

# Associations Incorporation and Other Legislation Amendment Regulation 2023

Explanatory notes for SL 2023 No. 59

made under the

*Associations Incorporation Act 1981*  
*Collections Act 1966*

## General Outline

### Short Title

*Associations Incorporation and Other Legislation Amendment Regulation 2023*

### Authorising law

- *Associations Incorporation Act 1981* (AI Act), sections 5(1)(c), 47A, 58, 59(2), 70D and 92
- *Collections Act 1966* (Collections Act), sections 32,33A and 47

### Policy objectives and the reasons for them

The *policy objectives of the Associations Incorporation and Other Legislation Amendment Regulation 2023* (Amendment Regulation) are to enhance the internal governance of Queensland's incorporated associations, and to reduce the regulatory burden for incorporated associations and fundraising entities.

The Amendment Regulation completes the implementation of the *Associations Incorporation and Other Legislation Amendment Act 2020* (Amendment Act), which introduced a requirement for:

- incorporated associations to have a grievance procedure in their rules, or otherwise observe a default grievance procedure to be defined in the model rules at Schedule 4 of the *Associations Incorporation Regulation 1999* (at section 47A of the AI Act); and
- management committees to disclose the prescribed details of remuneration paid to management committee members, senior staff, and their relatives to the association's annual general meeting (AGM) (at section 70D of the AI Act); and
- incorporated associations to keep appropriate financial records (at section 59 of the AI Act).

The Amendment Regulation also seeks to update and modernise the reporting requirements for incorporated associations and entities authorised to conduct fundraising in Queensland, with a view to reduce the burden incurred by not-for-profit entities in obtaining external financial verification of their annual financial statements.

A previous Amendment Regulation, the *Associations Incorporation and Other Legislation Amendment Regulation 2022*, reduced the reporting burden for incorporated associations and authorised fundraisers registered with the Australian Charities and Not-for-Profits Commission (ACNC) by conditionally exempting them from Queensland Government reporting requirements under the AI and Collections Acts. This amendment regulation seeks to reduce the reporting burden for non-exempt not-for-profit entities that continue to have Queensland Government reporting obligations under those Acts.

Additionally, the Amendment Regulation seeks to address an issue regarding model rule provisions dealing with the distribution of assets. Stakeholders have previously identified that these default provisions are not compatible with requirements of the Australian Taxation Office for organisations seeking deductible gift recipient status, or with the requirements of the *Taxation Administration Act 2001* (Qld) for organisations that seek registration as a charitable institution. The intent of the Amendment Regulation in this regard is to provide the necessary compatibility, by inserting into the model rules the distribution clauses required for both deductible gift recipient status and registration as a charitable institution. As a result, incorporated associations that adopt the model rules and which are otherwise eligible for the relevant concessions will no longer be required to seek a change to their rules in order to pursue deductible gift recipient status or registration as a charitable institution.

## **Achievement of policy objectives**

The Amendment Regulation achieves the policy objectives by amending the *Associations Incorporation Regulation 1999* (AI Regulation) to –

- prescribe the default grievance procedure that incorporated associations must observe pursuant to section 47A of the AI Act, unless the association’s rules provide for an alternative procedure that is compliant with section 47A;
- prescribe the details that incorporated associations must disclose to their annual general meeting regarding remuneration paid to management committee members, senior staff and their relatives (and how those details are to be disclosed);
- remove the existing prescriptive lists of financial records that must be retained by incorporated associations, to allow such matters to be determined by associations in accordance with the requirement of section 59 of the AI Act (with the assistance of regulator guidance); and
- change the financial (revenue and audit) thresholds that define the size of incorporated associations, and consequently define the financial reporting burden for associations.

To assist incorporated associations with obtaining taxation concessions, the Amendment Regulation amends the model rules at Schedule 4 of the AI Regulation to:

- provide a process for the transfer or distribution of assets on the winding-up of an association that has been endorsed as a deductible gift recipient, to meet the requirements of the Australian Taxation Office in this regard; and

- expressly provide in the rules that no part of an association's income or property is to be distributed, paid or transferred by way of a bonus, dividend or other similar payment to the association's members, to address the requirement of section 149C(5) of the *Taxation Administration Act 2001* (Qld) for associations that seek registration under that Act as a charitable institution in Queensland.

The amendments will have no effect on associations that adopt the model rules but are not eligible for or do not intend to seek tax concessions.

The Amendment Regulation also amends the *Collections Regulation 2008* (Collections Regulation) to:

- insert a similarly tiered reporting framework (based on annual revenue only) to that of incorporated associations into the Collections Regulation, in place of the existing mandatory audit requirement under the Collections legislative framework.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the authorising law. The amendments:

- are necessary to implement policy announced in the explanatory speech for the Associations Incorporation and Other Legislation Amendment Bill 2019; and/or
- support the amendments made to the respective authorising law; and/or
- are largely consequential and machinery in nature.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives of the Amendment Regulation.

## **Benefits and costs of implementation**

The Queensland not-for-profit sector will benefit from the amendments through:

- a reduction in the number of audits required under the AI and Collections Acts;
- the availability of a simple default grievance procedure that provides a formal way to address internal conflicts in an effort to settle them before parties incur legal costs;
- improvements to internal governance of incorporated associations through the disclosure of remuneration, which will enable greater transparency and accountability within associations and give association members who are not on the management committee the knowledge necessary to assess whether the compensation and benefits provided to key individuals are an appropriate use of the association's resources;

- elimination of the prescriptive list of records and outdated accounting procedures that incorporated associations must currently observe, in favour of a principles-based approach assisted by regulator guidance;
- model rules that are consistent with requirements for various tax concessions, where an incorporated association is otherwise eligible for such concessions.

To assist with implementation, provisions of the Amendment Regulation providing for a grievance procedure and the disclosure of remuneration will not commence until 1 July 2024. This will allow incorporated associations to consider and implement any change to procedures or rules before commencement.

Amendments related to reporting requirements will commence on 1 July 2023 and are taken to apply to financial statements due to the chief executive after that date.

## Consistency with fundamental legislative principles

1. **Legislation should have sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992* [Legislative Standards Act])**

### *Disclosure of remuneration and other benefits*

The requirement for incorporated associations to disclose to the association's AGM the prescribed details of remuneration paid, or other benefits given, to management committee members, senior staff, and relatives is provided in section 70D of the AI Act.

It was identified in the explanatory notes for the *Associations Incorporation and Other Legislation Bill 2019* (the Bill), which inserted the disclosure requirement at section 70D, that the requirement may impact on an individual's right to privacy and confidentiality.

The right to privacy, and the disclosure of private or confidential information has generally been identified by Parliamentary Committees as relevant to the consideration of whether legislation has sufficient regard to individual rights and liberties.

Explanatory notes to the Bill justified the disclosure requirement by providing that the disclosure is intended to facilitate greater transparency and accountability within associations by giving association members who are not on the committee the information necessary to determine whether the remuneration or benefit provided is an appropriate use of the association's funds.

The Amendment Regulation provides the details to be prescribed for section 70D and may infringe upon the same considerations around privacy and confidentiality.

However, the privacy and confidentiality concerns are somewhat reduced by the Amendment Regulation's requirement that incorporated associations need only disclose an aggregate of all remuneration and benefits paid by the association.

The approach is considered to balance the intent of the primary legislation (that association members be informed as to how the associations uses its funds in respect of the remuneration of management committees and other personnel) with the privacy concerns of relevant individuals.

### *Grievance procedure*

The Amendment Regulation provides for a model rule (default) grievance procedure that must be observed by incorporated associations if the association does not have an appropriate procedure in its existing rules.

Under the AI Act, an association may adopt proposed rules for the association by resolution passed at a meeting of the association by the votes of at least three quarters of the association's members who are present and entitled to vote on the resolution.

If the rules of the association do not set out a grievance procedure that is consistent with the prescribed principles in section 47A(2) to (5) of the AI Act, then under section 47A(6) the rules of the association are taken to include the model rules providing the grievance procedure. Associations and members will be required to make reasonable attempts to resolve their dispute under the grievance procedure in the rules prior to seeking the intervention of the Supreme Court.

Pursuant to section 4(2)(a) of the Legislative Standards Act, legislation should have sufficient regard to the rights and liberties of individuals. In this case, section 47A(6) of the AI Act (and by extension the model rule grievance procedure prescribed for section 47A(6)) can have the effect of replacing previous rules that were voted on and supported by the association's members.

This engagement with section 4(2)(a) is considered justified as the amendment is intended to ensure that the members of an incorporated association have access to a fair dispute resolution process, without subjecting incorporated associations to the burden of having to change their rules. Individual associations retain the ability to amend their rules if another grievance process is preferred.

## **2. Legislation should have sufficient regard to the institution of Parliament (section 4(5)(e) of the Legislative Standards Act 1992)**

### *Collections Act sub delegation of powers*

The Amendment Regulation contains a potential inconsistency with fundamental legislative principles in relation to the sub delegation of powers under the Collections Act. The sub delegation issue relates to the chief executive's discretion to determine that a person has appropriate qualifications or experience to verify an authorised fundraiser's annual financial statement, despite the person not having the specific qualifications listed in the legislation.

The Collections regulatory framework has for many decades provided for this sub delegation. Prior to the Amendment Act, the specification of who could verify a financial statement was provided in the Collections Act itself. The Collections Act required all financial statements to be audited by a person holding particular qualifications, or 'a person the chief executive considers has appropriate qualifications.' In effect, the Collections Act prior to the Amendment Act allowed the chief executive to determine that an entity's financial statement could be audited by someone other than a person holding the financial qualifications determined by the Parliament.

The Amendment Act subsequently removed the requirements relating to how financial statements were verified from the Collections Act, and provided that these matters were to be prescribed in a regulation. As a result, section 30C of the Collections Regulation

requires all financial statements to be verified by a person with particular financial qualifications, but continues to allow the chief executive to determine that other qualifications are appropriate. The existing section 30C engages with fundamental legislative principles relating to sufficient regard for the institution of Parliament via a sub delegation of powers to the chief executive.

Clause 16 of the Amendment Regulation now replaces section 30C with three provisions intended to introduce annual revenue thresholds to provide a risk-based (or tiered) approach to the verification of financial statements. For entities with annual revenue over \$150,000, engagement with a finance professional holding the prescribed qualifications is generally required, though the ability of the chief executive to determine other qualifications is again retained.

Further, the new provisions provide that the chief executive may also determine that a person is a suitable person to audit or verify a financial statement based not only on the person's qualifications (as before), but on the person's experience. The additional consideration of the person's experience has been inserted for compatibility with the existing reporting requirements of the AI Act, in acknowledgement that incorporated associations may also have reporting obligations under the Collections Act, and that where this is the case the chief executive should be able to consider a person suitable to undertake the verification of financial statements under both Acts, if justified.

The new risk-based (tiered) reporting scheme introduced into the Collections Act means it is less likely that the chief executive will need to consider the suitability of financial statements being verified by persons with alternative qualifications other than those specified. As engagement with a finance professional is only mandatory when annual revenue exceeds \$150,000, the costs of verification are less likely to substantially consume a significant proportion of fundraising revenue.

However, there may still be particular situations in which the chief executive may consider that a person other than a person who currently holds the specified qualifications should be authorised to verify a financial statement. Allowing the chief executive this discretion enables a more responsive approach to the regulation of fundraising in Queensland.

Thus, while the sub delegation is potentially inconsistent with s4(5)(e) of the Legislative Standards Act, the inconsistency is justified through its alignment with the policy objectives of both the Amendment Act and this Amendment Regulation.

## Consultation

The Department of Justice and Attorney-General has undertaken public consultation to determine the matters that must be prescribed in a regulation for provisions relating to a default grievance procedure; disclosure of remuneration; and financial reporting thresholds and requirements for incorporated associations and fundraising entities. The consultation was facilitated through discussion papers released on 1 August 2022. Suggestions received in public consultation have been incorporated into the proposals contained in the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) was consulted on some aspects of the Amendment Regulation in accordance with the *Queensland Government Guide to Better Regulation*. OBPR applied an OBPR-assessable exclusion from undertaking further regulatory impact analysis on the proposed amendments relating to the increase of asset and revenue thresholds for incorporated associations, a default grievance procedure for

incorporated associations, disclosure of remuneration for incorporated associations, amending the model rules to assist incorporated associations with obtaining taxation concessions and the introduction of a similarly tiered financial reporting framework for fundraising entities. The exclusion categories applied for each submission was category (k) – Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.

Other matters addressed in the Amendment Regulation were determined to be mechanical in nature and were therefore subject to agency-assessed regulatory impact assessment exclusions (category (g) – regulatory proposals that are of a machinery nature).