

WESTERN AUSTRALIA.

ASSOCIATIONS INCORPORATION.

59 Vict. No. 20.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 71 of 1947, assented to 10th January, 1948;

No. 8 of 1953,¹ assented to 3rd November, 1953;

No. 2 of 1955, assented to 13th October, 1955;

No. 28 of 1957, assented to 26th October, 1957;

No. 2 of 1962, assented to 27th September, 1962;

No. 77 of 1969, assented to 7th November, 1969;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to make Provision for the Incorporation of Religious and other Bodies.

[Assented to 2nd October, 1895.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as the *Associations Incorporation Act, 1895-1969*.

Short title.
Amended by
No. 77 of
1969, s. 1.

2. In the interpretation of this Act the following words shall have the following meanings:—

Interpre-
tation of
terms.
Amended by
No. 8 of
1953, s. 3.
Association.

The word "Association" shall include churches, chapels and all religious bodies, schools, hospitals, and all benevolent and charitable institutions, mechanics' institutes, and all associations for the purpose of promoting and encouraging literature, science, and

¹ Came into operation on 1st January, 1954: see *Government Gazette*, 11th December, 1953.

art, and all other institutions and associations formed, or to be formed, for promoting the like objects, and any other association, institution, or body which the Attorney General certifies as being one to which the facilities given by this Act ought to be extended: Provided that this Act shall not apply to associations for the purpose of trading or securing pecuniary profit to the members from the transactions thereof.

“Registrar” means the Registrar of Companies appointed under the provisions of the Companies Act, 1943-1951,¹ and includes a duly appointed acting or deputy Registrar.

Mode of incorporation.
Repealed and re-enacted by No. 8 of 1953, s. 4.
Amended by No. 2 of 1955, s. 2; No. 28 of 1957, s. 2.

3. (1) An Association may be incorporated under this Act by a trustee or a person authorised by a majority of the members of the Association so to do, filing with the Registrar the following:—

- (a) A memorial in the prescribed form and containing the particulars therein required to be set forth, together with an affidavit by the trustee or person verifying the contents of the memorial; and
- (b) a copy of the rules and regulations or Trust or Settlement deed of the Association, together with an affidavit by the trustee or person verifying the contents of the copy of the rules and regulations or Trust or Settlement deed of the Association.

(2) The trustee or person shall, after filing the memorial and the rules and regulations or Trust or Settlement deed of the Association as the case may be, cause to be published twice, at an interval of not less than seven nor more than fourteen days, in a newspaper approved by the Registrar and circulating in the district mentioned in the memorial as that in which the Association is situated or established, a notice in the prescribed form, the first of such publications to be made within twenty-eight days of such filing.

¹ Repealed by Companies Act, 1961.

(3) (a) If at any time after the expiration of one month from the date of the later publication of the notice, the trustee or person proves to the satisfaction of the Registrar that the notice as required by the last preceding subsection has been duly published, the Registrar may, subject to the provisions of sections four and four A of this Act, grant to the trustee or person a certificate of incorporation in the prescribed form.

(b) The certificate of incorporation or a copy of the certificate certified by the Registrar shall be received in evidence without further proof in any Court, that the Association to which the certificate refers is duly incorporated under the provisions of this Act.

4. Any trustee, or any person interested in the Association sought to be incorporated, before the expiration of one calendar month from the date of the last published notice may apply to the Supreme Court, or a Judge thereof in Chambers, for an injunction to restrain the trustee or person giving such notice from all further proceedings; and the Court or Judge shall have full power and authority to determine the matters in question, notwithstanding all the parties interested shall not be parties to the suit or affair.

Incorporation may be restrained.

4A. An Association shall not be incorporated under the provisions of this Act by a name which in the opinion of the Registrar is—

When Association shall not be incorporated.
Added by No. 8 of 1953, s. 5.

- (a) offensive;
- (b) likely to mislead the public as to the object or purpose of the Association;
- (c) undesirable; or
- (d) identical with that by which an Association in existence is already incorporated under the provisions of this Act or which in the opinion of the Registrar resembles any such name in a manner calculated or likely to mislead the public; or

- (e) identical with that by which a company is registered under the Companies Act, 1943-1951,¹ or which in the opinion of the Registrar resembles any such name in a manner calculated or likely to mislead the public.

Memorial to
be filed.
Amended by
No. 71 of
1947, s. 3;
No. 8 of
1953, s. 6.

5. (1) Every Association shall, as soon as conveniently may be after such incorporation, file with the Registrar a memorial, in the form prescribed, containing the name or names, together with the place or places of abode of the person or persons authorised to use the common seal of the corporation, with an impression of such seal, and verified by an affidavit of and countersigned by such person or persons, and upon every change of such person or persons or any change of the name of the Association a fresh memorial to the like effect shall be filed with the Registrar and verified.

(2) All such persons, or such one or more of them as shall be fixed by the rules of the Association, shall in all cases countersign any deed, instrument, or document to which the seal of the corporation shall be fixed.

(3) (a) An Association incorporated under the provisions of this Act shall within twenty-eight days after the making of any additional rules, regulations or trusts, or any alteration to any rules, regulations or trusts, file with the Registrar, a copy of the additional rules, regulations or trusts or the alteration to the rules, regulations or trusts.

(b) The copy so filed shall be verified by the affidavit of the person or persons authorised for the time being to use the Common Seal of the Association.

(4) In case any incorporated Association shall neglect to file such memorial as last aforesaid, or such copy of the rules, regulations, and trusts, or of the additions or alterations thereto or therein from time to time, or the copy of any alteration, variation, rescission or addition from time to time made to the objects of the Association required to

¹ Repealed by Companies Act, 1961.

be filed by subsection (4) of section seven A of this Act, then the powers of the Association shall be suspended during such period as the Association shall so neglect as aforesaid. Provided, nevertheless, that every such Association shall be liable to be sued and proceeded against as a corporation; and all dealings and transactions between the Association and any person whomsoever shall be valid against the Association and all persons claiming under such Association, notwithstanding such suspension.

(5) The production of the memorial or of the copy rules, regulations, or trusts for the time being filed with the Registrar under the provisions of this section, or an office copy thereof, shall be conclusive evidence in any Court, and in all proceedings and transactions whatsoever, that the person named in such memorial was at the time of his using the common seal of the corporation duly authorised so to do, and that the registered rules, regulations, and trusts are duly and legally made.

6. Upon such certificate of incorporation as aforesaid being granted in manner hereinbefore provided, the Association shall, as from the date of such certificate, be incorporated for the purposes following, that is to say—

Effect of
incorpora-
tion.
Amended by
No. 8 of
1953, s. 7.

- (1) for the purpose of using the name of the Association, adding thereto the word "incorporated" or the abbreviation "Inc.";
- (2) for the purpose of having and using a common seal (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the Association;
- (3) for the purpose of suing, and being sued, by the name of the corporation, in respect of any claim by or upon the Association, upon or by any person whether interested in the Association or not;

- (4) to purchase, or in any other manner acquire, and hold lands, tenements, and hereditaments, goods, chattels, and effects, and all other real and personal estate, in the name of the Association, and for the purposes thereof, and to let, sell, mortgage or dispose of, and otherwise deal with the same as fully and effectually as an individual owner could do; and for such purposes to execute all such transfers, deeds, mortgages, assurances, instruments, writings, and things as may be necessary or desirable.

Provided that no lands granted to the Association by the Crown before or after the passing of this Act, without pecuniary consideration therefor, shall be sold, mortgaged, or leased for a period exceeding twenty-one years, without the consent, in writing, of the Governor in Council, to be endorsed upon the deed of assurance on such sale, or mortgage, or lease.

Change of
names and
rules of
Association.
Amended by
No. 71 of
1947, s. 4;
No. 8 of
1953, s. 8;
No. 28 of
1957, s. 3.

7. (1) (a) Any Association, with the sanction required by its constitution, may with the written approval of the Registrar change its name, and upon such change being made the Registrar if he is satisfied that the provisions of paragraph (b) of this subsection have been complied with shall note the new name and shall issue a fresh certificate of incorporation altered to meet the circumstances of the case.

(b) Where an Association changes its name under the provisions of paragraph (a) of this subsection, notice of the alteration shall be published by the Association within fourteen days after the alteration is made, or within such longer period as the Registrar may allow, once in a newspaper approved by the Registrar and circulating in the district mentioned in the memorial for incorporation of the Association as that in which the Association is situated or established.

(2) Any Association may from time to time alter, vary, or rescind any or all of its rules and regulations, or the provisions of its trust deed or deeds,

and make new or additional rules and regulations or trusts.

(3) No alteration of name, or alteration, variation, rescission of, or addition to the rules and regulations, or provisions of the trust deed or deeds, shall affect any rights or obligations of the Association, or render defective any legal proceedings instituted by or against the Association, and any such legal proceeding may be continued by or against the Association in its new name.

(4) An affidavit of the person or persons authorised for the time being to use the common seal of the Association that the sanction required by the constitution of the Association to any such alteration of name or such alteration, variation, rescission or addition to the rules and regulations or provisions of the trust deed, or deeds has been duly given shall be conclusive evidence that such sanction has been duly given.

7A. (1) Any Association may from time to time with the sanction required by its constitution, alter, vary, rescind or add to the objects for which it is constituted:

Change of
objects of
Association.
Added by
No. 71 of
1947, s. 5.
Amended by
No. 8 of
1953, s. 9.

Provided that no such alteration, variation, rescission of or addition to the objects of an Association shall be of any force or effect unless and until the Attorney General certifies that after such alteration, variation, rescission or addition is made, such Association will continue to be an Association to which the facilities given by this Act ought to be extended and until the provisions of subsection (4) of this section have been complied with.

(2) No alteration, variation, rescission or addition to the objects of an Association shall affect any then existing rights or obligations of the Association.

(3) An affidavit of the person or persons authorised for the time being to use the common seal of the Association that the sanction required by the constitution of the Association to any such

alteration, variation, rescission or addition to the objects of the Association has been duly given shall be conclusive evidence that such sanction has been duly given.

(4) A copy of any alteration, variation, rescission or addition from time to time made to the objects of an Association shall be filed with the Registrar and shall be verified by the affidavit of the person or persons authorised for the time being to use the common seal of the Association.

(5) The production of the statement of the objects of an Association for the time being filed with the Registrar or an office copy thereof and the production of the copy of all alterations, variations, rescissions or additions made to such objects filed under subsection (4) of this section or an office copy thereof shall be conclusive evidence in all proceedings and transactions whatsoever of the objects of the Association and of any such alteration, variation, rescission or addition to such objects having been duly and legally made.

Affidavit by persons authorised to use common seal.
Added by No. 77 of 1869, s. 2.

7B. Where a provision of this Act requires any act, matter or thing to be verified by the affidavit of the persons authorised, for the time being, to use the common seal of an Association, it is sufficient compliance with such requirements if the affidavit—

- (a) is made by such of those persons as are present in the State at the time the affidavit is made; and
- (b) verifies the name or names of such of those persons as is or are absent from the State at the time the affidavit is made.

Liability of members.

8. No trustee, officer, or member of an incorporated Association shall, as such, be under any personal liability to any creditor of the Association beyond the property of the Association in his hands.

Persons interested may amend rules to enable Association to be incorporated.

9. The proprietors or other persons having the management of, or being interested in, any Association intended to be incorporated or a majority of them, may do all such acts as may be necessary

for bringing such Association under the operation of this Act, and for that purpose such proprietors or persons may alter, vary, or add to the rules and regulations or the provisions of the trust deed or deeds of the Association, so as to enable the same to comply with the provisions of this Act, anything in such rules, regulations, or deeds contained to the contrary notwithstanding, and in all cases in which any such alteration, variation, or addition shall be necessary, the same may be made with the consent of the majority present at a duly convened general or special meeting of the proprietors or other persons having the management of, or being interested in, such association.

10. (1) Subject as in this section mentioned, all personal property held by any trustee or trustees or other persons on the behalf of an Association shall, after incorporation as aforesaid, vest in the corporation; and all real estate vested in any trustee or trustees, or in any other person or persons on behalf of the Association, and described in the memorial next hereinafter mentioned, shall, after the certificate of the incorporation or a certified copy thereof shall be deposited with the Registrar of Deeds and the Registrar of Titles as the case may be, together with a memorial in the form prescribed, verified by the declaration of one or more of such trustees or other persons, vest in the corporation without any conveyance thereof.

Vesting of real and personal estate, subject to trusts, etc.
Amended by No. 8 of 1953, s. 10.

(2) Such real or personal property shall be so vested in the corporation, subject to all trusts, covenants, contracts, and liabilities affecting the same.

10A. Where the common seal of an Association is affixed to any instrument lodged in the Office of Titles for registration under the Transfer of Land Act, 1893, if the instrument is accompanied by a statutory declaration—

Statutory declaration to accompany document to be registered under Transfer of Land Act, 1893.

(a) made by the persons so affixing the seal; and

Added by No. 77 of 1969, s. 3.

(b) certifying that at the time the seal was so affixed they were duly authorised to do so,

a copy of the memorial relating to the Association last filed with the Registrar under subsection (1) of section five of this Act is not required to be filed in the Office of Titles.

Service of
notices.

11. In all cases wherein it may be necessary for any person to serve or to give any summons, demand, or notice or any writ or other proceeding at law or in equity, or otherwise upon any Association incorporated under this Act, service thereof upon the person or persons named in the before-mentioned memorial as the person or persons authorised to use the common seal of the Association shall, by leaving the same at the usual place of abode of any such person or persons, be deemed good and sufficient service of the same respectively on the said Association.

Notices, etc.,
of
Association,
how to be
signed.

12. In all cases wherein it may be necessary for any Association incorporated under this Act to serve or give any summons, demand, or notice of any kind whatsoever, to any person or corporation, such summons, demand, or notice may be given in writing, signed by the person or some one of the persons (if more than one) authorised to use the seal of the Association, or by the solicitor for the time being of the Association, without being required to be under the common seal of the Association.

Affidavits.
Amended by
by No. 8 of
1953, s. 11;
No. 2 of
1962, s. 2.

13. All affidavits and declarations required to be made by this Act may be made before any Justice or any commissioner for taking affidavits for use in the Supreme Court of Western Australia.

14. [*Repealed by No. 8 of 1953, s. 12.*]

Contracts
how made,
varied or
discharged.

15. Contracts on behalf of any incorporated Association may be made, varied, or discharged, as follows:—

- (1) Any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied, or discharged in the name and on behalf of the Association, in writing, under the seal of the Association.

- (2) Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged in the name and on behalf of the Association in writing, signed by any person acting under the express or implied authority of the Association.
- (3) Any contract which, if made between private persons, would by law be valid, although made by parole only, and not reduced into writing, may be made, varied, or discharged by parole, in the name and on behalf of the Association, by any person acting under the express or implied authority of the Association.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Association and all other parties thereto, their heirs, executors, or administrators, as the case may be.

16. (1) Regulations, not inconsistent with this Act, may be made by the Governor prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect, or to give effect to any power, function, duty or authority under this Act, and without limiting the generality of the power conferred by this section, the regulations may prescribe—

Regulations.
Added by
No. 8 of
1953, s. 13.
Amended by
No. 113 of
1965, s. 8.

- (a) the fees to be paid to the Registrar under this Act;
- (b) the forms to be used under this Act;
- (c) the duties of the Registrar for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act, and any matters or things convenient to be prescribed for carrying this Act into effect.

(2) The regulations may prescribe penalties not exceeding forty dollars for any breach thereof.

[*Schedules A, B, C, D, E and F repealed by No. 8 of 1953, s. 14.*]