

24 March 2020

Our ref: WD NFP

UrgentRegistration Services Unit
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001By email: [REDACTED]

Dear Registration Services

Incorporated associations regulated by *Associations Incorporation Act 1981* – financial and other obligations - impact of COVID-19

I write in relation to the unfolding impact of the COVID-19 outbreak on the incorporated associations of Queensland, particularly in light of recent government announcements about limiting non-essential gatherings and likely further restrictions of movement.

The Prime Minister's most recent announcements suggest that these measures will remain in place for up to 6 months.

The Queensland Law Society (QLS) Not for Profit Law Committee have substantial expertise in working with not for profit clients, including incorporated associations. The committee has identified a number of compliance obligations which may be difficult to meet in the current circumstances. This is particularly the case when most associations are community organisations run by volunteers.

QLS is seeking your assistance with an administratively simple process for incorporated associations to obtain extensions of time or suspend the operation of certain obligations under the *Associations Incorporation Act 1981* (AIA).

Some of these time-critical obligations include:

- An AGM must happen within 6 months of the end of an association's financial year¹;
- An annual return must be submitted to the Office of Fair Trading within 1 month of holding the AGM²;
- If an association needs more time to lodge the annual return, the association needs to contact the Office of Fair Trading.³ The association must make a written request

¹ Section 55 AIA Act

² Section 59(3), 59A(3), 59B(3) AIA Act

³ Section 121 AIA Act

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including reasons for the request and the date to which the extension is requested.⁴ Identifying an extension date is likely to be difficult at this time;

- Management committees must meet as often as necessary, but at least once every 4 calendar months.⁵

I understand that the Office of Fair Trading may be providing a 6 month blanket extension for AGMs. This is welcomed. QLS suggests that consideration could be given to publishing guidance covering:


- Automatic extensions of up to 6 months for organisations to hold their AGM and accordingly lodge their annual returns after the association's AGM, including waiving any requirement for a formal written application by an association to obtain the benefit of this extension;
- Waiving the requirement for a management committee to meet at least once every 4 calendar months for a specified period (it would appear that a prudent date at present is until at least 31 October 2020);
- How to hold meetings and enable voting to make decisions without the need for a physical meeting particularly if there are no enabling provisions in the Constitution. For example the Charities Commission of England and Wales has said:

Some charities have clauses in their governing documents that allow them to meet virtually or to use telephone facilities, so we advise trustees to check their governing document and see if they can make amendments themselves to facilitate changes as to how or when meetings are held. "Where there is no such clause in your governing document and you decide to hold meetings over the phone or using digital solutions, we will understand but you should record this decision and that you have done this to demonstrate good governance of your charity." The Commission said some charities may need to postpone their annual general meeting (AGM) and other key events. In these cases it also advised documenting how decisions were taken.

QLS would be pleased to assist in publicising any decisions or announcements of this nature amongst its members.

If you have any queries regarding 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



Luke Murphy
President

⁴ Section 121 AIA Act

⁵ Section 63 AIA Act