



9 January 2020

Sue Cawcutt
Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: eesbc@parliament.qld.gov.au

Dear Ms Cawcutt,

Submission – Associations Incorporation and Other Legislation Amendment Bill 2019

Clubs Queensland thanks the Queensland Government for the opportunity to provide feedback on the *Associations Incorporation and Other Legislation Amendment Bill 2019* (**'the Bill'**).

Clubs Queensland is largely supportive of the proposed amendments to the *Associations Incorporation Act 1981* (**'the Act'**).

Clubs Queensland

Clubs Queensland is the peak industry association and union of employers of registered and licensed community clubs in Queensland. Clubs Queensland engages in a range of professional activities such as the provision of expert policy and operational advice and the representation of industry interests to Government, media and other bodies.

Club Queensland's membership includes RSL Clubs, Surf Life Saving Supporter Clubs, Sporting Clubs and General Interest Clubs. The large majority of our member Clubs operate as incorporated associations within the framework of the Act.

General comment on the Bill

Clubs Queensland welcomes, and is largely supportive of, the proposed amendments to the Act, however we have concerns over the following proposed requirements which we view as unduly burdensome on associations:

- the uncertainty surrounding lawful execution of a contract;
- the potential for misuse of the proposed 'dispute resolution procedures' by association members who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association;
- the requirement of an association to present individual remunerations paid at the association's AGM which is disclosure in excess of that required by other entities incorporated under a different structure; and

- the proposal to allow a fair trading inspector to enter an association and seize property without the association's consent and without a search warrant, which is a power in excess of the powers afforded to the Australian Securities and Investments Commission to enter and seize company property.

What follows is a detailed submission on aspects of the proposed amendments to the Act.

Common Seal

Clubs Queensland welcomes the amendment of Section 21 of the Act to remove the requirement that an Association have a common seal.

We consider this will reduce the regulatory burden on Clubs when executing contracts. It will also align the Act with corporations' legislation which has not required corporations to use a common seal to execute contracts since 1998.

Execution of contracts

Clubs Queensland holds concerns about the insertion of sections 28(2A) and 28(2B) into the Act.

The proposed amendments provide that a document can only be executed where it is signed by a member of the management committee and countersigned by the secretary of the association, another member of the management committee or another person authorised by the management committee of the association.

This appears to be in conflict with section 28(1)(b) of the Act which states that:

'a contract, which if made between private persons, would be required by law to be in writing and signed by the parties to be charged therewith shall be made in writing and signed by any person acting under the express or implied authority of the incorporated association'.

As the 2014 decision of *Knight Frank Australia Pty Ltd v Paley Properties Pty Ltd*¹ demonstrates, it is extremely important for an organisation to lawfully execute its' contracts to ensure they are legally binding. In order to lawfully execute its' contracts, an association must have a clear understanding of the way that the legislation requires it to execute its' documents.

As the amendments currently stand, it is unclear whether contracts must always be executed in the way described in sections 28(2A) and 28(2B) or whether an association's power to make, execute, vary, ratify or discharge a contract or document can be exercised by an individual with the association's express or implied authority on behalf of the association.

Clubs Queensland submits that the legislation should clearly articulate that an association can expressly or impliedly authorise an individual to make, execute, vary, ratify or discharge a contract or document on behalf of the association.

Grievance procedure

Clubs Queensland is largely supportive of the proposal to insert section 47A into the Act requiring a grievance procedure to be used in dealing with member disputes.

However, we hold concerns regarding the potential scope of the grievance procure. In particular, we are concerned that Clubs will no longer have the ability to take disciplinary action against their members who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association, without first engaging in a mediation with the member.

¹ [2014] SASCFC 103.

Clubs Queensland considers it inappropriate for an association to be required to engage in mediation with a member who has conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association.

Mediations are designed to resolve legitimate disputes between parties. Mediations are not designed to allow a person who has conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association to 'negotiate' their way out of disciplinary action.

Clubs Queensland therefore submits that the term 'dispute' should be clearly defined to ensure that persons who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association cannot use the proposed dispute resolution procedures.

Meetings using communications technology

Clubs Queensland strongly supports the proposed amendment of section 56 of the Act to allow an association to hold its' meetings using communications technology without having to amend its' constitution to do so.

Clubs Queensland supports this positive change as we consider it unduly burdensome for a Club to go through the procedures involved in amending their constitution just to allow them to use modern technologies to conduct their meetings.

Keeping financial records

Clubs Queensland welcomes the proposed amendment to section 59 of the Act which will require an association to keep financial records that:

- correctly record and explain its transactions and financial position and performance;
- enable a true and fair financial statement for each reportable financial year of the association to be prepared;
- enable a true and fair audit report to be prepared; and/or
- enable a true and fair verification statement to be prepared.

Clubs Queensland considers that this will not impose any additional burden on Associations as these documents are of the kind that associations should already be keeping.

Convictions

Clubs Queensland supports the proposed amendment of section 61A of the Act to allow a person who has been convicted on indictment; or summarily and sentenced to imprisonment to be elected as a member of a management committee following a rehabilitation period of five years.

Remuneration

Clubs Queensland holds concerns over the proposed insertion of section 70D into the Act which provides that an association must ensure that remuneration paid or other benefits given for the financial year to the following persons is presented to the association's AGM:

- each member of the management committee of the association; and
- each senior staff member of the association; and
- each relative of a person mentioned in (a) or (b).

Clubs Queensland is opposed to the proposed disclosure of each individual senior staff member's remuneration to the AGM. We consider this to be unacceptable as such information is considered primarily to be in 'commercial confidence'.

Additionally, Clubs Queensland considers it unduly burdensome for an association to disclose the remuneration of each individual staff member where it is a requirement that is greatly in excess of the disclosure requirements of other entities which are incorporated under a different structure, such as a company limited by guarantee.

Clubs Queensland therefore proposes that the amendments instead mimic the Australian Accounting Standards AASB124 Related Party Disclosures which provides that 'an entity shall disclose key management personnel compensation **in total**'.

Duties of Officers

Clubs Queensland welcomes the insertion of Part 7 Division 3 – Duties of Officers which provides that an officer (a member of the management committee or a manager appointed by the management committee) of an incorporated association must:

- exercise the officer's powers and discharge the officer's duties with the degree of care and diligence that a reasonable person would exercise;
- exercise the officer's powers and discharge the officer's duties in good faith in the best interest of the association and for a proper purpose; and
- not improperly use the officer's position to gain, directly or indirectly, a pecuniary benefit or material advantage for the person or another person, or cause detriment to the association.

Additionally, Part 7 Division 3 also provides that a member of the management committee of an association must not:

- allow the association to incur a debt if the association is insolvent at the time the debt was incurred or becomes insolvent because of the debt; and
- immediately before the debt was incurred, there were reasonable grounds to expect that the association was insolvent or would become insolvent if they incurred the debt.

Clubs Queensland is of the view that currently, the Act does not provide adequate guidance to the officers of an association as to their duties in relation to the association. Such duties may currently exist at common law, however, it is difficult for an officer, who is often a volunteer and untrained in the law, to locate and apply common law principles.

Clubs Queensland considers that the proposed changes merely codify basic common law principles.

Clubs Queensland is supportive of the proposed changes as they provide greater guidance to associations on the standards of behaviour required by an association's officers. This will greatly contribute to the effective operation of an association.

Administration and Winding Up

Clubs Queensland strongly supports the amendment of sections 89 and 92A of the Act which, respectively, allow an Association to:

- place itself into voluntary administration without having to make an application to the Supreme Court for the appointment of an administrator; or
- make an application to the Chief Executive to cancel the incorporation if the association has no outstanding debts or liabilities, has paid all fees and penalties under the Act, and is not a party to legal proceedings.

Clubs Queensland welcomes these amendments as they provide a more cost effective and practical solution for an association in formally ending the existence of the association.

Powers of a Fair Trading Inspector

Clubs Queensland holds concerns over the proposed insertion of section 4A into the *Fair Trading Inspectors Act 2014* (Qld). The proposed Section 4A has the effect of allowing a fair trading inspector to enter the premises of an association and seize property without the association's consent and without a search warrant.

Clubs Queensland considers it unduly excessive that a fair trading inspector possess these powers where the powers are greatly in excess of those which the *Corporations Act 2001* (Cth) grants the Australian Securities and Investments Commission (ASIC) to enter company premises and seize company property.

Clubs Queensland submits that the amendments should mimic the powers of ASIC, who can require the production of documents, but can only enter or seize company property in accordance with a search warrant.

Conclusion

Clubs Queensland as the representative body for Queensland's Community Club sector largely supports the Queensland Government's proposed amendments to the Act.

However, Clubs Queensland holds concerns over a number of the proposed requirements which it views as unduly burdensome on associations, and as such, submits that the Bill requires the following amendments:

- a clear statement that an association can expressly or impliedly authorise an individual to make, execute, vary, ratify or discharge a contract or document on behalf of the association;
- a clear definition of the term 'dispute' to ensure that members who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association cannot use the proposed dispute resolution procedures;
- that section 70D mimic the Australian Accounting Standards AASB124 Related Party Disclosures which provides that 'an entity shall disclose key management personnel compensation **in total**' instead of requiring individual salary disclosure; and
- that the enter and seize powers of a fair trading inspector only be exercised with the express authorization of the association or under a search warrant.

Clubs Queensland requests that it be called to appear as a witness at the Education, Employment and Small Business Committee's public hearing into the proposed amendments to the Act on Monday 3 February 2020.

If you have any questions or require any further clarification, please do not hesitate to contact our Workplace Relations Manager, Dan Nipperess on (07) 3252 0770.

This submission was prepared with the assistance of Nastassja Milevskiy, Workplace Relations and Compliance Officer.

Yours faithfully


Doug Flockhart
Chief Executive Officer