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Article Information

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How will recent reforms impact the everyday operations of Queensland incorporated associations?

In its first comprehensive review of the incorporated associations legislation since 2007, Queensland has enacted amendments to strengthen the internal governance of incorporated associations while also reducing the regulatory burdens on these organisations.

Why has the Queensland Government introduced these changes?

The Explanatory Note to the new legislation states that the primary focus of the legislation is to

> "modernise the Associations Incorporation Act and to deliver amendments that will improve the internal governance of associations and reduce red tape in ways that will be beneficial for the sector."

What changes will impact incorporated associations now?

Under the new legislation, with effect from 22 June 2020, incorporated associations will now be able to:

- conduct a general meeting using communications technology such as video conferencing, irrespective of whether the association's rules allow for such use;
- replace their own rules with the model rules at any time after being incorporated provided they have passed a special resolution at a general meeting and applied to the Office of Fair Trading (**OFT**) to register the change within 3 months of passing the resolution;
- place themselves into voluntary administration if they are experiencing financial difficulties instead of having to apply to the Court for appointment of a provisional liquidator; and
- apply to the OFT to voluntarily cancel the incorporation of the association rather than having to undertake a formal winding up process, provided the 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.

What changes will impact incorporated associations in the future and when will the changes come into effect?

The amendments to improve internal governance arrangements impose additional requirements and obligations on incorporated associations, their officers and management committee members and will therefore not commence immediately to allow incorporated associations time to amend their rules and internal procedures and comply with the new requirements.

The following changes will commence either on the date set by proclamation or if no proclamation is made, on 30 June 2021:

- commencing with the 2020/2021 reporting period, incorporated associations that are registered as a charity with the Australian Charities & Not for Profits Commission will no longer be required to lodge an annual summary of financial affairs with OFT or pay annual lodgement fees;
- officers of incorporated associations will have the following duties:
    - to exercise their powers and discharge their duties with care and diligence, in good faith and in the best interests of the association and for a proper purpose;

    - not to improperly use their position or information obtained from their position to gain, directly or indirectly, a pecuniary benefit or material advantage for themselves or another person or cause detriment to the association, and

  failure to comply with the above duties will attract penalties of up to 60 penalty units, which, as at the date of this insight, equates to $12,600;

- management committees of incorporated associations and their members will be required to:
    - not allow the association to incur debts whilst insolvent;
    - disclose material personal interests to the management committee and must not be present while the matter is being considered or vote on the matter unless approved by the committee;
    - disclose any remuneration or benefits given to members of the management committee, senior staff and their relatives at the association's annual general meeting, and

  failure to comply with the above requirements will attract penalties of up to 60 penalty units ($12,600);

- the secretary of an incorporated association will be required to be 18 years or over; and
- incorporated associations will no longer be required to have and/or use a common seal.

Either on the date set by proclamation, or if no proclamation is made, on 30 June 2022, incorporated associations will also be required to include an internal grievance procedure or dispute resolution process in their rules and will no longer have to resort to the Supreme Court to adjudicate disputes. The procedure must apply to disputes between members, a member and the management committee and/or a member and the incorporated association. The legislation requires certain elements be included in the grievance procedure, such as provision for mediation if the dispute cannot be resolved between the parties, affording each party involved a right to be heard and allowing members to appoint another person to act on their behalf.

What should incorporated associations do now?

Incorporated associations should seek legal advice in relation to the changes required to their rules and internal governance procedures to ensure they comply with the new laws. Management committees and officers of incorporated associations should also make sure they understand the obligations imposed on them by the new laws, the manner in which such obligations apply to the activities of the organisation and the consequences of non-compliance with the new requirements.

If you would like advice regarding any changes required to the rules, governance policies or internal procedures of your incorporated association to comply with the new laws, please contact Sarah Johnson.