



Please Mute & Ask Questions on Chat



Changes to Associations Incorporations Act

Complaints Handling Procedures



What Changes When

- ▶ Law changes have been introduced to reduce red tape and improve internal governances for the 22,900 incorporated associations in Queensland, including 3,750 that have registered as charities.
- ▶ These law changes were introduced by Queensland Parliament with the passing of the [Associations Incorporation and Other Legislation Amendment Act 2020](#).
- ▶ Some law changes start on assent, while the remaining will come into effect over the next couple of years.
- ▶ Further law changes are being considered to amend the [Associations Incorporation Regulation 1999](#), and will be released as part of a consultation process later in 2020.

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 provision of using this technology no longer needs to be stated in its rules.

Law changes that started on assent 22 June 2020

Clarifying adoption of model rules

- ▶ Incorporated associations will be able to either adopt the model rules, or completely replace their own rules with the model rules at any time. To do so, they must pass a special resolution at a general meeting and apply to the Office of Fair Trading (OFT) for registration within 3 months of passing the resolution.

Law changes that started on assent 22 June 2020

Introduction of voluntary administration

- ▶ Committee members now 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 for appointment of a provisional liquidator.

Law changes that started on assent 22 June 2020

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. They can apply to the Chief Executive of OFT, to 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 1981](#)
 - ▶ is not a party to any legal proceedings.

Law changes that started on assent 22 June 2020

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, we will provide notification of how surplus assets, property or money is vested by gazette notice rather than regulation.
- ▶ When the Chief Executive determines that property attained 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.

Law changes that started on assent 22 June 2020

Management committee eligibility for people with convictions

- ▶ People convicted of certain offences can sit on a management committee after 5 years (reduced from 10 years) and when the rehabilitation period for the conviction has not expired.
- ▶ 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 your committee depends on the offence and how they were convicted. A person may be ineligible if:
 - ▶ they have been convicted of any indictable offence
 - ▶ they have been convicted of a summary offence and sentenced to a period of imprisonment (other than in default of payment of a fine).

Law changes that started on assent 22 June 2020

Increased maximum penalties

- ▶ The maximum penalty for breaches of some provisions will be increased to 20 penalty units.
- ▶ (Penalty units are set by Queensland Government and are currently \$133.45 per unit)

Law changes expected by 30 June 2021

Using a common seal

- ▶ It will be optional for incorporated associations to use a common seal when executing contracts and documents, rather than a regulation. However, if they wish to continue using a common seal they can. They will need to amend their rules to specify they will not use a common seal.

Law changes expected by 30 June 2021

Secretary must be 18 or older

- ▶ The secretary of an association will have to be 18 or older to help improve the internal governance standards for associations. This will help align the requirements of the secretary with those of other management committee members.

Law changes expected by 30 June 2021

Reduction in duplicated annual reporting

- ▶ Associations also registered as a charity with the [Australian Charities and Not-for-profits Commission](#) (ACNC) for the purpose of obtaining tax concessions, will no longer need to lodge their annual summary of financial affairs with OFT or pay the annual lodgement fee. Likewise, duplicated reporting requirements for community purpose organisations will be removed.
- ▶ If the association is not on the ACNC charities register, the reporting obligations will not change. All annual reporting will still need to be lodged with OFT and the lodgement fee paid.

Law changes expected by 30 June 2021

Clarifying duty of care and diligence

- ▶ The expected standard of care and diligence that management committees are expected to apply will be better clarified to help management committee members and officers meet their duties and exercise their powers.
- ▶ They will have to carry out their functions in the best interests of the association, and with due care and diligence. Penalty units will apply for breaches of these duties.

Law changes expected by 30 June 2021

Duty to prevent insolvent trading

- ▶ If the incorporated association is insolvent at the time a debt was incurred, or becomes insolvent by incurring the debt, members of the management committee have a duty to prevent the association from trading while insolvent. Otherwise **it will be an offence** for a person who took part in the management committee unless they:
 - ▶ can prove that the debt was incurred without their authority or consent
 - ▶ can prove they did not take part in the management of the association when the debt was incurred because of illness or some other good reason
 - ▶ had reasonable grounds to expect that the association was solvent when the debt was incurred and would remain solvent.

Law changes expected by 30 June 2021

Not profiting from position

- ▶ A committee member or officer of an incorporated association will not be able to 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.
- ▶ Penalties apply for breaching this provision.

Law changes expected by 30 June 2021

Disclosure of personal interests

- ▶ Management committee members will have to disclose when they have material personal interests in a matter. This will help improve internal governance and give members greater transparency.

Law changes expected by 30 June 2021

Disclosure of remuneration

- ▶ At the association's annual general meeting, management committee members will have to disclose remuneration or other benefits given to them, to senior staff and to their relatives. The details of what must be disclosed, and how, will be introduced by regulation.

Law changes expected by 30 June 2021

Disclosure of material personal interest

- ▶ If a committee member has a personal interest in a matter being considered at a management committee meeting, the member will not be able to be present at the meeting or vote on the matter unless permitted to do so by the management committee. Penalties will apply for a breach.

Law changes expected by 30 June 2021

Extend powers of OFT inspectors

- ▶ The *Fair Trading Inspectors Act 2014* (FTIA) has been amended to include investigations under the *Associations Incorporation Act 1981*.
- ▶ The application of the FTIA will result in our inspectors having 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 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.

Law changes expected by 30 June 2022

Internal grievance procedure in place

- ▶ An incorporated association will have to have an internal grievance procedure or dispute resolution process in place by 30 June 2022, and this may be outlined in your rules. This may eliminate the need for members to apply to the Supreme Court of Queensland to resolve a matter and may result in significantly less cost.
- ▶ Under the grievance procedure a member may appoint any person to act on their behalf and each party involved will be given an opportunity to be heard. The grievance procedure must also provide for unbiased mediation if the dispute cannot be initially resolved amongst parties.
- ▶ If an incorporated association wants to use their own customised dispute resolution process, they will need to include it in their rules by passing a special resolution.
- ▶ If the association doesn't have a grievance procedure in place by 30 June 2022, it will need to observe the grievance procedure contained in the model rules. These will be developed by OFT as part of a consultation process with industry bodies and will be made available before this law change starts. This will give incorporated associations time to determine whether they want to adopt the grievance procedure outlined in the model rules or adopt their own.

Questions

- ▶ Will every association need to submit the new rules (constitutions) and pay the fee?
 - ▶ Yes it would be good practice but not until 2021 or 2022. Until then constitutions and the requirements of the Act & Regulations need to be carefully monitored and managed.

Questions

- ▶ We understand that all associations now have an automatic extension of an extra six months in which to hold their AGM - so 12 months from the end of the financial year. Does this need to be approved or can we go ahead and set a later date if required?
 - ▶ The extension is automatic, so you don't need to apply.

Questions

- ▶ Our current grievance policy is referred to in our rules but the policy is included in our By-Laws. We attempt to utilize the By-Laws facility as much as possible to improve flexibility and maintenance of relevance. How do the By-Laws then sit with the new rules?
 - ▶ By-Laws are still allowed, however they must never attempt to contradict or override the constitution or the Act. They are beneficial for things that need to be updated regularly such as fees, policies & procedures.

Questions

- ▶ There is more flexibility for winding up but does the new Act specify what happens to an association's assets?
 - ▶ Yes, it continues to require assets go to a “like minded” organisation on wind up.

Law changes expected by 30 June 2022

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U3A Complaints Handling Procedure

Background

- ▶ The Management Committee of U3A _____ and its members aim to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness. We understand our obligation to ensure that our complaints procedure has integrity and is free of unfair repercussions or victimisation against any person making a Complaint. We also understand that Complaints should be dealt with quickly where possible and fairly.
- ▶ This procedure is compliant with requirements of the Incorporated Associations Queensland Act.

Resolving Complaints

Complaints may be resolved informally or formally. This Procedure provides for resolution of complaints in a variety of ways. These range between:

- ▶ low key informal resolution where both parties accept the basic facts of a situation and it is possible to counsel the party who has acted inappropriately about a better way to have acted;
- ▶ situations where the complainant wishes to make a formal complaint in writing and further investigation is required; (**See Attachment 1**)
- ▶ resolution through mediation; (**See Attachment 2**) Mediation is a confidential process that allows those involved in a complaint to discuss the issues or incident in question and come up with mutually agreed solutions. Mediation can occur before, after or instead of the investigation of a Complaint.
- ▶ Hearings by a Tribunal. (**See Attachment 3**) The Tribunal can investigate and/or determine Complaints referred to it by the Management Committee; or conduct appeals requested by a Complainant or a Respondent to a Complaint.

There are some complaints, for example those related to discrimination or unlawful activity, where the complainant/s may wish to have their complaint handled by an external agency under anti-discrimination, child protection, criminal or other relevant legislation.

Responsibilities

- ▶ The Management Committee is responsible for appointing a Complaints Officer at the first meeting after election of the Management Committee.
- ▶ The Management Committee will when necessary, appoint a Tribunal to be comprised of at least three people who possess a particularly useful skill - such as human resources management, business management, corporate governance or like skills - to convene if and as required.
- ▶ The Complaints Officer is responsible for receiving complaints and managing the process for resolution.
- ▶ The Management Committee and members must take all necessary steps to make sure that the people involved in a Complaint are not victimised.
- ▶ The Management Committee will discipline a person who harasses or victimises another person for making a Complaint or supporting another person's Complaint.
- ▶ The Complainant is responsible for ensuring that their complaint is true, not maliciously motivated or intended to cause distress to the Respondent. Persons making such complaints can be subject to disciplinary action.

Who Can Lodge a Complaint?

- ▶ Any person (Complainant) may report a complaint (Complaint) about a person, people or organisation bound by the policy (Respondent) if they feel that they have been discriminated against, harassed, bullied or there has been any other serious breach of our policies or Code of Conduct.
- ▶ Complaints are preferred in writing but this is not essential.



The Complaints Handling Process

- ▶ In the first instance, Complaints should be reported to the Complaints Officer.
- ▶ A Complaint may be dealt with formally or informally. An example of an informal process would be a low-key conversation where the Complaint is resolved by agreement between the people involved with no need for disciplinary action.
- ▶ The Complainant may indicate his or her preference and the Complaints Officer should consider whether the preferred process is an appropriate way to handle the particular complaint, for example the law may require that the Complaint/allegation be reported to an appropriate authority.
- ▶ If a Complaint is not resolved to the Complainant's satisfaction through an informal process, the Complainant may make a formal Complaint in writing. Individuals or organisations may seek to have their Complaint handed by an external agency under relevant legislation.

The Complaints Handling Process

- ▶ Where a Complaints Officer decides that a complaint should be the subject of an investigation process, it should take place in accordance with **Attachment 1**.
- ▶ Once the Complaints Officer receives a written report from the investigator (in accordance with **Attachment 1**), the Complaints Officer will determine what, in any, further action to take. This action may include:
 - ▶ A direction to the investigator to make further enquiries and obtain additional information;
 - ▶ Disciplinary action; or
 - ▶ Referring the Complaint to an informal or a formal mediation session, a hearings tribunal and/or the police or other appropriate authority.

The Complaints Handling Process

- ▶ The Complaints Officer may also determine to take no further action and dismiss the complaint.
- ▶ If a Complainant wishes to resolve the complaint with the help of a mediator, the Complaints Officer will, in consultation with the Complainant, arrange for an independent mediator where possible. Lawyers will not be permitted to participate in the mediation process. The Complaints Officer will determine which party or parties (e.g. the Complaints Officer, the Complainant or the Respondent) are responsible to pay any costs of the mediation process.
- ▶ Where a Complaints Officer refers a complaint to mediation, the mediation should proceed in accordance with the process in **Attachment 2**.
- ▶ **NB:** Mediation might not be a suitable method for resolution of a Complaint in all cases.

The Complaints Handling Process

- ▶ The Tribunal may be convened to hear a proceeding referred to it by the Complaints Officer. Where the Complaints Officer refers a Complaint to the Tribunal, the Tribunal should proceed in accordance with **Attachment 3**.
- ▶ If at any point in the Complaint handling process the Complaints Officer considers that a Complainant has knowingly made an untrue Complaint, or the Complaint is malicious or inappropriately intended to cause distress to the Respondent, the matter may be referred in writing to the Tribunal for review and appropriate action, including disciplinary action against the Complainant.
- ▶ Every Complaints Officer bound by this policy will recognise and enforce any decision of a Tribunal.

Attachment 1 - Investigation Procedure

If a Complaints Officer decides that a Complaint should be investigated the following steps should be followed:

- ▶ A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
- ▶ The Complainant will be interviewed by the investigator and the complaint documented in writing.
- ▶ The details of the complaint will be conveyed to the person/people complained about (Respondent(s)) in full. The Respondent(s) will be given sufficient information to enable them to properly respond to the Complaint.
- ▶ The Respondent(s) will be interviewed by the investigator and given the opportunity to respond. The Respondent'(s)' response to the Complaint will be documented in writing.

Attachment 1 - Investigation Procedure

- ▶ If there is a dispute over the facts, statements from witnesses and other relevant evidence will be obtained to assist in a determination.
- ▶ The investigator will determine whether the complaint is:
 - ▶ substantiated (there is sufficient evidence to support the complaint);
 - ▶ inconclusive (there is insufficient evidence either way);
 - ▶ unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
 - ▶ mischievous, vexatious or knowingly untrue.

Attachment 1 - Investigation Procedure

- ▶ The investigator will produce a report documenting the complaint, investigation process, evidence, and findings and, if requested, recommendations. This report will be given to the relevant Complaints Officer.
- ▶ The relevant Complaints Officer will provide a report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the parties.
- ▶ Both parties are entitled to support throughout this process from their chosen support person (who is not empowered to speak on their behalf).
- ▶ The parties may have the right to appeal against any decision based on the investigation. Any appeal should be in accordance with the appeals process provided in this Complaints Procedure.

Attachment 2 - Mediation Procedure

- ▶ Mediation is a process that allows all people involved in a Complaint to talk through the issues with an impartial person - the mediator - and work out a mutual solution.
- ▶ The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved talk through the issues making sure that the process is as fair as possible for all concerned.
- ▶ The following is the general procedure for the conduct of mediations under this policy.

Attachment 2 - Mediation Procedure

- ▶ The following is the general procedure for the conduct of mediations under this policy.
- ▶ The people involved in a formal Complaint (Complainant and Respondent(s)) may work out their own resolution of the Complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur at any time.

Attachment 2 - Mediation Procedure

- ▶ Mediation will only be recommended:
 - ▶ after the Complainant and Respondent have had their chance to tell their version of events to the relevant Complaints Officer; and
 - ▶ the relevant Complaints Officer does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the Complainant desires; and
 - ▶ mediation looks like it will work (i.e. the versions given by the Complainant and Respondent align or almost align and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).

Attachment 2 - Mediation Procedure

- ▶ Mediation will **not** be recommended if:
 - ▶ the Respondent has a completely different version of the events and they won't deviate from these;
 - ▶ the Complainant or Respondent are unwilling to attempt mediation;
 - ▶ when the issues raised are sensitive in nature;
 - ▶ when there is a real or perceived power imbalance between the people involved;
 - ▶ matters that involve serious, proven allegations; or
 - ▶ the Complaint is not suitable for mediation due to the nature of the Complaint, the relationship between the Complainant and the Respondents and any other relevant factors.

Attachment 2 - Mediation Procedure

- ▶ If mediation is chosen to try and resolve the Complaint the relevant Complaints Officer will, in consultation with the parties arrange for a mediator to mediate the Complaint.
- ▶ The relevant Complaints Officer will notify the Respondent(s) that a formal Complaint has been made, provide them with details of the Complaint, and advise them that it has decided to refer the matter to mediation.
- ▶ The mediator's role is to assist the parties reach an agreement on how to resolve the issues between them. The mediator, in consultation with the parties, will determine the procedures to be followed during the mediation. An agenda of issues for discussion will be prepared by the mediator.
- ▶ The mediation will be conducted confidentially and without prejudice. The rights of the parties to pursue an alternative process if the Complaint is not resolved will be preserved.

Attachment 2 - Mediation Procedure

- ▶ If the Complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement reached between the parties and it will be signed by them as their agreement. The relevant Complaints Officer will be advised of the resolution of the matter. MC expects parties involved to respect and comply with the terms of the agreement executed.
- ▶ If the formal Complaint is not resolved by mediation, the Complainant may:
 - ▶ write to the relevant Complaints Officer within 14 days of the mediation to request that they reconsider the Complaint, particularly whether they refer the Complaint to a resolution process other than mediation; or
 - ▶ approach an external agency such as an anti-discrimination or equal opportunity commission to resolve the matter.

Attachment 3 - Hearings & Appeals Tribunals Procedure

- ▶ Upon receipt of the Complaint the relevant Complaints Officer shall appoint a Hearings Officer. It is preferable that the Hearings Officer is fresh to the details of the complaint and the resolution steps already taken, though this may not be possible in all situations. The Hearings Officer shall, as soon as possible, do the following:
 - ▶ determine the composition of the Hearings Tribunal, as set out in clause 1(2) below; and
 - ▶ send to the Complainant(s) and Respondent(s) a notice setting out the alleged breach (collectively referred to as **Notice of Alleged Breach**) in accordance with clauses 1(4) and 1(5) of this Attachment; and
 - ▶ send a copy of the Notice of Alleged Breach to the chairperson of the Hearings Tribunal.

Attachment 3 - Hearings & Appeals Tribunals Procedure

- ▶ The Hearings Tribunal for each hearing shall be that appointed by the Management Committee in each year and may include:
 - ▶ a barrister or solicitor or if after reasonable attempts have been made to obtain such person without success, then a person with some experience in disciplinary/hearings tribunal;
 - ▶ a person with a thorough knowledge of the relevant issues (Eg safety); and
 - ▶ a person of experience and skills suitable to the function of the Hearings Tribunal, provided that such persons do not include:
 - ▶ a person, who would, by reason of their relationship with any of the parties, be reasonably considered to be other than impartial.

Attachment 3 - Hearings & Appeals

Tribunals Procedure

- ▶ Frivolous, vexatious or malicious Complaints
- ▶ The Hearings Tribunal will send a Notice of Alleged Breach to the Respondent(s) in writing informing them that a Hearings Tribunal hearing will take place. The notice will outline:
- ▶ The Hearings Tribunal will send a Notice of Alleged Breach to the Complainant(s) in writing informing them that a Hearings Tribunal hearing will take place. The notice will outline:
- ▶ The Hearings Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances
- ▶ The parties to the hearing shall include the Complainant, the Respondent, the relevant Complaints Officer and any relevant witnesses which the Hearings Tribunal considers necessary.

Attachment 3 - Hearings & Appeals

Tribunals Procedure

- ▶ If upon receipt of the Notice of Alleged Breach the Hearings Tribunal considers that pending the determination of the matter the Respondent may put at risk the safety and welfare of the Complainant or others it may order that the Respondent be:
 - ▶ suspended from any role they hold with MC;
 - ▶ banned from any event or activities held by MY CLUB; and/or
 - ▶ required not to contact or in any way associate with the Complainant or other person about whom the alleged breach relates, pending the determination of the hearing.
- ▶ There is no right of appeal of the decision by a Hearings Tribunal under clause 1(8).
- ▶
- ▶ www.committee.com.au leisadonlan@committee.com.au No party to the hearing may be legally represented. The chairperson of the Hearings Tribunal may grant leave for a party to the hearing to be legally

Attachment 3 - Hearings & Appeals

Tribunals Procedure

- ▶ No party to the hearing may be legally represented. The chairperson of the Hearings Tribunal may grant leave for a party to the hearing to be legally represented where their livelihood or a proprietary right is at risk. The onus is on the party seeking representation to prove that livelihood or a proprietary right is at risk.
- ▶ Each party to the hearing shall bear their own costs in relation to the hearing.
- ▶ The Hearings Tribunal shall give its decision as soon as practicable after the hearing and the Hearings Officer will deliver to the following a statement of the written reasons:
 - ▶ the Complainant;
 - ▶ the Respondent; and any other party represented in the hearing.

Attachment 3 - Hearings & Appeals Tribunals Procedure

APPEALS

- ▶ A party represented at a Hearings Tribunal may appeal a decision of that Hearings Tribunal on the sole ground that natural justice has not been provided at the hearing of the Hearings Tribunal.
- ▶ An appeal against a decision of a Hearings Tribunal established by a Complaints Officer, shall be made to the appeals tribunal established by MC (**Appeals Tribunal**). Subject to the discretion of the chairperson of the Appeals Tribunal all appeals shall be heard at the principal place of business of MC.
- ▶ There is only one right of appeal following the decision of the initial Hearings Tribunal.

Attachment 3 - Hearings & Appeals Tribunals Procedure

SANCTIONS

- ▶ Any disciplinary measure imposed by a Hearings Tribunal or Appeals Tribunal must:
 - ▶ conform to the principles of natural justice;
 - ▶ be fair and reasonable;
 - ▶ be based on the evidence and information presented; and
 - ▶ be within the powers of the Hearings Tribunal and Appeals Tribunal to impose the disciplinary measure.

Attachment 3 - Hearings & Appeals

Tribunals Procedure

- ▶ If a Hearings Tribunal or Appeals Tribunal considers that a person or organisation has breached a rule, regulation or policy of MC it may impose any one or more of the following penalties:
- ▶ For breaches committed by individual persons. If the Hearings Tribunal or Appeals Tribunal considers that an individual person has breached a rule, regulation or policy, it may impose any one or more of the following penalties on such person:
 - ▶ counselling; terminate the appointment of the role which the offender holds; direct that the offender pay compensation to the relevant organisation which controls or has possession of damaged property; impose a monetary fine; impose a warning; consider termination of membership under the association's constitution; any other such penalty as the Hearings Tribunal considers appropriate.

That's Too Much For Us!

- ▶ Use the template as a place to start and simplify wherever you feel appropriate for your group.
- ▶ Make sure you can see a logical flow of natural justice (always being fair and accountable)
- ▶ Keep mediation in as an option and decide who covers the costs, U3A, complainant or responded or a combination of all?



Questions?

- ▶ For templates contact:
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