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Modernising Processes of Incorporated Associations

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The laws affecting incorporated associations have not been substantially reformed since 2007. Queensland Parliament intends for the *Associations Incorporation and Other Legislation Amendment Act 2020 (Qld)* ('Act') to assist thousands of people involved in community groups by modernising processes. The amendments are aimed to simplify processes, improve internal governance, reduce red tape, and enhance government practice.

Amendments Currently in Force

We draw your attention to the following amendments now in force:

- (1) Associations can use communications technology to conduct general meetings without provision for technological usage in their rules.
- (2) An incorporated association has the discretion to adopt or replace the model rules at any time. To effect this change, the association must:
 - a) pass a special resolution at a general meeting; and
 - b) apply to the Office of Fair Trading (OFT) for registration within 3 months of passing the resolution.
- (3) Should the incorporated association be experiencing financial difficulty, committee members may voluntarily appoint an administrator to place the association into voluntary administration.
- (4) An incorporated association may apply to the Office of Fair Trading to cancel the association, thereby avoiding a lengthy winding up process. To be eligible, the association must not:
 - a) have any outstanding debts or liabilities;
 - b) have any outstanding fees or penalties under the *Associations Incorporation Act 1981*; and
 - c) must not be a party to any legal proceedings.
- (5) An individual will be eligible to sit on a management committee after 5 years from the later of:
 - a) the day the conviction is recorded;
 - b) the day the individual is released from prison;
 - c) the day any other occur order relating to the conviction or term of imprisonment is satisfied.

Notwithstanding, conviction of any indictable offence or of a summary offence leading to imprisonment may affect that individual's eligibility.

- (6) The maximum penalty for breaches of some provisions will be increased to 20 penalty units.
- (7) Upon an incorporated company being wound up or cancelled, information pertaining to how surplus assets, property or money is vested will be published by gazette notice rather than regulation.
- (8) Should the Chief Executive determine that property under the *Collections Act 1966* is unlikely to reach the intended beneficiaries, they may vest that property to the Public Trustee by gazette notice rather than by regulation.

Expected Amendments: 30 June 2021

Further amendments are expected to take effect by 30 June 2021. It would be prudent for incorporated associations to take note of these amendments now to plan for and accommodate these amendments moving forward.

In the future, using a common seal will be optional and the secretary of an association will have to be 18 years or older. To simplify processes, duplicated reporting requirements for charities on the ACNC register will be removed.

Significantly, management committees and members will be given increased responsibilities and liabilities, notably:

- (1) Penalties will apply to management committees that fail to carry out their functions in the best interests of the association, with due care and diligence;
- (2) Members of the management committee will have a duty to prevent the association from trading while insolvent;
- (3) Penalties will apply to committee members and officers who use their position to gain a benefit or cause detriment to the association; and
- (4) Management committee members will have 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.

Finally, the powers of Office of Fair Trading inspectors will extend to allow for entry and seizure methods.

Expected Amendments: 30 June 2022

It is expected that by 30 June 2022, incorporated associations will be required to have an internal grievance procedure or dispute resolution process in place. This amendment is aimed at reducing the need to resort to litigation to resolve a matter. The Office of Fair Trading will develop model rules as part of a consultation process with industry bodies that may be used in default. If the association wants to use their own dispute resolution process, they must include it in their rules by passing a special resolution.

If you would like to be part of the consultation process, you can register your interest by emailing nfpconsultation@justice.qld.gov.au.

How we can help you

If you have any questions or concerns regarding the above amendments, please do not hesitate to contact us. We consider it would be prudent for all incorporated associations to begin discussing the upcoming amendments, particularly those that carry penalties as outlined above.

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