



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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Record of Proceedings, 26 November 2019

## **ASSOCIATIONS INCORPORATION AND OTHER LEGISLATION AMENDMENT BILL**

### **Introduction**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (3.15 pm): I present a bill for an act to amend the Associations Incorporation Act 1981, the Collections Act 1966, the Fair Trading Inspectors Act 2014, the State Penalties Enforcement Regulation 2014 and the acts mentioned in schedule 1 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Associations Incorporation and Other Legislation Amendment Bill 2019 [2123](#).

*Tabled paper:* Associations Incorporation and Other Legislation Amendment Bill 2019, explanatory notes [2124](#).

I am pleased to introduce the Associations Incorporation and Other Legislation Amendment Bill 2019 into the parliament today. The bill progresses important reforms for more than 22,000 not-for-profit associations incorporated in Queensland. These associations represent and support many vital aspects of the Queensland community. The hard work and dedication of Queensland's associations sustain a range of important activities that are vital to our way of life. Incorporated associations provide a means for like-minded people to collaborate and participate in activities such as sport, social activities and hobbies, industry representation, advocacy, as well as support for a range of charitable or community causes. Queensland's incorporated associations therefore play an important role in generating community connections and strengthening civil society. The government is committed to supporting the work of these incorporated associations and assisting them to operate more effectively. The amendments contained in the bill are a reflection of this commitment.

The bill proposes a number of amendments aimed at reducing the regulatory burden experienced by incorporated associations and modernising the legislative framework that applies to them; for example, the bill will ensure all associations have the ability to conduct general meetings via communications technology if they desire to do so without necessarily having to amend any of their rules. The bill will also amend the act so that incorporated associations are no longer required to use a common seal. This will reduce red tape for associations in the execution of contracts and other documents and will bring the Associations Incorporation Act in line with equivalent legislation in other states. Associations may, however, continue using their seal if they wish to do so.

Significantly, the bill recognises the duplicated annual reporting burden of approximately 3,759 Queensland incorporated associations that have registered as charities with the Australian Charities and Not-for-profits Commission—the ACNC—for the purpose of obtaining certain tax concessions from the Australian Taxation Office. These ACNC registered associations represent almost 17 per cent of all associations incorporated in Queensland. As a result of their dual registration, ACNC registered associations have an obligation to submit annual financial reports to both the Queensland government under the Associations Incorporation Act and the ACNC.

I am pleased to announce that the Associations Incorporation and Other Legislation Amendment Bill will address this situation by providing the Queensland government with the ability to exempt, by regulation, certain classes of association from the financial reporting obligations of the Associations Incorporation Act. Subject to Governor in Council approval, the government will use this exemption power to remove the requirement for ACNC registered incorporated associations to submit financial statements to the Office of Fair Trading.

Importantly, the bill proposes similar amendments to the Collections Act 1966, which provides the framework under which charities and associations with community purpose objects may conduct fundraising in Queensland. The Collections Act amendments, coupled with subsequent amendments to the Collections Regulation 2008, will remove the duplicated reporting requirement to the benefit of an estimated 3,200 charities and community purpose organisations, representing some 70 per cent of those authorised to fundraise in Queensland. This is a highly desired reform for charities and I am pleased to introduce legislation providing for the necessary amendments today. It is intended that the changes will be in place for most incorporated associations and Collections Act entities before the reporting deadlines for their 2020-21 reporting period.

To ensure the Office of Fair Trading will still be able to maintain an appropriate level of risk based oversight of exempt ACNC registered entities if required, the bill provides the chief executive with the ability to enter into an information-sharing arrangement with the ACNC. The chief executive will also have the power to direct an exempt entity to provide financial statements and to have those statements audited, verified or examined.

For incorporated associations with a continued obligation to report to the Office of Fair Trading, the bill addresses a situation in which a smaller association may incur the cost of having their financial statement reviewed or audited because a one-off grant or insurance payment has temporarily increased their annual revenue above the audit thresholds contained in the Associations Incorporation Act. The bill will provide the chief executive with the discretion to allow the association to report under a lower reporting tier in these special and unusual circumstances if requested to do so by the association. The bill will also reduce red tape with regard to the administration and winding-up of associations.

The bill applies part 5.3A of the Corporations Act 2001 to provide associations with a formalised process to appoint a voluntary administrator. Currently, incorporated associations are not able to place themselves into voluntary administration under the Associations Incorporation Act if they experience financial difficulties. Instead, an incorporated association would need to apply to the Supreme Court for the appointment of a provisional liquidator which is often a time-consuming and expensive process. The ability to appoint a voluntary administrator will greatly assist an association to overcome periods of serious financial difficulty and help to optimise the outcome for the association's creditors and members if the association is ultimately wound up.

The bill also introduces a process whereby an association may apply to the chief executive to cancel its incorporation without having to undergo a formal winding-up process. This voluntary cancellation process will only be available if the association has no outstanding debts or liabilities, has paid all fees and penalties applying to it under the Associations Incorporation Act, and is not a party to any legal proceedings. The association must also arrange for the appropriate disposal of its assets.

The ability for an association to voluntarily cancel its incorporation will provide a more cost-effective and less burdensome means of ending an association where the association has no ongoing obligations arising from the property in its possession. Eligible associations will not be required to undergo formal liquidation, making it easier for associations to cease operating as an incorporated association.

The bill also amends the Associations Incorporation Act to reduce the period during which a person convicted of certain criminal offences is ineligible to serve on a management committee from 10 years to five years. These amendments will create consistency with other jurisdictions and are intended to give associations greater freedom regarding who they may elect to their committees. It is anticipated that vital associations in some remote areas will be the primary beneficiaries of the change.

In response to longstanding stakeholder views expressed over a number of years, the bill also seeks to provide greater standards of transparency and accountability within associations. For example, the Associations Incorporation Act does not currently include clear guidance about the obligations of those who hold influential positions within incorporated associations. Consequently, the bill includes amendments to clarify the governance obligations for management committee members and officers. The amendments will assist management committee members and officers in meeting their fiduciary duties. This is particularly important in light of the growing sophistication of the not-for-profit sector and the resulting increase in public expectation that those who hold influential positions within incorporated associations should be held accountable to minimum standards of behaviour.

The amendments impose obligations on officers to exercise their powers and discharge their duties with care and diligence, in good faith, in the best interest of the association, and for a proper purpose. Officers must also not improperly use their position or use information obtained from their position to gain a pecuniary benefit or material advantage for themselves or another person. Management committee members will also have a duty to prevent the association from trading while insolvent. Management committee members will also be required to disclose any material personal interest they have with regard to any matter being considered at a meeting of the management committee.

These obligations merely reflect the basic governance principles that officers and management committee members would generally be expected to observe at present. The obligations are also largely consistent with those codified in the associations incorporation legislation of other Australian jurisdictions. Although penalties for noncompliance with these obligations will apply, it is important to note that they are balanced where relevant by the introduction of presumptions. These presumptions take into account an officer's reliance on information or advice and ensure that an officer who makes a business judgement will be taken to have acted with a reasonable degree of care and diligence, provided certain pre-conditions are met.

In addition to their fiduciary obligations, management committee members will be required to disclose the details of remuneration paid and other benefits given to committee members, senior staff and their relatives at the association's annual general meeting. This will ensure that the members of the association are appropriately informed of how the association's funds are being used, particularly with regard to payments that management committees might authorise to themselves. The way in which the disclosure must occur will be prescribed in a regulation.

Another measure aimed at improving the internal governance of associations under the bill is the introduction of a requirement for the rules of an association to have a grievance procedure. Currently, the Associations Incorporation Act provides that members who believe they have been deprived of rights conferred upon them by the rules of the association may only seek redress through application to the Supreme Court. The introduction of a requirement for incorporated associations to have a formal mechanism by which to address internal disputes will ensure parties to a dispute attempt to resolve the matter internally before seeking adjudication through the court system.

The grievance procedure must enable a member to appoint any person to act on their behalf and provide each party to the dispute with an opportunity to be heard. The grievance procedure must also provide for mediation. The mediator, and any person who may be optionally appointed under the rules of a specific association to decide the outcome of the dispute, must be unbiased.

The bill provides that if an association's rules do not contain a grievance procedure, or contain a grievance procedure that does not comply with the principles set out in the bill, the grievance procedure outlined in the model rules will apply. This approach ensures all incorporated associations will be obligated to observe a compliant grievance procedure while also relieving associations of any implementation burden, as associations may choose to allow the model rule procedure to apply automatically.

The bill also assists the Office of Fair Trading in conducting investigations under the Associations Incorporation Act. Currently, the regulator's investigation powers under that act are encapsulated in part 10 of the Financial Institutions Code 1992, despite the repeal of that instrument in 1999. It is unreasonable to expect that a modern and innovative regulator is required to rely on a code that was repealed two decades ago as the repository for its investigative powers. It is therefore intended to apply the Fair Trading Inspectors Act 2014 to investigations conducted under the Associations Incorporation Act. The Fair Trading Inspectors Act already consolidates inspector functions and powers across a number of acts within the fair trading portfolio, and its application to the Associations Incorporation Act will bring about efficiencies and consistency for fair trading inspectors. Importantly, the Fair Trading Inspectors Act is the most contemporary piece of legislation dealing with inspectorate provisions and the checks and balances to inspectorate powers.

The bill applies the Fair Trading Inspectors Act in a way that does not make available some powers deemed unnecessary to investigations of not-for-profit incorporated associations. For example, inspectors will not have the power to stop and move vehicles or the power to obtain criminal history reports.

The bill also introduces a number of amendments to clarify the operation of the Associations Incorporation Act, including inserting an objects clause to clearly identify its purpose and scope and amendments to make clear that an association may replace its rules with the current version of the model rules at any time and not just at incorporation.

Further, the bill introduces amendments to streamline internal government processes regarding the vesting of property in the Public Trustee under the Associations Incorporation Act and the Collections Act and the appointment, under the Collections Act, of the Disaster Appeals Trust Fund Committee. Minor and consequential amendments are also proposed to be made to the Food Act, the Hospital Foundations Act, the Liquor Act, and the Royal National Agricultural and Industrial Association of Queensland Act. I commend the bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (3.30 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Legal Affairs and Community Safety Committee**

**Mr DEPUTY SPEAKER** (Mr McArdle): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.