



MACKAY REGIONAL COMMUNITY LEGAL CENTRE Inc.

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2020 changes to the *Associations Incorporation Act* 1981 (Qld)

February 2021



MRCLC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging.



DISCLAIMER



The content in this publication is intended only to provide a summary and general overview on matters.

This content is not intended to be comprehensive, nor does it constitute legal advice.

We attempt to ensure that the content is current, but we do not guarantee its currency.

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ABOUT THE MACKAY REGIONAL COMMUNITY LEGAL CENTRE INC.

- ▶ MRCLC provides free and confidential legal information, legal advice, referrals, community legal education and some ongoing assistance, which may include drafting court documents, throughout the Mackay, Whitsunday and Isaac Regional Council areas
- ▶ 1 hour appointments available between 9:00am - 5:00pm Monday to Friday, either by telephone or face to face. MRCLC also provides shorter appointments at legal advice evenings held twice per month
- ▶ Outreach to Sarina, Cannonvale, Proserpine and Bowen
- ▶ Queensland Statewide Tenant Advice and Referral Service (QSTARS) Partner
- ▶ Elder Abuse Prevention and Support Service
- ▶ DV Duty Lawyer



Topics covered

- ▶ General information about incorporated associations
- ▶ Overview of the recent changes to the *Associations Incorporation Act 1981* (Qld)
- ▶ Overview of the further proposed changes to the *Associations Incorporation Act 1981* (Qld)



Incorporated associations generally

- ▶ Incorporated associations are typically community-based organisations which operate on a not-for-profit basis to achieve the objectives of the association.
- ▶ Incorporated associations in Queensland are mainly governed by the *Associations Incorporation Act 1981* (Qld) and the *Associations Incorporation Regulation 1999* (Qld).
- ▶ Historically, incorporated associations have represented a “middle-ground” structuring option for community organisations; the incorporated association structure sits somewhere between an unincorporated association and the more sophisticated (and complex) company structure.
- ▶ An incorporated association is a separate legal entity (body). This means an incorporated association can:
 - ▶ Enter into contracts in its own right
 - ▶ Buy, own and sell property
 - ▶ Sue and be sued.



Incorporated associations continued (general requirements)

- ▶ Must have at least 7 members.
- ▶ Are governed by a set of governing rules or the model rules.
- ▶ Have a management committee which comprises of at least 3 members: must have a president, treasurer and a secretary.
- ▶ Required to hold a financial account with a Queensland branch.
- ▶ Hold meetings (including an Annual General Meeting) and keep records in accordance with the legal framework.





2020 changes to the *Associations Incorporation Act 1981 (Qld)*

The *Associations Incorporation and Other Legislation Amendment Bill 2019* (Qld) was introduced on 26 November 2019.

The *Associations Incorporation and Other Legislation Amendment Act 2020* (Qld) (**the “Amendment Act”**) was then passed by parliament and received assent on 22 June 2020.

On 22 June 2020, the Queensland Government passed the first round of changes to the *Associations Incorporation Act 1981* (Qld) (**the “Act”**). Further changes in accordance with the **Amendment Act** are proposed to take effect by 30 June 2021 and 30 June 2022.

Purpose of the changes:

The changes were implemented by the Queensland Government to reduce red tape and improve internal governances for the approximate 22,900 incorporated associations in Queensland.



22 June 2020 changes

The Act now includes an “objects/purpose” provision which states as follows:

Section 1A Main purposes

The main purposes of this Act are to provide for—

- (a) a scheme for the incorporation of associations; and
- (b) matters including the corporate governance, financial accountability, and rules and membership, of incorporated associations.



22 June 2020 changes

Section 56: Meetings using communication technology

- ▶ An incorporated association 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.
 - ▶ *Example of use of technology— teleconferencing*
- ▶ A member who participates in a meeting under subsection (1) is taken to be present at the meeting

Previously, section 56 only allowed an incorporated association to hold meetings via technology if the association's rules specifically permitted this (the section was previously titled "Rules may allow meetings using communication technology").



22 June 2020 changes

Changing and adopting the incorporated associations rules:

The amendments to the Act now clarify that an incorporated association is at any time able to:

- ▶ adopt the model rules; or
- ▶ completely replace the association's existing rules with the model rules





22 June 2020 changes

Section 89: Voluntary administration under Corporations Act

Under the new provision, committee members now have the option to voluntarily appoint an administrator to place the incorporated association into voluntary administration if the association is experiencing financial difficulties.

Under the old provisions, committee members had no option to put the association into voluntary administration.

Incorporated associations still have the alternative option to apply to the Supreme Court for the appointment of a provisional liquidator. This is often more costly and time consuming.



22 June 2020 changes

Sections 92A – 94: Voluntary cancellation

Under these new provisions, committee members now have the option to voluntarily apply to the Chief Executive of the Office of Fair Trading for cancellation, provided the incorporated association:

- ▶ Has no outstanding debts or liabilities;
- ▶ Has paid all applicable fees and penalties under the Act; and
- ▶ Is not a party to any legal proceedings.

This option is an alternative to the more lengthy and formal winding up process by the Supreme Court.



22 June 2020 changes

Section 94: Vesting of property on cancellation

These changes apply in the event an incorporated association is wound up by the Supreme Court, or if its incorporation has been cancelled by the Office of Fair Trading.

The Chief Executive will provide notification of how surplus assets, property or money is vested by gazette notice, rather than regulation.

In the event the Chief Executive determines there is property attained under the *Collections Act 1966* (Qld), and such property is unlikely to reach the intended beneficiaries, the property may vest to the Public Trustee by gazette notice, rather than regulation.



22 June 2020 changes

Section 61A: Eligibility for election to a management committee

The definition of “***rehabilitation period***” has been changed to 5 years, reduced from 10 years.

This means that people convicted of certain offences can now sit on a management committee after 5 years. Exclusions still apply.

The 5 year period begins on the later of the following:

- ▶ The date the conviction is recorded
- ▶ The day the person is released from prison
- ▶ The day any other court order relating to the conviction or term of imprisonment is satisfied.



22 June 2020 changes

Increased maximum penalties

Section 136: Penalties under regulations to be limited

The maximum penalty that may be prescribed by regulation for an offence against a regulation is 20 penalty units.

The maximum penalty has been increased from 4 penalty units.

1 penalty unit currently equates to \$133.45.





22 June 2020 changes

In addition to the changes discussed, there has also been some relocation and renumbering of provisions in the Act in order to accommodate the recent changes, as well as further changes per the Amendment Act.



Further Changes - 30 June 2021

The next few slides focus on further proposed changes which have not yet commenced. These changes are subject to proclamation by the Queensland Government.

The first lot of further changes are expected to commence by 30 June 2021.



Further Changes - 30 June 2021

Using a common seal – it will become optional for incorporated associations to use a common seal when executing contracts and documents.

Section 21 currently says:

An incorporated association—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue or be sued in its corporate name.

Sub-section (b) is due to be amended, per the Amendment Act, to read “**may have a common seal**”.



Further Changes - 30 June 2021

In accordance with the changes per the Amendment Act, a secretary of an incorporated association must be 18 or older.



Further Changes - 30 June 2021

Reduction in duplicated annual reporting

As part of the proposal to reduce “red tape”, incorporated associations that are also registered as a charity with the Australian Charities and Not-for-profits Commission (“ACNC”), and report to the ACNC, will no longer need to lodge their annual summary of financial affairs with Office of Fair Trading or pay the annual lodgement fee.

In addition, the classification of incorporated associations as “level 1, level 2 and level 3” associations will change to “small, medium and large”. The monetary tiers (based on assets and revenue) used to determine the classification of the incorporated association will not change.

The current financial reporting obligations for incorporated associations can be found in Part 6, Division 2 of the Act.



Overview of current reporting requirements for Incorporated Associations in Queensland (generally)

Level 1 current assets or total revenue of more than \$100,000

A registered auditor or certified accountant must audit the financial statements

Level 2 current assets or total revenue between \$20,000 and \$100,000

A registered auditor, or certified account, or other person approved by the Office of Fair Trading must verify the financial statements

Note: some Level 2 incorporated associates are required to have an audit conducted by a registered auditor, certified accountant, or other person approved by the Office of Fair Trading in accordance with the *Collections Act 1966*, *Gaming Machine Act 1991* or other law

Level 3 current assets or total revenue of less than \$20,000

The president or treasurer must verify the financial statements

Note: some Level 3 incorporated associates are required to have an audit conducted by a registered auditor, certified accountant, or other person approved by the Office of Fair Trading in accordance with the *Collections Act 1966*, *Gaming Machine Act 1991* or other law

Some incorporated associations may also have further reporting obligations with the ACNC, or other bodies.



Further Changes - 30 June 2021

Extended powers of Office of Fair Trading inspectors

The *Fair Trading Inspectors Act 2014* (Qld) has been amended to include investigations under the Act.

The changes will give Fair Trading Inspectors entry and seizure powers.



Further Changes - 30 June 2021 continued

Duty of care and diligence and duty to act in good faith

Section 70E: Management committee members will have a duty to carry out their functions in the best interests of the association, and with due care and diligence.

Section 70F: Management committee members will also have a duty to in good faith in the best interests of the association and for a proper purpose.

Penalty units will apply for breaches of these duties.



Further Changes - 30 June 2021 continued

Duty to prevent insolvent trading

Section 70I

Management committee members will have a duty to prevent the association from trading whilst insolvent.

Breaches of this duty will be an offence for each person who took part in the management committee, subject to limited exceptions, and penalty units will apply.



Further Changes - 30 June 2021 continued

Not profiting from position / improper use of position

Sections 70G and 70H

Management committee members must not use their position, or information obtained from their position, to gain a benefit or material advantage for themselves or another person, or cause detriment to the association.

Penalty units will apply for breaches of these duties.



Further Changes - 30 June 2021 continued

Disclosure

Management committee members will have a duty to disclose:

- when they have material personal interests in a matter.
- remuneration or other benefits given to them, to senior staff and to their relatives. The details of what must be disclosed, and how, will be introduced by regulation.
- Sections 70B & 70D.

In addition, management committee members will not be able to be present at a meeting, or vote on a matter, if they have a personal interest in a matter being considered. This is subject to some exceptions – section 70C.

Penalties will apply for breaches.



Further Changes - 30 June 2022

This change has not commenced. This change is subject to proclamation by the Queensland Government and is expected to commence by 30 June 2022.

Internal grievance procedure – s 47A

- ▶ An incorporated association will have to have an internal grievance procedure, or dispute resolution process, in place by 30 June 2022.
- ▶ The model rules will be amended to contain a default grievance procedure. Alternatively, incorporated associations will have the option to adopt a customised dispute resolution process in the incorporated association's rules, provided that process complies with the new legal requirements.
- ▶ The purpose of this change is to create a cost-effective way to resolve disputes, and reduce the need for members and committee members to apply to the Supreme Court of Queensland to resolve a matter.



Further Changes - 30 June 2022

Recommendations

Moving forward, management committees should consider:

1. Conducting a review of their constitution and consider any changes necessary to ensure they comply with the changes
2. Make any necessary changes to their organisations policies and procedures to accommodate the changes
3. Ensure the members of management committees are aware of, and understand, how the changes may affect them and their association



Any
questions?