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Office of the President

16 January 2020

Our ref: WD NFP

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [redacted]

Dear Committee Secretary

**Associations Incorporation and Other Legislation Amendment Bill 2019**

Thank you for the opportunity to provide comments on the Associations Incorporation and Other Legislation Amendment Bill 2019 (**Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation. Thank you also for the extension of time to deliver this submission.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Not for Profit Law Committee whose members have substantial expertise in this area.

With respect to the Bill we raise the following:

- The amendments proposed in the Bill represent a significant change from the "low cost" and "light touch" regulatory framework of the original *Associations Incorporation Act 1981* (**Act**). The legislation initially provided a simple and inexpensive means of incorporation for community organisations, providing an alternative to the unincorporated association model or a more complex corporate structure. The amendments in the Bill shift the position of an incorporated association firmly out of the middle ground into the corporate regime and in fact include some more onerous regulatory features. This new approach may have unintended consequences on the future use of the Act by new community endeavours and current incorporated associations may choose to migrate to other legal forms. The policy solution adopted in other jurisdictions is to move large organisations who warrant more onerous regulation into more appropriate regulatory regimes. This is achieved by placing a revenue/asset cap and a power exercised by the Chief Executive to require organisations to transfer their incorporation.

- QLS has raised a number of concerns below in relation to the Model Rules in Schedule 4 of the *Associations Incorporation Regulation 1999* (**Regulation**). Many of these issues could be addressed by adopting the approach that the current version of the Model Rules applies to all associations, not the model rules in place at the time of the association's incorporation. This is the approach taken in other jurisdictions.
- In addition to the review of the Act, QLS calls for the complete review of the *Collections Act 1966* and the regulatory policies of fundraising generally. The current regulatory framework does not take account of significant changes in modern society. For example, it does not address the modern mischiefs of public fundraising such as undesirable conduct involving the internet, email and crowd-funding, or the advent of social enterprise and social media. The current bushfire appeals that are mainly conducted via digital means and receiving funds from donors outside the jurisdiction are a compelling example of the contemporary issues that should be addressed.
- In the Annexure, QLS has identified a number of additional reforms for consideration, which are not presently included in the Bill.
- QLS urges the Committee to recommend that the Bill not be progressed until wider consultation occurs on the current Bill to ensure that reforms that are progressed represent a thorough and considered review of the Act and associated legislation.
- If the Bill is progressed, QLS calls for an extensive transitional period of at least 2 years to ensure all affected associations have time to seek appropriate advice and to make any necessary changes in their management processes. This is particularly important when this legislation will affect a large number of small, under-resourced organisations run by volunteers

**Consultation timing and timeframe**

QLS is concerned at the short timeframe allowed for responding to this Bill.

Reforms of this kind benefit from extensive and detailed consultation with stakeholders who work closely with incorporated associations. The short time frame allowed to respond to this Bill, at the time of year incorporating the traditional business closure between 25 December 2019 and 2 January 2020, necessarily means that valuable input will not be obtained and there is a real risk of unintended consequences as a result.

QLS is aware that consultation on reforms to the *Associations Incorporation Act 1981* (the **Act**) has been underway for a number of years. QLS first participated in discussions in 2010 and again in 2015. The Explanatory Notes also indicate that community consultation was undertaken in 2010 and again in 2012.

Given the significance of the reforms proposed in the Bill, and the long-term nature of these discussions, it is disappointing that these reforms have been rushed into the last sitting week in November 2019 with submissions required in early January 2020.

QLS urges the Committee to recommend that the Bill not be progressed until wider consultation is undertaken with stakeholders on the practical effect these reforms will have on their day to day activities.

If this recommendation is followed, QLS will seek further feedback from its members and their clients and may wish to make a further submission as a result.

**Clause 7 Main Purposes**

The inclusion of purposes to the Act is welcomed.

However, the identified purposes are purely descriptive and do not fulfil the expressed aim of the Explanatory Memorandum which is to list "any guiding principles for its operation."

Our view is that the Parliament should be encouraged to set out the broader social and philosophic justification for the Act's existence, particularly given the recent historic declaration by the Parliament of the *Human Rights Act 2018*.

The *Associations Incorporation Act 1981* is a vehicle for the fulfilment of the fundamental human right to free assembly (section 22 *Human Rights Act 2018*), and ancillary to others such as freedom of religion, freedom of expression and participation in the social and cultural life of a community subject only to the restraints necessary for public order.

> **Recommendation**: The Act should acknowledge that a guiding principle of the Act is to facilitate freedom of assembly and association.

**Clause 8 – new section 1C – Relationship with *Fair Trading Inspectors Act 2014***

The updating of the powers of inspectors under the Act is generally welcomed.

The restrictions on the powers that might infringe the fundamental legislative principles are acknowledged as generally appropriate.

However, some association's premises may be the home or accommodation of vulnerable persons such as those with a disability, victims of domestic violence, the ill, aged and infirm and homeless. Search procedures should recognise these sensitivities in their execution.

QLS will call out behaviour which offends the accepted standards and intent of fundamental legislative principles in the exercise of an inspector's powers.

QLS has previously expressed concerns about the exercise of statutory powers of entry without a warrant.[1]

It is noted that the power to enter under the *Fair Trading Inspectors Act 2014* (**FTA**) includes power to enter without a warrant when the place is open for carrying on a business.

QLS has a strong preference that entry of this kind is with a warrant. If an inspector considers that there are grounds for exercising these powers, QLS considers that those grounds should generally be tested before a magistrate by way of an application for a warrant.

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[1] See QLS submissions to parliamentary inquiries on the Labour Hire Licensing Bill 2017; Land, Explosives and Other Legislation Amendment Bill 2017; Building and Construction Legislation (Non-conforming Building Products - Chain of responsibility and Other Matters) Amendment Bill 2017; Tow Truck and Other Legislation Amendment Bill 2017; Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018; Community Services Industry (Portable Long Service Leave) Bill 2019.

QLS considers that if entry is obtained under section 22(1)(d) of the FTA, that is, without a warrant or without consent, the inspector should advise occupiers of the place that the inspector is entering in accordance with the FTA, so that those affected by the entry are aware of the nature of the attendance.

If an inspector enters under the power of a warrant, section 32 of the FTA requires that the inspector identify himself or herself to the occupiers and provide a copy of the warrant. A similar process should be required if no warrant is obtained, particularly given the significant powers of the inspector to seize evidence or property and the power to require a person to provide personal details and produce documents.

**Clause 11 – Amendment of section 9 – Form of application etc**

In respect of the Model Rules (assuming that they will remain the same), QLS recommends consideration be given to the application requiring not only a copy of the objects but also:

- the name of classes of members (if required) (clause 5)
- the end date of the financial year (clause 48)

**Recommendation:** That when adopting the Model Rules, the application for incorporation must include:

(a) The name of classes of members (if required) (clause 5); and

(b) the end date of the financial year (clause 48).

**Clause 12 – Amendment of section 16 - Register of Incorporated Associations**

The amendment is welcome. Consideration should also be given to the register including an email contact and web site URL for the association. This allows for easier communication with the association.

The inclusion of the Australian Business Number (ABN) would also be beneficial. Whilst not all incorporated associations have an ABN; the vast majority are registered with this unique entity identifier. The unique identifier would assist the OFT with identification of ACNC registered charities[2] and the community with the correct identification of organisations and each place of business of the association. This can be leveraged by using other Commonwealth agency databases and tools to increase regulatory productivity.

The OFT and other government agencies may be able to harness the benefits of the ABR Explorer. It is an online reporting tool providing eligible government agencies access to non-

[2] Researchers compared the Associations and Collections Act register with the ACNC register with difficulty because of differences in recording formal names of charities. Further, only 1,132 of 1,634 Collections Act charities appear to be registered as ACNC charities. Further, 1,058 of 2,574 Queensland community purpose organisations are registered with the ACNC as charities. Refer McGregor-Lowndes, Myles & Crittall, Marie (2015) *The State of Queensland Charities: An examination of the first Annual Information Statements of charities operating in Queensland.* Queensland University of Technology, Brisbane, QLD. [Working Paper] available at https://eprints.qut.edu.au/84654/

public ABN data stored on the Australian Business Register (ABR).[3] One particularly useful feature is Geocoding, the integrated mapping feature directly linked to NationalMap.gov.au.

This permits the plotting of ABN locations and conducting an analysis of association development, planning and design tactical responses to emergency and disaster situations, visualisation of geospatial government datasets as provided on the NationalMap with ABR information, identify target groups for events and specific messages, undertaking investigations, regulatory compliance and checking grant eligibility.

> **Recommendation:** Consideration be given to including the association's ABN, digital mail and Internet details on the register.

**Clause 13 – Amendment of s 21 – Incorporated associations are bodies corporate (regarding common seal)**

- This amendment is welcome, but consideration could also be given to deleting section 21(b) altogether, thereby removing the requirement for associations to have a common seal. The proposed substitute wording is not necessary.

**Clause 14 – amendment of s 28 (Contracts)**

QLS endorses the submission made by Clubs Queensland that the conflict between the current section 28 of the Act with the proposed sections 28(2A) and 28(2B) be clarified.

**Clause 15 – Amendment of section 31 – registered name on seal**

The amendment is welcomed.

**Clause 16 – Replacement of pt 5, div 1 - Registration of rules**

*Amendment of section 46 – Rules of incorporated association on registration*

It is not clear why the proposed section 46(1)(a) does not include the classes of members and financial year-end as well (noting comments on clause 11 above) in the Model Rules.

It would be very useful if the register identified the actual description of the applicable model rules (subordinate regulation identifier), given that it is the version of the model rules in force at the time of incorporation that is applicable, not the current model rules. This will assist in the avoidance of mistaken use of the wrong version of the model rules, which is common in internal disputes.

> **Recommendation:** That the proposed section 46 includes:
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> (a) the classes of members (if any) and financial year-end as part of the model rules; and
> (b) recording on the register the version of the model rules adopted.

[3] https://www.abr.gov.au/sites/default/files/2019-05/ABR%20Explorer%20factsheet_C.pdf

*New section 47 – additional provisions in model rules*

The amendment of section 47 for clarity is welcomed, but we recommend further amendments to ensure clarity and simplicity for the Act's users.

In previous submissions, QLS proposed that Queensland join New South Wales and Victoria in adopting the position that the applicable model rules for an association are not those at the time of the association's incorporation, but the model rules currently in force.

This was because:

- it provides a simple mechanism for an association to always be governed by the most current and 'fit for purpose' rules;
- the rules can be easily identified by reference to the latest regulations, as the alternative is to search the parliamentary archives for model rule regulations that may have been in force several decades ago upon incorporation;
- it avoids disputes about the content of the rules, as a common error made by association members is to default to the current model rules, not the model rules at the time of incorporation; and
- it avoids errors due to association members not being able to readily determine which of the particular model rules might now be in conflict with amended provisions of the Act itself or matters newly provided for in the model rules in force.

The amendment appears to be that any association rules (those with their own rules or those adopting a previous set of model rules) that do not 'provide for a matter' that now appears in the latest model rules will have the 'matter' included by statutory force in their rules.[4] The following observations are made about the amendment:

- it is unclear what exactly 'providing for a matter' means. How close does the old model rule need to be to the latest model rule to be classed as 'providing for a matter'?
- it is an arduous and exacting task for an association member to compare a set of old model rules with the current in force model rules and this exercise can easily lead to errors; and
- it will often be the case that members will not be aware of the section, but take for granted the rules found in the records of the association are their effective rules.

**Recommendation**: That Queensland adopt a position similar to the position under New South Wales and Victorian association legislation, that the model rules of an association are those in force at any time.

*Insertion of new section 47A Grievance Procedure*

QLS has for a number of years drawn to the attention of the Government the issue of the legislation's facilitation of the timely resolution of internal disputes. QLS welcomes the initiative proposed, however, offers some suggestions for further clarification of the amendment.

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[4] Provided that s47(3) does not apply, that is that an association's own rules have provided that this section does not apply.

To understand the policy options, a little background is required. The common law has traditionally been reluctant to provide a forum for disputing members of an unincorporated association and adopts a basic policy of encouraging members to settle their disputes through the association's own governance system.

The rationales offered for this approach are a reluctance of the courts to interfere in private domestic bodies thereby infringing on the freedom of association, the perceived trivial nature of the issues, a lack of appropriate or effective judicial remedies and a possible opening of the floodgates of litigation.[5]

However, there are increasing inroads by judges into this stance with exceptions being made, such as where a person's livelihood depends on associational membership, or where property or a trust is involved.

One of the advantages of incorporated association legislation is the adoption of the corporate law principle that the rules of the body constitute a contract between the members, the member and the management committee and the member and the association. Such a contract could be enforced by a member when breached, overcoming the lack of a legal basis and capacity in unincorporated associations.

However, a disadvantage is the potential for increased litigation, particularly given that many cases are resolved by the court ordering that a general meeting of members decide the issue once and for all by democratic processes.

The initial Associations Incorporation Act was concerned with the floodgates of litigation being opened and used two strategies to mitigate this. The initial Queensland Act required a management committee to consider a report by a qualified legal person on the prospects of success of any litigation. The section was later repealed as it caused more issues than it solved. It did not require the management committee to follow the advice and the section was not complied with in several cases that came before the courts.[6]

The second strategy, which remains to this day, is to allow the Supreme Court extensive discretion to refuse to entertain such member complaint applications.[7] There is no record of the Supreme Court exercising this discretion, but perhaps its very existence acts as a clear signal to potential offenders. Some point to anecdotal evidence that unresponsive management committees know that unless they have members with deep pockets to take the association to the Supreme Court, they can 'tough out' protestations of members who have been harshly dealt with. This is compounded by apathetic general meetings which can be swamped by proxy votes and a perception that the OFT rarely uses its power or limited resources to effectively intervene in membership disputes.

When association membership is driven by an emotional commitment to a cause, rather than the bottom line of financial investment, simple economic rationality of moving to another

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[5] Note, "Judicial Control of Actions of Private Associations", *Harvard Law Review*, Vol 76, 163, 983 at 990.

[6] For example, *Central Queensland Speleological Society Incorporated v Central Queensland Cement Pty Ltd (No.1)* 1989 2 Qd. R. 512; *Southside Action Group against the Proposed Dump at Rochedale v Brisbane City Council & Anor*, Unreported, 91/01/0199 SC 14/2/91 Horton Q.C. Senior Master; *Tamborine Mountain Progress Association Inc v Beaudesert Shire Council & Ors*, Unreported, Court of Appeal, [93.172], Fitzgerald, P., Pincus, JA., Dowsett, J.

[7] s 72(2) AIA.

association may not be a desirable option. Often members seek vindication regardless of any financial or personal cost to themselves or others. Queensland has had two murders being directly surrounded by the events of voluntary association disputes.[8] More commonly, the typical member with a grievance presents with a long litany of procedural injustices, illustrating an underlying breakdown of relationships, trust and confidence between the parties. The member's focus is on the tangible breaches of procedures, rather than the underlying relationship issues. It often becomes a dispute about the process of the dispute with sight being lost of the initial grievance. Craving vindication, the member desires a third party who will uncover the 'truth' and declare the other party to be an 'arrogant power-drunk association criminal'. Preoccupation with victory overshadows resolving the underlying matters which are causing the tension and rebuilding trust and confidence. When disputes become intense personal crusades, the stress and personal anxiety levels of those involved and drawn into the dispute often increase with tragic health consequences. The legalities are used as a proxy for underlying relationship issues. Hence, mediation by a facilitator with some behavioural skills at an early stage may be able to address the core underlying issues. The alternative is a long running emotionally charged dispute which distracts the association from achieving its purposes and/or expensive legal procedures which are unlikely to produce a satisfactory outcome to all concerned.

Other Australian jurisdictions have adopted strategies such as empowering magistrate's courts and other tribunals to hear internal disputes together with mandated mediation and dispute resolution procedures in the rules of associations. QLS has suggested that the Supreme Court ought not to be the primary court for issues that are not suited to mediation and that QCAT or the Magistrates Court is more suited. This is further explained in relation to clause 32.

There are a number of specific issues that ought to be carefully considered with the amendments proposed in section 47A – Grievance procedure.

1. The section appears a little confused. The subheading 'Grievance procedure' is misleading. The section's essence is that of mediation. An association is not mandated to have in its rules a grievance procedure as section 47A uses the permissive word 'may' rather than the mandatory word 'must'. The matter that is mandated is a mediation. It appears possible for an association not to have a grievance procedure, unless it is intended to make such a clause a requirement of an own rules association under Schedule 3 of the *Associations Incorporation Regulation 1999* (**Regulation**). If this is the case, section 47(6) would import the grievance procedure into the Model Rules. The new model rules have not been released for public comment and it is unknown whether they will merely require a mediation or contain other grievance processes. Attention is directed to the ACNC model Company Limited by Guarantee constitution template, clauses 16-17, as a model grievance procedure which is well accepted by charitable organisations and advisors.[9]

[8] M Oberhardt, "Charity Worker on Kill Charge", *The Courier Mail*, Friday, March 20, 1998, p 5; M Fynes-Clinton, "Who Killed Kathleen?", *The Courier Mail*, Saturday, March 7, 1998, p 21.
[9] Refer https://www.acnc.gov.au/tools/templates/constitution-charitable-company-limited-guarantee

2. Unlike other rules, an incorporated association will not be able to exclude having provisions that are consistent with those prescribed in s 47A implied into their own rules. This may be too inflexible and give rise to unintended consequences.

   Some associations have 'fit for purpose' grievance and mediation procedures that may depart from the principles set out in the proposed section due to being part of a religious tradition, part of a network of organisations (often international) or being subject to other government agency requirements. This may lead to a conflict between the provisions in this section and long-held traditions or other government requirements.

   For example, the service club Lions (where branches often take the form of an incorporated association) already has a detailed complaints policy[10] and club grievance procedure[11] in accordance with Lions Clubs International Dispute Resolution Guidelines. A mandated grievance procedure and mediation within the AIA model rules may cause inconvenience and legal uncertainty sitting aside more detailed grievance provisions.

   It may be possible for the Minister to exercise their ability to exempt certain associations from the provisions of the Act pursuant to s 132, but this might be an onerous procedure for all concerned.

   > **Recommendation:** That consideration be given to an administratively expedient procedure to exempt associations from the requirements under section 47A where the association has satisfactory grievance procedures that may not strictly comply with the mandated procedure, but otherwise provide appropriate processes.

3. It is conceivable that the proposal to prohibit the association from taking further disciplinary action once a member has initiated a grievance procedure (section 47A(5)) may hinder the association when decisive action is required for safety reasons.

   > *Case Example 1*
   > An incorporated association with the object of child care in a small rural community. There are no employed staff, childcare being delivered by volunteers who must also be members of the association with appropriate Blue Card clearances. One member has their Blue Card revoked. The association wishes to immediately remove the person from membership and the ability to access the childcare facilities. Having to proceed through a mediation process and also being unable to take other disciplinary action while the grievance is progressed may not be timely or socially appropriate.

   **Recommendation**: That consideration be given to including a qualification in section 47A(5) that allows an association to act immediately in critical situations such as those involving health and safety issues.

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[10] https://lionsclubs.org.au/wp-content/uploads/2019/08/20190214-CSO-Complaint-Handling-Procedure.pdf
[11] https://lionsclubs.org.au/wp-content/uploads/2018/12/20181206-MD201-CLUB-GREIVANCE-PROCEDURE.pdf

4. The term "mediation" is not a legal term of art and to remove any doubt, consideration should be given to defining the term.

   The term has many different meanings. *The Encyclopaedic Australian Legal Dictionary* (Lexis) defines the term as "A method of dispute resolution in which an impartial third party seeks to facilitate a settlement by encouraging the disputing parties to generate solutions that focus on their mutual interests."[12] It may be appropriate to define the least complicated acceptable form of mediation for these purposes. Further, such issues as whether and when the mediation is binding on the parties should also be considered for clarification in the definition.

   **Recommendation:** That the term "mediation" be defined to remove any doubt.

5. It is not clear to a lay reader of the Act how the proposed section interacts with sections 71(1) (rules constitute a contract) and 71(3) (association bound by the rules of natural justice).

   **Recommendation:** That consideration is given to the insertion of a statutory note in the Act referring readers to section 71 Rights of members.

6. It is not clear how the grievance provisions are enlivened by an aggrieved member. It may be possible for an association to place barriers to the procedure being successfully engaged by members. For example, by providing that costs are to be borne by the aggrieved party, or that certain pre-conditions must be met before the process can commence. The drafting to overcome such a provision may be complex, but could be overcome by giving the OFT power to order an association to conduct a mediation under its supervision.

   **Recommendation:** That consideration is given to the OFT being able to direct an association to conduct a grievance mediation under its supervision.

### Clause 17 – Amendment of section 48 – application to register amendment of rules

The clarification to enable an association to replace their current rules with the model rules is welcome. However, the QLS makes recommendations (refer Annexure) in relation to the applicable model rules being the current model rules, rather than those at the time of incorporation.

### Clause 18 – Amendment of section 49 – Registration of amendment

The clarification of the amendment taking effect on registration is welcome. Again as above, the QLS makes recommendations (refer Annexure) in relation to the applicable model rules being the latest current model rules, rather than those at the time of incorporation.

### Clause 19 - Omission of section 51 – effect of amendment of model rules

This clarification is welcome.

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[12] Encyclopaedic Australian Legal Dictionary

**Clause 20 – Amendment of section 56 – rules may allow meetings using communication technology**

The clarification is welcome. QLS notes that there is an issue with postal voting for officers of the association because of the wording of section 3(4) requiring a person to be present in such a vote. This matter is further explained in the annexure to this letter (refer Annexure).

**Clause 21 – Amendment of section 58 – Definitions for div 2 (relating to financial reporting)**

It is proposed to tier associations for financial reporting purposes as small (under $20,000 revenue), medium (between $20,000 - $100,000 revenue) and large (over $100,000 revenue) as well as assets held.

This is inconsistent with ACNC charities that are classified as small, medium or large, based on total annual revenue:

- Small charities have annual revenue under $250,000
- Medium charities have annual revenue over $250,000 but under $1 million
- Large charities have annual revenue of $1 million or more.

The ACNC does not have an asset qualification. Doing so has not caused any issues for the ACNC.

There would be significant compliance cost reductions in the alignment of tiers between different non-profit regulators.

> **Recommendation:** That the proposed tiers of small, medium and large associations be aligned with other jurisdictions to reduce compliance costs for incorporated associations.

**Clause 22 – replacement of sections 59-59C –financial records and statements etc**

The amendments are welcome.

**Clause 25 – insertion of new section 59F – chief executive may require lodgement of financial information**

The amendments are welcome.

**Clause 30 - Amendment of s 66 (Management committee to ensure association has appropriate individual as secretary)**

This is a welcome reform.

**Clause 31 - Insertion of new pt 7, divs 2 and 3 - Matters of material personal interest and remuneration**

This is generally a welcome reform. However, we make the following comments on particular items.

**Section 70B Disclosure of material personal interest**

- The obligations in new section 70B regarding disclosure of material personal interests apply to a 'member of a management committee' rather than to all 'Officers'. This means that the provision may not apply to an appointed (rather than elected) Secretary who is not a management committee member and a manager.[13] Although these officers cannot vote at a management committee meeting, never-the-less they may exercise substantial influence at such a meeting and it would be prudent to require any material personal interest of an officer to be disclosed.
- In section 70B(2), the duty is cast on the member of the management committee, rather than the management committee, to disclose the material personal interest at the next general meeting of the association. It may be more practical for this to be attended to by the management committee at the general meeting.

**Recommendation:** That 'member of the management committee' be replaced with 'officer' in relation to disclosure obligations.

**Section 70C Voting on matter in which member has material personal interest**

- Section 70C(4)(b) allows any member to request and receive a copy of the management committee meeting minutes containing the information required about the disclosure of a material conflict of interest. QLS suggests that consideration be given to including a provision such as appears in section 57B(2) requiring reasonable costs of such provision to be paid by the member. QLS also notes that board minutes are usually confidential, may contain business in confidence material and potentially private information of the committee member. QLS recommends consideration of including some restrictions as to the member's use of such minutes.

**Recommendation:** Consideration should be given to allowing reasonable cost recovery of the costs of provision of minutes and protection of legitimate privacy issues for the disclosure of minutes.

**New section 70D - Disclosure of remuneration and other benefits**

QLS supports the disclosure of remuneration of the management committee and senior staff members, but raises the following issues:

The provision also seeks to include disclosure of remuneration or benefits given to relatives of management committee members or senior staff. The mischief presumably is to prevent avoidance of disclosure by diverting remuneration through relatives. The proposed provisions may not fully achieve this purpose. This is because:

- The definition of 'relative' (section 70D(2)) is narrow and would not appear to include defacto partners, half brothers and sisters and stepchildren.

[13] Definition of Officer in the Schedule Dictionary to the Act.

- It may not catch the arrangement where remuneration is diverted through an independent contractor with a captive entity such as a trust or company.
- It may not catch the arrangement where remuneration is passed through discounted goods or services.

QLS reserves its rights to comment on proposed regulations mentioned in this provision about the presentation of the disclosures to the annual general meeting. It may be appropriate to create a written record of the disclosures that would be available on the registry such as inclusion in the annual financial return filed with OFT.

**Recommendation 11:** That consideration is given to:

(a) widening the definition of "relative"; and

(b) that disclosures form part of the annual financial return filed with OFT.

**New sections 70E to 70J – new duties of officers**

These provisions do more than state the common law duties that currently apply to officers of incorporated associations. The original *Associations Incorporation Act 1981* was enacted with the intention of providing a simple and inexpensive means of incorporation for associations whose activities benefited the community. The alternatives were, and still are, an unincorporated association under common law and a company limited by guarantee under the national companies scheme.

The Act was to provide an alternative legal form between common law with few facilitations and a highly structured and regulatory geared commercial corporate regime.

The amendments in this Bill shift the position of an incorporated association firmly out of the middle ground into the corporate regime and in fact have some more onerous regulatory features.[14] This may have unintended consequences on the future use of the Act's regime by new community endeavours and current incorporated association may migrate to other legal forms.

We make the following comments:

- Proposed section 70I introduces a duty to prevent insolvent trading which is similar to the corresponding obligations contained in the *Corporations Act 2001* (Cth) (**Corporations Act**). However, there are no corresponding safe harbour protections for management committee members included in the Bill. There does not appear to us to be any policy reason why management committee members should not also have the benefit of 'safe harbour' provisions similar to those afforded to company directors.
- The protections afforded to volunteer committee members under section 39 of the *Civil Liability Act 2003*, being that they do not incur any personal civil liability in relation to any act or omission done or made by the volunteer in good faith when doing community work, may be restricted. This is as result of the newly created offences which will engage section 40 of the Civil Liability Act 2003. The new offences will

[14] For example, charitable corporations have no express obligation to disclose executive remuneration and there are greater defences available to company directors for duty breaches.

prevent the protection of section 39 where at the time of the act or omission, the volunteer was engaged in conduct that constitutes an offence.

**Recommendation:** Amend the Bill to include similar safe harbour protections for management committee members with substantially the same effect as for directors under the Corporations Act.

### Clause 32 Amendment of section 72 - Enforcement of rights and obligations

There are few cases that reach the Supreme Court because of the barrier of expense placed in the path of litigants.[15] Only 16 cases in nearly 20 years (less than 1 a year) involving internal disputes have been heard by the Supreme Court.

The proposed amendment will prevent a court application unless the relevant party has made reasonable attempts to resolve the dispute under the grievance procedure in the association's rules. QLS considers that placing another barrier is unwarranted. There may be circumstances where access directly to the Supreme Court is warranted for either party, and the provision should allow for this to occur.

It is noted that section 73(2) already gives the Supreme Court extensive discretion to refuse to entertain trivial or unreasonable applications in appropriate circumstances.

**Recommendation:** That the provision not be included in the amendments or at least, flexibility is allowed for the situation where direct application to the Supreme Court is warranted.

### Clause 33 - Amendment of s 81 (Applicant incorporated associations must have agreed rules)

The amendment is welcomed.

### Clause 34 - Replacement of pt 10, hdg and ss 89–91 – new Part 10 - Administration and winding up

The provision allowing for voluntary administration is a welcome development and one that QLS has advocated for previously. It is also necessary if the proposed insolvent trading provisions are accepted.

QLS has previously advocated for the inclusion of a mechanism under which a statutory manager can be appointed by the OFT and this is further discussed in the Annexure.

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[15] A search of Queensland Judgments (https://www.queenslandjudgments.com.au) from 2000 to date indicates that 42 cases had the words "incorporated associations" in their judgments. There were 36 cases in the first instance and 6 appeals. There were 16 cases involving what could be called 'internal disputes', 9 regarding winding up, 6 with respect to administrative law, 3 regarding trusts and equity and criminal matters, 2 miscellaneous, and one involving a will, property and a tort.

**Clauses 35 (Amendment of s 92 (Distribution of surplus assets) and 36 Insertion of new pt 10AA – Cancellation**

These amendments are welcomed.

**Clause 42**

This amendment is welcome.

**Clause 46 - Proposed new section 152 – Transitional provisions**

It is assumed that this provision is required to ensure that associations who have previously adopted the model rules will now have the provisions of section 47A implied into their rules.

As noted in our comments on section 47A, the section is potentially confusing and this matter would not have arisen if our recommendation is accepted – that is, that the application of the model rules are automatically updated for all associations regardless of incorporation date.

This clause refers to *'the requirement under section 47A for the rules to set out a grievance procedure'.* However, section 47A only provides that the rules 'may' include a grievance procedure, failing which the provisions in the Model Rules apply by default.

**Recommendation:**

Amend proposed new section 152 to reflect the fact that inclusion of a grievance procedure in an association's rules is optional, with the grievance provisions in the Model Rules applying if the rules are silent.

**Forthcoming Regulations and Education**

QLS draws attention to the issue of new regulations consequent upon these amendments.

In particular, the model rules will require amendment. The model rules are a critical element of the Regulation and functioning of the AIA. Extensive consultation with stakeholders will be required to ensure that any revised model rules are appropriate and functional.

The OFT needs to be proactive in bringing the proposed regulations, and in particular the model rules, with meaningful explanation and discussion to the attention of stakeholders. There are a number of legacy associations that have 'old version' model rules adopted on incorporation that are no longer fit for purpose and include provisions that conflict with the Act.

If our recommendation is not accepted (to have an automatic update of all model rule associations as occurs in other jurisdictions), then the OFT should be required to bring the issue to the attention of all "old version" associations.

The general community will require education about these amendments to the Act and any regulations.

The OFT should be adequately resourced to undertake this task which cannot be accomplished by web based resources alone. Regional meetings throughout Queensland will be required to assist officers and members of incorporated associations to adjust to these changes.

QLS also calls for an extensive transitional period of at least 2 years to ensure all affected associations have time to seek appropriate advice and to make any necessary changes in their management processes. This is particularly important when this legislation will affect a large number of small, under-resourced organisations run by volunteers.

### Amendment of *Collections Act 1966*

Two preliminary issues are addressed in relation to the *Collections Act 1966* (**Collections Act**), before commenting on the substantive amendments proposed.

#### 1. Review of the Collections Act and fundraising regulation

The QLS renews its call for the complete review of the Collections Act and consideration of the regulatory policies of fundraising generally.

The Collections Act is simply not fit for purpose for any stakeholders, whether a regulator, charity, community organisation, donor, beneficiary or the public. In summary, the reasons for these conclusions include:

- The provisions were drafted decades ago without the advantage of modern drafting techniques and plain English disciplines. The comprehension of the act is difficult for qualified lawyers let alone members of the public, the audience to which the regulation is addressed.
- The definition of charity and community organisations are no longer fit for purpose given changing law, social expectations, social enterprise, crowdfunding and other regulators using more modern definitions. For example, a number of ACNC Queensland-based charities are not charities for the Collections Act.[16]
- The provisions fail to address the modern mischiefs of public fundraising such as undesirable conduct involving the internet, email, crowd-funding, social enterprise and social media.
- The provisions fail to address modern fundraising practice and concepts such as donor lifetime value, multi-channel fundraising techniques, social enterprise, impact investing and the nationalisation and internationalisation of fundraising.
- The exceptions and exemptions provided to some organisations to the Act require reassessment given changed circumstances.
- The altered regulatory environment, including the advent of new legal forms, the ACNC and consumer protection laws needs to be considered to avoid duplicative compliance obligations.
- Government agencies are using only partially satisfactory 'workarounds' to address fundraising mischiefs such as police powers and local government regulation to cover

[16] Refer McGregor-Lowndes, Myles & Crittall, Marie (2015) *The State of Queensland Charities: An examination of the first Annual Information Statements of charities operating in Queensland.* Queensland University of Technology, Brisbane, QLD. [Working Paper] available at https://eprints.qut.edu.au/84654/

the deficiencies of the 'unfit for purpose' provisions of the Collections Act. There is a general non-profit sector sentiment that the Act is inappropriate and an unnecessary compliance burden with few redeeming features.

QLS foreshadows that there are significant risks of fundraising fraud and mischiefs which the current Act is unable to appropriately address and this may result in a disastrous reduction of confidence in Queensland charitable fundraising, which will ultimately impact upon Queensland communities.

### 2. ACNC registered charities operating in Queensland

Research conducted some time ago indicates that there may be 8,526 (80.4%) ACNC registered charities either resident or operating in Queensland that are not on the Queensland Collections list.[17]

There may be legal and other reasons for them not being registered or sanctioned, but there is a good chance that many should be registered, particularly those with web sites that seek donations generally.

The OFT should clarify its administrative position on such charities in the light of the undertakings made by the current government during the last federal election to harmonise fundraising regulation across Australia.

### Comments on proposed amendments to Collections Act

### Clause 54 - Replacement of ss 31 (Keeping financial records) and 32 (Financial statement)

QLS reserves its rights to comment on proposed regulations mentioned in this provision and recommends that QLS and other stakeholders be consulted on the regulations.

### Clause 55 - Amendment of s 35 (Vesting of property in the public trustee)

The amendments are welcomed.

### Clause 56 - Amendment of s 35A (Disaster appeals trust fund and committee)

The amendments are welcomed, but as discussed earlier, QLS considers that additional changes are required to address contemporary fundraising developments.

The current bushfire appeals that are mainly conducted via digital means and receiving funds from donors outside the jurisdiction are a compelling example of the contemporary issues that should be addressed.[18]

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[17] Refer McGregor-Lowndes, Myles & Crittall, Marie (2015) *The State of Queensland Charities: An examination of the first Annual Information Statements of charities operating in Queensland.* Queensland University of Technology, Brisbane , QLD. [Working Paper] available at https://eprints.qut.edu.au/84654/

[18] Refer to some of the issues emerging for Facebook and PayPal appeals at https://emergencylaw.wordpress.com/2020/01/06/diverting-facebook-donations/ and

A useful case study is the *Humboldt Broncos Memorial Fund Inc. (Re)*, 2018 SKQB 341 (CanLII) involving a tragic bus crash of a beloved hockey team that fuelled a significant online fundraising campaign.[19]

The Saskatchewan Informal Public Appeals Act attempts to deal with legal gaps arising from online crowdfunding on sites such as GoFundMe, Kickstarter and Facebook. Its purpose is to provide some structure for the disbursement of funds raised by informal (such as on social media) and specific-site online methods.

The campaign in this case raised $15.1 million, of which $14.6 million is available for disbursement after processing fees and contested donations. The online fundraiser charges payment-processing fees of 2.9% of the total raised plus 30 cents per donation processed. Without legislation of this type, there would be no controls over disbursement of funds raised informally or online.

The *Informal Public Appeals Act 2014* came into force in Saskatchewan on 1 January 2015 in response to a consultation paper published by the Uniform Law Conference, a national body that proposes changes to Canadian provincial, territorial and (where necessary) federal laws to increase harmonisation and develop uniform statutes across the country.

The Saskatchewan legislation is aimed at avoiding difficulties with the establishment of charitable trusts or schemes ordered by courts. Rather, the legislation gives the courts another method of creating a trust out of the money raised and setting terms for administration and disbursement.

A further ULC discussion paper has now been issued by the Consultation Paper on a Uniform Informal Public Appeals and Crowdfunding Act.[20]

> **Recommendation**: That consideration be given to the issues arising in digital appeals for support for disasters and the measures (including statutory measures) required to facilitate and regulate such endeavours.

**Clause 57 – disclosure of information to Commissioner of the ACNC**

The amendments are welcomed.

**Clause 58 - Amendment of s 47 (Regulations)**

The amendments are welcomed.

**Clause 59-60**

The amendments are welcomed.

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https://emergencylaw.wordpress.com/2020/01/07/further-complicating-the-issue-of-diverting-facebook-donations-and-perhaps-an-out/

[19] A case summary is available at https://eprints.qut.edu.au/132136/

[20] A copy of this Consultation Paper can be downloaded at: www.unilaw.ca

Throughout our submission, there have been issues raised that relate to other inadequacies of the AIA and associated legislation currently in force and not dealt with in the amendments in this Bill. For convenience these matters and others are included in the Annexure to this letter.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

[redacted]

Luke Murphy
**President**

**Encl:** Annexure

# Annexure

**Further reforms required – matters not addressed in the Associations Incorporation and Other Legislation Amendment Bill 2019**

We have taken this opportunity to also highlight further action that QLS considers should be taken to rectify other issues under the Act and which would ensure the smooth operation of the statute.

A number of issues that have been identified in prior public consultations over many years are not addressed by the Bill.

For example, as stated above, QLS is firmly of the view a complete review of the *Collections Act 1966* and consideration of the regulatory policies of fundraising generally is essential.

QLS respectfully suggests that consideration be given to including the further amendments outlined below.

1. **Clarification regarding commercial activities which are ancillary to association's principal purpose**

Currently, most jurisdictions, including Queensland, do not allow organisations which engage in purely commercial trading activities to either become or remain incorporated as an association. However, trading which is *ancillary to the association's principal purpose and is not substantial when compared with its other activities* is permitted.[21]

This provision has become difficult to interpret and administer, with associations often confused about what does or does not constitute 'ancillary' trading.

***Recommendation:***

a. Amend the Act to remove any restriction on associations trading. The existing prohibition on distributing benefits to members and the requirement that associations operate for the benefit of members or the community are sufficient protections to ensure that associations are not being used as shells for commercial trading.

b. If restrictions on trading are to be retained, the Act should be amended to provide clarity regarding the meaning of '*ancillary* to the association's principal purpose and including that it is not substantial when compared with its other activities".

2. **Requirement for election of management committee members**

Contemporary good governance practice continues to move towards favouring governing body composition and selection based on the skills, experience and competencies required to do the job of governing an organisation.

The Act currently requires that all members of a management committee must be elected by a general meeting (other than the secretary and casual vacancies).

[21] Section 4 *Associations Incorporation Act 1981* (Qld)

Although non-members may be elected at a General Meeting, the Act effectively precludes a management committee from itself appointing external management committee members to fill relevant gaps in skills, experience and competencies, without the need for those persons to be elected. This differs from the Corporations Act which permits Board-appointed Directors, provided that they are ratified at the next AGM.[22]

***Recommendation***

a. Amend the Act to allow for appointment by the management committee of up to 2 management committee members or 20 percent of the committee positions with requisite skills, experience and competencies.

b. Although the Act does not require management committee members to also be members of the association, the OFT publishes information to the effect that they do need to be association members.[23] QLS recommends that the Act is amended to make clear that management committee members do not need to be association members.

**3. Transparent and accountable processes for funds and account management**

The management committee has the general control and management of the administration of the affairs, property and funds of the association, including all expenditure which must be approved or ratified at a management committee meeting.

It is important that there are transparent and accountable processes for funds and account management.

Under the Model Rules (and the Regulation itself), cheques must be signed by two persons, one of whom must be the president, secretary or treasurer, and the other who must be one of three other members with authority from the management committee to sign cheques.

These requirements are not always practical. Unfortunately, as a result, the practice of one management committee member signing a number of blank cheques at once, and then the requisite second signatory adding their signature and the amount either when they become available to do so or when the need to issue the cheque arises, is rife in the sector.

In terms of funds management and control, this is a particularly poor practice for any organisation and open to fraud and abuse.

***Recommendation:***

Enabling cheques to also be signed by any two members nominated by the management committee is likely to improve business efficiency for associations. It is proposed that the two signatories to a cheque must be either:

a. two members of the management committee, or

[22] Refer section 201H (3) Corporations Act.

[23] Refer https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/running-an-incorporated-association/incorporated-association-management-committee/who-on-committee

b. one member of the management committee and one of the three members authorised by the management committee to sign cheques, or

c. two of the three members authorised by the management committee to sign cheques.

***Recommendation:***

Provision should be made to encourage contemporaneous execution.

## 4. Increase maximum amount of petty cash payments

Currently, payments by associations of $100 or more must be made by cheque or electronic funds transfer. This is a requirement of both the Model Rules and the additional accounting requirements in Schedule 5 of the Regulation. Only payments less than $100 may be made out of the petty cash account.

***Recommendation:***

The current maximum amount of $100 for petty cash payments is too low and needs to be raised to account for inflation. QLS proposes a new threshold amount of $500. Although considerably higher than the present amount, it is a realistic point between funds required to meet day-to-day/recurrent outgoings and one-off/significant expenditure.

This proposal is directly aimed at reducing red tape requirements, and will increase operational efficiencies for associations, whilst maintaining a reasonable degree of control of outgoings.

## 5. Remove restriction requiring bank account in Queensland

The Regulation requires associations to keep an account with a financial institution in Queensland. This does not reflect modern electronic banking and communication practices, and there is no equivalent restriction in the other States and Territories. The issue is whether the current requirement for associations to keep an account in Queensland with a financial institution should be removed.

When the requirement was first included, banking usually occurred at the branch of a financial institution, whereas today banking is mostly conducted electronically. As such, not all financial institutions maintain physical branches in every jurisdiction. The requirement to keep an account actually within Queensland therefore limits an association's choice of financial institutions. Given the diversity in size and type of associations, this freedom of choice is important to ensure an association has a financial institution which best suits its needs.

***Recommendation:***

Removing the current restriction will give associations greater flexibility and enable them to choose banking arrangements which best suit their needs. It will also bring Queensland in line with other jurisdictions. Such an amendment offers improved choice for associations in their banking arrangements.

### 6. Permit vesting of property in trustees

Associations are permitted to act as trustees for other people's property in some circumstances: for example, they may be trustees of land under the *Land Act 1994* (Qld). However, some associations seek to vest their own property in trustees, who then hold that property on trust for the association and its members. It is not clear whether this arrangement of having association property held on trust is permitted by the Act.

As the Act clearly provides for trusts established before incorporation to continue, it could be argued that an association which is already incorporated should be able to choose to deal with its property in this way. This argument is supported by section 25 of the Act, which gives associations all the power of an individual, including the powers to purchase, hold legal and equitable title to, and dispose of real and personal property.

An illustration of some of the issues that can arise are contained in the case of *McKnight & Anor v Ice Skating Queensland (Inc)* [2007] QSC 273.

***Recommendation:***

The Act should be amended to make it clear that associations are permitted to vest their property in trustees. This would provide additional flexibility for associations, allowing them to manage their property as they see fit.

### 7. Delegation by management committees to subcommittees and other approved members or persons

Model Rule 27 enables the management committee to appoint a subcommittee to help conduct the association's operations, but it is not clear how the management committee is to achieve or process this delegation. Delegations need to be made clearly and formally, and recorded in order to ensure decisions made under delegation are within power and, if necessary, to protect the individuals making the delegated decision and the organisation.

In addition, the Act and the Model Rules do not expressly provide for a management committee to delegate powers to an individual or individuals (for example management personnel), even though section 60(2) provides that any manager duly appointed by the management committee and acting in the business or operation of the association shall be deemed to be an agent of the incorporated association.

The Corporations Act allows directors to delegate their powers to a broader range of persons as committees under the Act. Delegations must be recorded in the minute book.[24] Furthermore, directors are responsible for the delegate's exercise of power unless the director believed on reasonable grounds, in good faith, and after making proper inquiry that the delegate was reliable and competent.[25] A trustee who delegates powers under the *Trusts Act 1973* (Qld) remains responsible for the actions of his or her delegate.

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[24] *Corporations Act 2001 (Cth)* s 198D.
[25] *Corporations Act 2001* (Cth) s 190.

***Recommendation:***

a. Amend the Act to specifically allow management committees to delegate powers, in writing, to:

   i. Subcommittees;

   ii. a member or members; and

   iii. other persons approved by the committee,

   but with the committee retaining responsibility for the acts of the delegate.

b. Include a provision protecting committees from unexpected acts by delegates, along the lines of s 190 of the *Corporations Act.*

## 8. Voting by minors

Minors can be members of an association, but it is not clear as to whether they may vote in association meetings. Voting rights for minors may be warranted for some associations, particularly those set up to address the interests of young people. However, some adult members collect general proxies of minors to seek to influence the voting at meetings, which is not generally considered desirable.

***Recommendation:***

Amend the Act to clarify that minors may only vote at a meeting of an association where that is specifically provided for in the rules of the association and if physically present.

## 9. Effect of amendments to Model Rules

Incorporated associations are required to have documented rules.

When associations resolve to incorporate, they may decide to adopt the Model Rules or their own rules. It is estimated that about 8 000 incorporated associations have their own rules. Model Rules in the Regulation may be amended from time to time.

Once associations become incorporated and adopt the Model Rules, neither the Act nor the Regulation make any provision as to what happens if the Model Rules are amended. The amended Model Rules will be put on the Department's website as an example of best practice, but it is up to individual associations to inform themselves of changes and to decide whether to adopt the updates to the rules by going through the mandated process for changing their rules, with is costly and time consuming. As a result, well over 10,000 incorporated associations have various versions of model rules which do not align, to various degrees, with the current legislation.

Many smaller associations struggle with administration issues arising from turnover of volunteers and staff and a lack of comprehensive handover procedures. Many have problems knowing what the current version of their rules is and in internal disputes it is often the case that the dispute is exacerbated by sides arguing over what the current rules are or using different sets of rules unbeknown to each other. Establishing the actual

applicable model rules for an association is central to appropriate meeting procedures and resolution of internal disputes.

This problem is exacerbated by members referring to the Department's web site which refers to the latest Model Rules and does not have links to prior Model Rules. '

Other jurisdictions provide that if an association adopts the model rules, if the model alters, they are deemed to have updated to the new model. There does not appear to be any practical issues with such a practice.

***Recommendation:***

Model Rules are an example of best practice, and if these rules change, it is also arguable associations should have to comply with the amended Model Rules unless they specifically decide a different rule is more appropriate for their particular circumstances. The effect of a change to the Model Rules should be detailed in the Act.

**10. Statutory Manager**

There may be circumstances where an association has become dysfunctional, for reasons other than financial difficulties, which can only be remedied by another form of external intervention. The issue to be considered is whether consideration should be given to granting the Chief Executive the power to appoint a temporary statutory manager to resolve a deadlock or overcome dysfunction within an association. The Chief Executive may also require the power to alter the rules or constitution of the association to enable any proposed statutory manager to carry out their duties to restore function to the association.

Amendments to the Victorian *Associations Incorporation Act 1981*[26] have introduced this measure. Under the Victorian Act, the Registrar can investigate the affairs of an incorporated association, including its functioning and financial condition. After such an investigation, if the Registrar considers it in the interests of the incorporated association's members, creditors or the public, the Registrar can apply to the Victorian Magistrates' Court for the appointment of a 'statutory manager' to conduct the affairs of the incorporated association.

It is anticipated that the Victorian provision will be used in circumstances where there is evidence of a serious dysfunction in the operations of an association, such as the association ceasing to function due to an internal dispute over election results. This was seen as a less severe alternative to seeking that the association be wound up.

Victoria introduced the added measure of its Registrar having to apply to the court for an order to appoint a statutory manger to ensure that the power was not used without external independent oversight.

In New South Wales, the Director-General may appoint an administrator to manage the association's affairs if the association has either persistently failed to comply with the Act

[26] PartVIIAB

or if the Director-General believes in the circumstances it is in the interests of the association's members or creditors.[27]

***Recommendation:***

Amend the Act to give the Chief Executive the power to apply to court for the appointment of a temporary statutory manager and to allow the statutory manager to alter the rules or constitution of the association to overcome any dysfunction, but only upon approval from the Chief Executive to do so.

**11. Publication of statements by Office of Fair Trading**

In addition to the matters listed above, QLS considers that the Office of Fair Trading (OFT) could take a more proactive approach by regularly publishing statements which disclose its policy position and administrative guidelines in relation to matters associated with the Act.

Although it is well understood that the OFT cannot provide legal advice to associations, internal policies in relation to the administration of the Act and regarding the exercise of discretion could be made available and updated as necessary. Such documents and rulings are published by the Australian Taxation Office, ACNC and the English Charities Commission.

This would allow for formal comments on procedures adopted by the OFT rather than allowing news of policy positions to spread 'on the grapevine'. Information of this type may also be available in the form of 'statements of affairs' under freedom of information legislation and would complement existing fact sheets and other publications.

***Recommendation:***

OFT to publish statements and policies to provide guidance to associations, similar to the Australian Taxation Office, ACNC and the English Charities Commission.

**12. Email address of secretary**

The OFT should seek an email address for the secretary of an association for ease of communication.

**Other matters for consideration:**

- **Election of a president by management committee**

  We recommend that the Act expressly allow for election of a president by and from management committee members who have been elected at a general meeting. The AIA currently requires an association to have a president and treasurer at all times. We are aware of organisations who currently elect management committee members

[27] S55 *Associations Incorporation Act 2009* (NSW)

and subsequently those management committee members elect a president. The Act may not currently allow for that.

- **Clarification of when an organisation is being carried on for financial gain**

  Clarification is required regarding when an organisation is being carried on for financial gain. Section 4 of the Act provides that an association will not be formed or carried on for the purpose of providing financial gain to members simply because a member of the association receives a trophy or prize (other than money) from the association because of a competition.

  As an example of a prize which is in the form of money (contrary to section 4), swimming clubs often conduct 'skins' competitions which may result in members winning cash prizes.

  It would seem an unintended result if that type of competition resulted in an association being held to have been carried on for the purpose of providing a financial gain. We are also aware that some organisations incentivise voting at general meetings by offering items such as low-value vouchers which effectively have a cash equivalent. Again, we question whether that should be specifically prohibited.

- **Cross-reference Model Rules with the Act**

  We recommend that the content of the Model Rules be cross-referenced against the Act to ensure that rights covered by the Model Rules which are not currently referred to in the Act (for example, the right to establish subcommittees and the status of the Secretary, as mentioned above) are expressly authorised by the Act. In that regard, an association which does not adopt the model rules will generally expressly exclude the operation of section 47(1) of the Act.

- **Term of office for management committee members**

  The AIA should be amended so that it is absolutely clear that the term of office for management committee members may be longer than 1 year (as confirmed by case law).