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Law changes for incorporated associations

## Law changes for incorporated associations

Law changes are being introduced to reduce red tape and improve internal governance for the 23,300 incorporated associations in Queensland, including 3,750 that have registered as charities.

These law changes are from the *Associations Incorporation and Other Legislation Amendment Act 2020* (<https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2020-017>) (the Act).

### Changes starting on 1 July 2024

#### Remuneration disclosure

Associations will need to disclose at their annual general meeting any remuneration and other benefits given to:

- management committee members
- staff
- relatives of management committee members.

This information may be disclosed as a total value along with the number of people who benefited.

#### Internal grievance procedure

Incorporated associations will need to either follow the grievance procedure in the model rules or adopt a formal grievance procedure in their own rules through a special resolution.

Incorporated associations can adopt their own grievance procedures at any time before or after the model rules grievance procedure is developed, but they must meet the requirements set out in [section 47A](https://www.legislation.qld.gov.au/view/html/inforce/current/act-1981-074#sec.47A) (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1981-074#sec.47A>) of the Act, including:

- allowing a member to appoint any person to act on their behalf
- giving each party involved an opportunity to be heard
- providing for unbiased mediation if the dispute cannot initially be resolved

- ensuring a decision-maker is unbiased if the grievance procedure provides for a person to decide the outcome of the dispute.

Note: The Office of Fair Trading (OFT) **cannot** settle disputes between incorporated associations and their members.

## Changes that started on 1 July 2023

### Change to financial reporting thresholds

Reporting thresholds will increase, meaning your association classification may change from its current level:

- Large associations (previously Level 1)—from current assets or revenue of more than \$100,000 to either
  - current assets of more than \$1 million
  - total revenue of more than \$500,000
- Medium associations (previously Level 2)—from current assets or total revenue between \$20,000 and \$100,000 to either
  - current assets between \$300,000 and \$1 million
  - total revenue between \$150,000 and \$500,000
- Small associations (previously Level 3)—from current assets or revenue less than \$20,000 to current assets of less than \$300,000 **and** total revenue of more than \$150,000.

## Changes that started on 29 July 2022

### Reduction of duplicated annual reporting

Your association no longer needs to lodge an annual summary of financial affairs with OFT or pay the annual lodgement fee if:

- your association is also registered as a charity with the Australian Charities and Not-for-profits Commission (<https://www.acnc.gov.au>) (ACNC) for the purpose of gaining tax concessions
- you comply with ACNC reporting requirements.

As is the case in some other jurisdictions, the exemptions will **not** apply to ACNC registrants:

- who are part of group reporting arrangements
- if the ACNC does not publish financial reports or details (e.g. revenue) for them on its register.

Reporting requirements remain the same for an association, charity or community purpose organisation not on the ACNC charities register. All annual reporting still needs to be lodged with OFT and the lodgement fee paid.

Incorporated associations, charities and community purpose organisations must also continue to notify OFT of certain changes to their details. Learn more about:

- reporting changes for incorporated associations (<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/incorporated-associations-forms-and-fees#changes>)
- making changes to a charity (<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/charities-and-fundraising/making-changes-to-a-charity>).

## Changes that started on 22 June 2022

### Using a common seal

It is now optional for incorporated associations to use a common seal when executing contracts and documents.

An association needs to amend its rules to specify that it will not use a common seal.

The need for a common seal has been removed from model rules in the Associations Incorporation Regulation 1999

(<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-1999-0143>).

### Secretary must be 18 or older

The secretary of an association must be 18 or older to help improve the internal governance standards for associations. This aligns with other management committee members.

### Clarifying duty of care and diligence

The standard of care and diligence that management committees are expected to apply has been clarified to help management committee members and officers undertake their duties and exercise their powers.

They must carry out their functions in the best interests of the association, with due care and diligence.

A maximum penalty of 60 penalty units (<https://www.qld.gov.au/law/fines-and-penalties/types-of-fines/sentencing-fines-and-penalties-for-offences>) will apply for a breach.

### Duty to prevent insolvent trading

Management committee members have a duty to prevent the association from incurring a debt if there are reasonable grounds to expect that the association is insolvent or will become insolvent if the debt is incurred.

A maximum penalty of 60 penalty units applies for breaching this provision.

## Not profiting from position

A committee member or officer of an incorporated association must not use their position—or information obtained from their position—to:

- gain a benefit or material advantage for themselves or another person
- cause detriment to the association.

Maximum penalties of 60 penalty units apply for breaching these provisions.

## Disclosure of material personal interest

Management committee members must disclose when they have a material personal interest in a matter being considered at a management committee meeting to the committee as soon as they become aware of the interest and to members at the next general meeting of the association. This will help improve internal governance and give members greater transparency.

If a committee member has a personal interest in a matter being considered at a management committee meeting, the member can't be present at the meeting or vote on the matter unless permitted to do so by the rest of the management committee.

Maximum penalties of 60 penalty units apply for a breach.

## Extend powers of OFT inspectors

The *Fair Trading Inspectors Act 2014*

(<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2014-008>) (FTIA) has been amended to include investigations under the *Associations Incorporation Act 1981* (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1981-074>).

The application of the FTIA gives inspectors entry and seizure powers, including the power to enter a place where an incorporated association carries out its activities, holds its meetings or keeps its records.

Some powers are not available to inspectors if they are deemed unnecessary to investigations of incorporated associations. For example, inspectors don't have the power to stop and move vehicles, or to get criminal history reports.

## Law changes that started on assent 22 June 2020

### Use of communications technology

If an incorporated association uses technology such as video conferencing to hold its general meetings, the use of this technology no longer needs to be set out in its rules.

### Clarifying adoption of model rules

At any time, an incorporated association can either:

- adopt the model rules
- completely replace their own rules with the model rules.

To do so, they must pass a special resolution at a general meeting and apply to OFT for registration within 3 months of passing the resolution.

## **Introduction of voluntary administration**

Committee members have the option to voluntarily appoint an administrator to place the incorporated association into voluntary administration if they are experiencing financial difficulties.

The administrator will help manage the financial affairs of an incorporated association if it can't pay debts or as an alternative to applying to the Supreme Court to appoint a provisional liquidator.

## **Introduction of voluntary cancellation**

An incorporated association can opt to apply for a voluntary cancellation, rather than going through a lengthy, formal winding up process.

Upon application, the Chief Executive of OFT can cancel the incorporated association, provided the association:

- has no outstanding debts or liabilities
- has paid all applicable fees and penalties under the Associations Incorporation Act (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1981-074>)
- is not a party to any legal proceedings.

## **Vesting of property on cancellation**

If an incorporated association is wound up by the Supreme Court or its incorporation has been cancelled by the Chief Executive of OFT, notification of how surplus assets, property or money is vested will be made by gazette notice rather than regulation.

When the Chief Executive determines that property gained under the Collections Act 1966 (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1966-007>) is unlikely to reach the intended beneficiaries, the property may be vested in the Public Trustee by gazette notice rather than by regulation.

## **Management committee eligibility for people with convictions**

People convicted of certain offences can sit on a management committee after a rehabilitation period of 5 years (reduced from 10 years).

The 5-year period begins on the later of the following dates:

- the day the conviction is recorded

- the day the person is released from prison (if applicable)
- the day any other court order relating to the conviction or term of imprisonment is satisfied.

Whether a conviction affects a person's eligibility to sit on a committee depends on the offence and how they were convicted. A person may be ineligible until their rehabilitation period expires if they have been convicted of:

- any indictable offence
- a summary offence and sentenced to a period of imprisonment (other than in default of payment of a fine).

## Increased maximum penalties

The maximum penalty that may be prescribed for an offence against the Associations Incorporation Regulation or Collections Regulation 2008 has been increased to 20 penalty units. There has been no change to the penalties that are already prescribed in the regulations.

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