;
- (b) by inserting after subsection (1A) the following subsection:—

(1B) The Commissioner may, by notice in writing given to an incorporated association—

- (a) exempt the incorporated association, either generally or in relation to a specified year, from complying with subsection (1); and
- (b) revoke any exemption given under paragraph (a).

Section 24B amended (Annual returns)

13—Section 24B of the Principal Act is amended as follows:—

- (a) by omitting “An” from subsection (1) and substituting “If an incorporated association is not exempted under section 24 (1B), the”;
- (b) by inserting after subsection (1) the following subsection:—

(1A) If an incorporated association is exempted under section 24 (1B), the incorporated association must, within a period of 6 months after the end of each financial year, lodge with the Commissioner an annual return, signed by the public officer, containing—

- (a) a statement of the association’s income and expenditure for that financial year; and
- (b) a list of the names and residential addresses of the committee for that financial year.

Sections 25A and 25B inserted

14—After section 25 of the Principal Act, the following sections are inserted:—

Application to bring company under Act

25A—(1) A company in respect of which a licence is in force under section 383 of the Corporations Law may apply in writing to the Commissioner, in a form approved by the Commissioner, for incorporation as an association under this Act where—

- (a) the company has passed a special resolution approving the making of the application; and
- (b) the objects of the company are objects for which an incorporated association may lawfully be carried on; and
- (c) the company has articles of association that comply with this Act, or upon incorporation under this Act will have rules or articles of association that so comply, whether by reason of the adoption of rules or the model rules or the alteration of its articles of association.

(2) A company that intends to make an application under subsection (1) may, notwithstanding any other law to the contrary, make an alteration of its articles of association, or adopt rules or the model rules, to have effect from the date on which a certificate of incorporation is granted to it under this Act as if it were an incorporated association and the articles or rules were the rules of an incorporated association.

(3) An application by a company under subsection (1) is to be in a form approved by the Commissioner and—

(a) is to state—

- (i) its proposed name upon incorporation, being a name under which an association may be incorporated in accordance with section 9; and
- (ii) the place in Tasmania where the principal place of administration of the incorporated association is proposed to be situated; and
- (iii) the name and address in the State of a member who is resident in the State and who has been nominated as the first public officer of the proposed incorporated association, being a person who has attained the age of 18 years; and

(b) is to be accompanied by—

- (i) a statement of objects as proposed to be in force upon its incorporation under this Act; and
- (ii) a copy of its articles of association or rules as proposed to be in force upon its incorporation under this Act or a statement that its rules will be the model rules; and
- (iii) the name, address and occupation of each of its directors; and

(c) is to contain such other particulars as may be prescribed; and

(d) is to be accompanied by the prescribed fee.

(4) Where an application is made under this section, the Commissioner, if satisfied that there is no reasonable cause why the company should not be incorporated under this Act and that the company is not carried on for the object of trading or securing pecuniary profit for its members, must—

- (a) incorporate the company under this Act by granting in respect of it a certificate of incorporation; and
- (b) cause a notice of the incorporation of the company under this Act to be published in the *Gazette*.

Effect of transfer of incorporation

25B—(1) Subject to this section, upon the incorporation of a company as an incorporated association pursuant to section 25A—

- (a) the directors of the company become the committee for the purposes of this Act; and
- (b) the company is dissolved and, except as otherwise provided in this Act, none of the provisions of the Corporations Law, after its incorporation under that section, apply to the company; and
- (c) the registration of the company under the Corporations Law ceases to have effect; and
- (d) the property of the company vests in the incorporated association subject to—
 - (i) any trust; and
 - (ii) any covenant, contract or liability—
to which the property was subject immediately before it so vested.

(2) The incorporation of a company as an incorporated association pursuant to section 25A does not affect the identity of the company which is deemed to be the same body before and after the incorporation and no act, matter or thing is affected or abated by the incorporation and, in particular, any claim by or against the company subsisting immediately before its incorporation pursuant to that section may be continued by or against the incorporated association in the name of the company or commenced by or against the incorporated association in the name of the incorporated association.

(3) Without limiting the generality of subsection (2), nothing in subsection (1)—

- (a) affects any right, privilege, obligation or liability acquired or incurred under the Corporations Law, the *Companies (Tasmania) Code* or the *Corporations (Tasmania) Act 1990*; or
- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against the Corporations Law, the *Companies (Tasmania) Code* or the *Corporations (Tasmania) Act 1990*; or
- (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment—

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

Section 31 amended (Extension of time)

15—Section 31 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Subject to subsection (2), where,” and substituting “Where,”;
- (b) by omitting subsection (2).

Section 36 amended (Liability of association on cancellation of incorporation)

16—Section 36 (1) of the Principal Act is amended by inserting “or section 34A,” after “34”.

Section 37 amended (Regulations)

17—Section 37 (2) of the Principal Act is amended by inserting the following paragraph after paragraph (ac):—

- (ad) prescribe the fees payable for the lodgement of documents with the Commissioner under this Act, which may differ according to the document concerned;

Certain amendments to apply despite *Corporations (Tasmania) Act 1990*

18—The amendments to the Principal Act contained in section 14 of this Act have effect despite any provision of the *Corporations (Tasmania) Act 1990*.

[*Second reading presentation speech made in:—*
House of Assembly on 8 April 1993
Legislative Council on 23 March 1993]

