

## APPENDIX 5: COMPARATIVE TABLE INCORPORATED ASSOCIATIONS LEGISLATION

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The original draft of this comparative table was prepared by Mrs Sally Sievers as at June 2003.

REFORMING NOT-FOR-PROFIT REGULATION

	ACT	NT	NSW	QLD	SA	TAS	VIC	WA
<b>ELIGIBILITY</b>								
Specific definition		4(1) (admin power to certify others)			18(1)	2(1)(a), (b) (admin power to declare others to be eligible)		4(1) (admin power to approve others)
Non-specific	14(1)		7(1)	2, 5(1)			3(1)	
Definition of gain	5		4	4(1)	18(6)		3(2)	4(4)
Prohibition on trading	14(2), 109 (penalty)	4(1)	7(2)(a), 66 (penalty)	5 (prohibition on financial gain)	18(5)	2(1), 21(2)	10(4A), 51(1)	4(2)
Exemptions	15	4(1) (trading assoc)	4(h), Reg 10 (charities)	5			51(4)-(6)	
<b>INCORPORATION PROCESS</b>								
Prior notice/advertisement of intention to apply		5-6, 25A-25B (trading assoc)		10-11 (may be required in specific cases)				6-7
Reservation of name	37		13		53A			
To include denoter of NFP status in name	36	9(2), 9A, 25L (trading assoc)	12(3)	29-33 (unless exempt)	20(3)(a)(ii)	9(3)-(4)	12, 12A	10(b)
Procedure	18	7, 25C (trading assoc)	8-9	6-9	19	7-8	4-5, reg 5A	5-7
As of right	19		10(1)	12 (power to grant OR refuse)	20		7(1)	9(1)
Some exceptions			10(2) (scale or nature of activities etc)	10-13	20(2)		7(2)	9(2)

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Discretionary		8, 25D (trading assoc)				8(1)		
Effect of incorporation	22	9(1), 25J (trading assoc)	15	21, 25	25	11-12, 21	14, 16	10, 13
Limited liability, etc	51	21	16	27	21(2)	27	15	12
Ultra vires	24		17-18,	26	27-28		17	15
Agency & other issues	47		31-36 (pre-reg contracts), 60-61 (agents, constructive notice)	28	26	20	19, 20 (pre-reg contracts, 41-42 (constructive notice)	14
Transfer of Incorporation				Part 11				
Directed / voluntary from Association to Company	82 (voluntary), 83 (directed)	25AR (trading associations only)	10(2), 56-58, regs 17-18 (directed/ voluntary to Corps Act or Co-op)	105K-105N (to co-op)	42		31AA (vol), 31AB (directed)-31A (includes co-op)	34 (to some other Act)
Voluntary to Association			48-49	105A-105J (co-op to Assoc.)		25A-25B	10-11, reg 5C	
<b>RESTRUCTURE, AMALGAMATION</b>								
Amalgamation	26-28		46	79-88	22	25	31, regs 5G-5H	
Branches				74-78				
<b>CONSTITUTION</b>								
Statement of objects/purposes	29		8-9, 19				5(1), 21(1)	

## REFORMING NOT-FOR-PROFIT REGULATION

	ACT	NT	NSW	QLD	SA	TAS	VIC	WA
Objects clauses	29	9(1)(b),	19(1)	46(2)(b), regs sch 3	23A(1)(a)			
Rules	31-32	15, 25U (trading assoc)	11	46	23		6, 21(2)	16-18
Minimum content	32, sch	25T (trading assoc)	11(1), Sch 1	Reg 7, regs sch 3	23A(1)(c)		6(a), sch	16, sch 1
Model rules	regs		Reg 9, regs sch 1	Reg 8, regs sch 4	67(2)(a) (none prescribed)	16, regs	21(2)(b), reg 29, sch 5	
As default rules	31(2)		19(2),(3)	47(1), 51		16(3)	21(3)	
Alteration of rules	33	16, 25V (trading assoc)	20	48, regs sch 3 cll 8-9	23A(1)(c) (to be included in rules), 24, 24A(by court order)	18	22	17, 19 (objects)
By special resolution	33(1)		20(1)	48(1)	24(1) (subject to rules)	18(1)	22(1)	17(1)
Proportion of membership required for special resolution	_ (70)		_ (5)	_ (2)	_ (3)	_ (23)	_ (29)	_ (24)
Administrative approval		16(3)		48(5)-(8)	24(5) (name only)	10(2) (name), 18(4) (objects)	44(2)-(4)	18 (name), 19 (objects)
No effect until lodged	33(5)	25V(4)(5)-25Y (trading assoc)	20(3)	48(8), 49 (no effect unless approved)	24(7) (name only)	18(4)	22(2) (lodged for approval and approved)	17(2)
Rules take effect as contract	48		11(2)	71(1)	23(1)		14A(1)	
<b>MANAGEMENT</b>								
Committee/board structure is mandatory	60			60-61, 61A (eligibility)				
Public officer	57-58	12-14, 25R-25S (trading assoc)	22	65-67 (secretary)	56	14-15	24-28, reg 5E	

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Registered office	121(1)(optional)			17			13A (registered address)	40 (lodging an address for service is optional)
Requirement of registered office to be open	121(1)							
AGM required	69		26	55-57	39 (prescribed assoc only)		30	23
Special resolution	70		5	2, 3	3	23	29	24
Removal of directors/committee members	63			64(1) (rules), 64(2)(automatic on death, bankruptcy conviction etc), regs sch 3 (to be included in rules)	30 (automatic on death, bankruptcy, conviction etc)			
Meetings			See sch 1 (to be included in rules)	See sch 3 (to be included in rules) and s 133 (irregularities)	23A(1)(c) (to be included in rules)	22A (10% of members may call a meeting)		
Technology permitted				63(2) (management c'ttee)				
Proxies permitted	To be in rules, Sch 1		To be in rules, Sch 1				To be in rules, Sch	
Voting procedure	To be in rules Sch 1		To be in rules, Sch 1				To be in rules, Sch	
Mandatory Insurance			42-45, reg 14	70				

REFORMING NOT-FOR-PROFIT REGULATION

	ACT	NT	NSW	QLD	SA	TAS	VIC	WA
Duties of Committee				63 (regular meetings)				
Fiduciary duties					39A		29A	
Duty to disclose certain interests	65				31-32		29B-29C	21-22
Insolvent trading			37-38		49AD			
Membership rights			To be in Rules, Sch 1			22A (10% of members may call a meeting)		
Judicial review	49-53			71-73			14A92)-(4)	
Natural justice	50			71(3)	40		14B(3) (grievance procedure)	
Oppression					61			
<b>DISCLOSURE</b>								
Registered office	121(2)-(3) (if it has a regd office)			17			13A (reg address)	40 (lodging an address for service is optional)
Change in Officers	59 (public officer) 62 (committee)	14 (public officer) 25S (trading assoc)	25 (public officer) 21A (register of committee members kept by public officer.)	68 (sec, pres, treasurer)	56(5) (public officer)	15 (public officer)	28 (public officer)	
Change in constitution/rules	33	16, 25V (trading assoc)	20(2)	48	24(2)	18(2)-(6)	22	17 (rules), 19(objects)



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Notify any other changes	38 (name), 26-27 (amalgamation)	17 (name), 25Z (name of trading assoc)	14 (name)	35-38 (name)		10(2) (name)	13, reg 6 (name)	18 (name)
Financial records kept	71	25AG(1) (trading assoc)	28(1)(a)	Regs 9-10, regs schs 3 & 5	39C(all assoc), 35(1), reg 8 (prescribed assoc)	23A	30A	25
Annual report/return lodged	79	25(3) (balance sheet), 25AI(4) (balance sheet – trading assoc)	27	59(4) (unless exempted: 59(5)), reg 11	36, reg 9 (periodic return for prescribed assoc)	24B (unless exempt)	30(4), reg 5F, 30(4)(aa) (prescribed assoc)	
Financial report presented to members	73	25AI(3) (trading assoc)	26(6), 27(1)(b)	59(1)(c), regs sch 3 Pt 2	35(6) (prescribed assoc)		30(3)	26 (annual accounts)
Only concise/summary financial report lodged	79 (annual return)	25(3) (balance sheet), 25AI(4) (balance sheet – trading assoc)	27(1)	59(4), regs 11-12 (public may inspect: 59(6))			30(4) (prescribed assoc must lodge audited accounts)	
Financial reports to comply with Accounting Standards	76(3) (prescribed associations)				No, but see the standards required by s 37		Reg 7, sch (prescribed assoc)	
Financial reports audited	76 (prescribed associations)	25AI(2) (trading assoc)		59(1)(b) (must be independent but need not be registered auditor), regs sch 3 Pt 2	35(2) (prescribed assoc), 23A(1)(c) (to be included in rules of prescribed assoc)	24 (auditor or approved person, unless exempt)	30B (prescribed assoc, auditor or approved person )	

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	ACT	NT	NSW	QLD	SA	TAS	VIC	WA
Minutes books			28(2)	Regs sch 3, cll 6-7	51			
Sliding scale	74, reg 12-13						3, reg 7	
Register of members –who has access?	67 (members)	25AF (trading assoc) open to public		18, reg 16 (public access)			Sch (to be in rules)	27 (members) 28 (rules) & 29 (record of office-holders) may also be inspected by members
Sources of funding (Fundraising Appeals Acts)	Sch 1 (to be included in rules)		Sch 1 (to be included in rules)				Sch 1 (to be included in rules)	
<b>EXTERNAL REGULATION</b>								
Investigation, etc	99-105	25AT-25AZD	67 (records)	119-120	10, 11, 62	24A	37C-37Q	39(3)-(7) (limited power)
Direction to migrate	83	25AR (trading assoc)	10(2), 56-58, regs 17-18		42		31AB	34
Cancellation of incorporation	93	23A-23G (dissolution by Registrar)	54-55, 55A-55b (vol)	93-94D, reg 14	44-49	34-36	36E-37	35
<b>FINANCIAL DIFFICULTIES</b>								
Compromise with creditors					40A			
Voluntary administration					40B			
<b>DISSOLUTION</b>								
Voluntary winding up	88		50	89	41(1)(b) (decl of solvency required: 41C)	32 (incorporates CA by reference)	33	30



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Compulsory winding up	89-90	20, 25AP-25AQ (trading assoc)	51	90-91	41(1)(a), (3) (by the court), 41(1)(c), (7)-(8) (on certificate of registrar)	32 (incorporates CA by reference)	34 (by the court), 35-36B (on certificate of registrar)	31
<b>SURPLUS ASSETS</b>								
According to the rules or a special resolution		25T (trading assoc: to be in rules)	53(2), 55B(1) (vol cancellation)	92, regs sch 3 cl 14	43(2)	33(1)	33A-33B (vol only)	33 (distribution plan)
Subject to external approval	92, 94-98	2, 25AP (trading assoc)	53(2A)(a), 55B(1)(a) (vol cancellation)		43(3)-(4)	33(1)-(2)		33(6)-(12), 36
No distribution to members	92 (by implication)		53(2A)b), 55B(1)(b) (vol cancellation)		43(1)			33(2)
<b>COMPANY SEARCHES / PUBLIC REGISTER</b>								
Name and OAN/ABN	9-11	Reg 7	59	16, 18, 40, reg 16	6	29	39-40	37
Registered office	121 (optional)			17, 18 reg 16				40 (address for service – if lodged)
Office holders	62	Public officer 12-14, 25R-25S (trading assoc)	21A(6) (kept by public officer, public can inspect)	68	56 (public officer)	24B(1A) (details of committee to be lodged if exempted from annual return)	28 (public officer)	

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	ACT	NT	NSW	QLD	SA	TAS	VIC	WA
Details of shareholders / members	67 (members only)	25AF (trading assoc)						
Copy of rules / constitution	18,30,33	15-17, 25T-25V (trading assoc)	20, 59	53(1)(sec must allow members to inspect)			5, 22	37(1)
Basic details of any changes registered	59,33,62	14, 16-17, 25R-25V (trading assoc)	20, 22,25, 59	16,17,18, 40, 68, regs 16-17	19, 24	7(2)(b), 15, 18	22, 28	37(1)
Penalties	108 (General offence provision)	S 27A (general offence provision) 25, 25AI (public officer for failure to lodge balance sheet) also other specific penalties for breaches	66, 68,-71 (officers deemed liable for offences by assoc)	Management committee members liable for specific penalties for breaches, eg 57, penalties for false/misleading information: 19-20	14 (general offence provision), 57 (penalty for officers for non-compliance with Act)	18 (public officer liable for failure to lodge change of address etc), 21 (assoc liable if raises funds from public) 24 (penalty for failure to lodge accounts)	49 (false & misleading statements), 50-50A (general penalty provisions), 50B (penalty notices), 51 (trading)	42 (c'ttee members liable if assoc breaches Act) 43 (false & misleading statements)

