Department of **Employment, Economic Development and Innovation**

Consultation Paper

Possible changes to the
Associations Incorporation Act 1981
and the Associations Incorporation Regulation 1999

Toward Q Tomorrow's Queensland | Queensland Government

Contents

How can I have my say?

All incorporated associations and members of the community are invited to comment on the issues identified and the proposals presented in this Consultation Paper. This feedback is very important, as it will reveal whether the proposed changes will work well in practice, and whether an alternative change would be more appropriate. The feedback will also ensure all the issues of concern have been identified and addressed.

The closing date for providing comments is **Monday 4 April 2011**. Written submissions should be sent to:

Mail:
Associations Review
Director, Fair Trading Policy Branch
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001

Facsimile:
07 3405 4059

Email:
AssociationsReview@deedi.qld.gov.au

Outside Government access to the submission

Submissions may be subject to laws providing for Freedom of Information. It should therefore be kept in mind when making submissions they may be provided to persons making an application under such laws. Neither the Office of Fair Trading nor the Government will include the personal details of a member or an association in any report which may later be released in relation to this consultation.

Disclaimer

This is a Consultation Paper only – it does not represent the policy of any State, Territory or the Australian Government. The Paper seeks public comment on the operation of the *Associations Incorporation Act 1981* and the Associations Incorporation Regulation 1999.

While every effort has been made to ensure the accuracy of the information contained in this Paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal advice.

1. Summary

1.1. Purpose of the consultation paper

Incorporated associations make an important contribution to the community and to Queensland's economy. From time to time, the government receives feedback about particular issues with the current laws affecting associations. This feedback is received from individual associations, members of associations, organisations representing associations, and also from government agencies working with or administering associations. These issues often arise because of changes in the way business is done or improvements in technology. Suggestions are also made to address matters not dealt with under the present laws or about how 'red tape' may be reduced.

In Queensland, the laws directly affecting associations are the Associations Incorporation Act 1981 (the Act) and the Associations Incorporation Regulation 1999 (the Regulation). This legislation is administered by the Office of Fair Trading (OFT) within the Department of Employment, Economic Development and Innovation. The key provisions of both the Act and Regulation are outlined below.

Substantial amendments were last made to the Act in 2007, following a comprehensive review of the legislation. Those amendments significantly reduced red tape for most associations, by changing the mandatory insurance and auditing requirements under the Act. Other amendments were directed at reducing disputes between members, making the Act clearer, and addressing various technical anomalies. No substantial amendments to the Regulation were required at that time.

Under the Statutory Instruments Act 1992, subordinate legislation (such as regulations made under an Act) will expire ten years after they are made to ensure such instruments remain relevant to the economic, social and general wellbeing of the people of Queensland. The Regulation has been in force for ten years, and it is appropriate for it to be reviewed to ensure it remains relevant and continues to meet the objectives of the Act.

This Consultation Paper outlines some important issues affecting associations, and proposes ways in which these issues may be resolved. It is important associations are based on sound management and good governance, although regulation should not overburden associations, particularly small associations heavily reliant on voluntary participation. The reforms discussed in this Consultation Paper are designed to balance these sometimes competing objectives.

Given the Act was reviewed relatively recently this paper will primarily focus on the Regulations and seek to identify ways to enhance the Model Rules prescribed under the Regulation. The Model Rules assist associations in their internal governance, clarify

how requirements under the Act may be met, and enhance transparency in their operation. This paper will also discuss a number of issues relevant to the Act itself.

1.2. Role of the *Associations Incorporation Act 1981*

The Act provides a framework for the following:

- determining which organisations are eligible to incorporate and the process for incorporating;
- establishing the powers of, and the rules by which, the association will operate, including the provision of a set of Model Rules (which can be used in part or as a whole);
- the calling and running of general meetings of the members;
- the election and membership of the management committee;
- the role and meetings of the management committee and its members (including the secretary); and
- the rights of members and access to the Supreme Court where there are internal disputes.

1.3. Role of the Associations Incorporation Regulation 1999

The Regulation prescribes matters in relation to record-keeping and accounting requirements, and contains a set of Model Rules which associations may adopt as their own on becoming incorporated.

Associations are required to have rules which govern how the association is run, including such matters as record-keeping, accounting requirements, appointment or election of the management committee, membership, meetings and quorums of the management committee, annual general meetings and business to be conducted thereat, quorums and voting at general meetings.

Associations may either adopt the Model Rules, write their own rules, or adopt the Model Rules to suit their own purposes. Adoption or adaptation of the standard set of rules can be a simple and inexpensive way for associations to comply with the Act. For this reason, it is important the Model Rules work well, as the majority of associations adopt them, or amend them to suit their requirements.

The Model Rules deal with all matters associated with the administration of an association. Among the governance issues covered by the Rules are general meetings and meetings of the management committee (including voting quorums, resolutions, subcommittees, and minuting), funds management and keeping of accounts. For associations which do not adopt the Model Rules as their rules, the Regulation prescribes matters which must be contained in an association's own rules.

1.4. Issues in the Consultation Paper

Based on issues raised by associations, a series of issues important to all associations were identified and a discussion paper was prepared. In March 2010, this paper was provided to key association and government stakeholders for their comments and suggestions about the issues identified and how such issues might be resolved. These stakeholders all have a good understanding of issues concerning associations, and included Clubs Queensland, the QUT Centre of Philanthropy and Non-Profit Studies, the Queensland Council of Social Service Inc, the Queensland Law Society, and law firms with experience in representing the interests of associations.

The feedback provided was then used to develop this Consultation Paper. In addition, a number of other important association-related issues were separately raised with the government, and proposed solutions to these issues are also included in this paper.

Feedback on this Consultation Paper is being sought from all associations and their members, in addition to the broader community.

1.5. Identified issues and how these will be addressed

Feedback is now sought on proposed changes designed to assist associations in their day-to-day operations and bring Queensland in line with other jurisdictions in relation to dispute resolution, the keeping of accounts, eligibility for election to the management committee, the appointment of a voluntary administrator, and disclosure of remuneration and pecuniary interests:

- Should the Model Rules be amended to provide for a simple and inexpensive process to deal with disputes? Feedback is sought on proposed changes to the Model Rules to introduce a dispute resolution requirement. Feedback is also sought on a proposal requiring those associations which do not adopt the Model Rules to develop their own dispute resolution process. These changes would require a complementary amendment to the Act, to require an association to exhaust this new dispute resolution process before invoking the existing option of going to the Supreme Court.

- Should the Model Rules be amended to ensure all secretaries of an association are at least 18 years? This will also require a complementary amendment to the Act.

- Should the Model Rules and the Regulation be amended to enable cheques to also be signed by two of the three members nominated by the management committee?

- Should the Model Rules and the Regulation itself be amended to increase payments made by cheque or electronic funds transfer from $100 to $500? This would enable payments of $500 or less to be made from a petty cash account.

- Should the Regulation be amended to remove the restriction that incorporated associations must keep an account in Queensland with a financial institution?

Should the Act be amended to change the existing disqualification on persons with certain criminal convictions from being elected to the management committee of an association? This proposed change reflects the period-of-disqualification provisions contained in the *Corporations Act 2001* (Cth).

Should the Act be amended to allow the appointment of a voluntary administrator, to assist associations overcome periods of serious financial difficulty?

Should the Act be amended to require associations to disclose the remuneration of management committee members.

Should the Act be amended to require management committee members to disclose any direct or indirect pecuniary interest they may have in a matter to be decided by the committee, and if such an interest exists, whether the committee member should be prohibited from voting on the matter to be decided.

There are also a number of issues discussed for which no amendment to the Act or Regulation is proposed. These issues were raised in the earlier discussion paper, and it is proposed that no changes to the status quo are warranted at this time. These issues relate to:

- adoption of amended Model Rules;
- classes of membership;
- information about classes of members in the Model Rules;
- the register of members;
- office holders; and
- making decisions, voting and proxies.

1.6. Other options for consideration

Where appropriate, this paper details alternative options to address the issues identified. It is also acknowledged any regulatory change may be disruptive for some associations, and therefore the consequences of maintaining the status quo by not making changes are also discussed.

To promote discussion, some preferred models are identified, based upon the preliminary stakeholder feedback already received. The reasons for preferring a particular model are discussed in the body of this Consultation Paper. The preferred models will be reconsidered in view of the results of this present consultation process, and may change depending on the feedback received. It is important to note the options described in this paper as preferred options do not represent Government policy.

2. Issues which may require changes to the Act or Regulation

2.1. Dispute resolution (proposed amendment to the Act and Regulation)

2.1.1. Background

Neither the Act nor the Regulation makes provision for a simple and inexpensive process to deal with disputes, nor do they require associations to adopt a dispute resolution process in their rules.

Currently, where it is alleged an association or a member is not acting in accordance with the rules of the association, the Act provides the Supreme Court will decide the matter. The fee for lodging an application with the Supreme Court is $1,041 for an association, and $526 for an individual member. Few disputes reach the Supreme Court, and anecdotally this is because the process is expensive, legalistic and beyond the reach of many small organisations or members of associations.

There is no mechanism for tracking the number of disputes which may actually occur within associations. What is known is the number of complaints referred to OFT for resolution, with 133 received between January 2007 and August 2010, although this potentially represents only a small percentage of actual disputes. The issues referred to OFT include the following:

- misuse or misappropriation of association funds;
- meetings not being conducted according to the association's rules (including having an insufficient quorum, inaccurate minuting, and voting and notification anomalies);
- potential members having their application to join the association rejected, or existing members having their membership cancelled;
- conflict of interest between personal business interests of members of the management committee and the activities of the association; and
- general failures by members or the management committee to abide by the association's rules.

Disputes within associations, particularly smaller associations, may become quite personal and acrimonious, and are therefore best dealt with by way of a formalised, yet simple, dispute resolution process.

When the Act was reviewed in 2007, the majority of associations indicated (in response to consultation) a change was required as to how disputes were dealt with. Due to other government priorities, the issue of dispute resolution was not progressed at that time. In response to the discussion paper released in March 2010, most respondents again indicated the need for a simple and inexpensive process to deal with internal disputes.

Other jurisdictions, for example, New South Wales, Victoria and Tasmania, have alternative models for dispute resolution, often involving a continuum of processes from negotiation between the members themselves, through to mediation and sometimes arbitration, prior to the dispute being heard and determined by the relevant court.

Consultation to date has indicated support for introduction of a new way of resolving disputes in a less formal way than going directly to the Supreme Court.

However, it could reasonably be assumed most people join associations to make a contribution to the community, often giving up many hours of their own time for no payment or other reward. In Queensland, most associations are small-to-medium in size, and across the community, comprise thousands of volunteers. It would also be reasonable to assume members of associations would be concerned if their well-intentioned actions could lead to a court or tribunal hearing if other members of the association challenge something they have done or intend to do in the course of working for the association. It is generally accepted associations rise and fall on the ability of members to work together to promote their common interests, and although some reasonable disagreement may be unavoidable, persons may think twice about joining an association if there is a likelihood of such disagreements being taken directly to a court or tribunal to resolve rather than being sorted out 'in-house'.

This concern is potentially more acute for persons who not only join an association, but take an even more active role in running the association by being elected to the association's management committee. In such a position, they are responsible for making decisions, which despite being well-intentioned for the overall best interests of the association, may be the subject of disagreement and result in a dispute. Just as an association depends on general membership to survive and flourish, so too does it need driven and committed members to give even more of their time and effort in managing the direction, activities, accounting and promotion of the association. As such positions are particularly exposed to being caught up in disputes, this may therefore disincline ordinary members of an association from stepping up into such roles if there is a high probability these disputes will be referred to a court or tribunal.

As such, introducing a new dispute resolution process which may encourage more disputes to be pursued could be a significant disincentive to people both joining associations and nominating for management committee positions. Of course, disputes within associations are not always the result of trivial disagreements or personality clashes, and a fair, open and accessible mechanism for resolving legitimate disputes is needed to ensure accountability and equity in the way associations are operated. Given the inclusion of such mechanisms in other situations where a person's rights may be affected (such as having an ombudsman to hear complaints about various consumer issues, or providing for internal review of decisions at hospitals or universities), an informal (and in-house) dispute resolution process may also be considered 'best

practice', and may act as an incentive for persons to join associations where such a process is in place.

Whatever dispute resolution process applies, associations must balance these competing concerns of providing a fair and accessible means of resolving legitimate disputes without discouraging associations from resolving their differences internally.

2.1.2. Issues

Given developments interstate and the absence of a less formal method of dispute resolution in the Act or Regulation, it would be appropriate to consider a range of options to address the need for a less formal dispute resolution process. The main options are outlined below.

- Option 1 – Maintain the status quo, by not providing an alternative process to deal with disputes.

- Option 2 – Amend the Regulation and the Model Rules to provide mediation process to deal with disputes, and require those associations which do not adopt the Model Rules to provide for a dispute resolution process in their rules. This would also require a complementary amendment to the Act, to require an association to exhaust this informal dispute resolution process before invoking the jurisdiction of the Supreme Court.

- Option 3 – As with Option 2, amend the Regulation and the Model Rules to provide for a simple and inexpensive process to deal with disputes, and require those associations which do not adopt the Model Rules to provide for a dispute resolution process in their rules. However, this option would also amend the Act to substitute the Queensland Civil and Administrative Tribunal (QCAT) for the Supreme Court as the body to adjudicate disputes unable to be resolved through the new informal dispute resolution process. Similarly to Option 2, the jurisdiction of QCAT would only be invoked where this informal dispute resolution process had first been exhausted. The jurisdiction of the Supreme Court would remain, but only as an appeal court from decisions of QCAT.

- Option 4 – The Act would be amended to substitute QCAT for the Supreme Court as the body to adjudicate disputes, with the jurisdiction of the Supreme Court remaining as an appeal court from decisions of QCAT. Under this option, the Regulation would not be amended to require associations to provide their own informal dispute resolution process, meaning disputes would be brought directly to QCAT.

2.1.3. Preferred option

Stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because it will provide associations with a simple and inexpensive process to deal with internal disputes. Due to the cost involved in going to the Supreme Court, it is likely the present dispute resolution process is prohibitively expensive for many members of associations to pursue. As the focus of this new process will be for associations to resolve disputes in house without the need to go to Court, it will be more timely and efficient, and less formal and expensive, than the present process or the alternatives. Serious disputes which remain unresolved, even after mediation, may still be taken to the Supreme Court regardless of what type of preliminary process is adopted, as the related Act amendment retains the option to go to the Supreme Court.

This option is also most in keeping with the existing framework of the Act, by maintaining the Supreme Court as the forum for adjudicating disputes rather than inserting an alternative forum (such as QCAT) as proposed in Options 3 and 4. Given the very few disputes which have resulted in application being made to the Supreme Court under the present process, it is unknown how this volume would change once an in-house step was added. Before a more radical change to the Act is made (which may impact on the ability of associations to attract members and fill management committee positions), it would be sensible to determine the effectiveness of the changes proposed in this option.

Option 1 is not preferred because maintaining the status quo would not address the issue of associations currently experiencing difficulty in resolving disputes and which would benefit from a simple and inexpensive dispute resolution process.

Option 3 is not preferred at this time. The ultimate goal of any reform on this issue must be to ensure most disputes within associations are resolved internally. Accordingly, if the next step in a dispute resolution process is potentially seen as ‘an easy option’, associations may not make all effort possible to resolve the dispute between themselves. Where this next step is a hearing before QCAT (as per Option 3), this is likely to be a significantly more attractive proposition (because it will probably be less expensive) than applying to the Supreme Court (as per Option 2). Arguably then, Option 3 may inadvertently deter associations from attempting to resolve disputes informally. Extending the jurisdiction of QCAT to cover disputes arising from the Act would also incur costs to government, as there may be a resulting increase in QCAT’s workload. Depending on the volume of disputes referred to QCAT, this may create a substantial new cost for government and trigger delays in having matters involving associations resolved.

Option 4 is not preferred because the problems identified under Option 3 would not only also apply, but be amplified under this option. As noted above, there may be less

incentive for disputes to be settled internally, and substantial costs are likely to be incurred for associations involved in such a process and government depending on the volume of disputes brought to QCAT. Further, the absence of any in-house dispute resolution process may deter persons from joining associations (and may particularly deter existing members from joining the management committee), due to the likelihood of being involved in a QCAT hearing. There are also application fees for initiating a QCAT action, and although these would need to be determined, such fees (based on current QCAT fees) could range between $75 and $255. Whilst this fee is less expensive than the cost of applying to the Supreme Court under the present dispute resolution process, it may still represent a disincentive for many aggrieved association members. This is because in the absence of any internal dispute resolution process, they would have no option but go to QCAT to pursue their rights.

2.1.4. Impacts of preferred option

2.1.4.1. Incorporated associations and members

Given a more accessible dispute resolution process, more disputes may be pursued. As a result, associations may spend more time and incur greater administrative costs in dealing with such disputes, although it is not possible to reliably quantify these costs at this time. Some associations (particularly their management committee) may consider the possibility of more disputes a considerable negative consequence; however improved access to a dispute resolution process represents a significant benefit to members, especially if the present process deterred valid disputes being pursued in the past.

Where the parties are unable to resolve the dispute between them, mediation is required, and engaging a mediator will normally incur a cost. Mediation pursued under the *Dispute Resolution Centres Act 1990* (DRC Act) of Queensland would incur a $110 per hour intake fee and $205 per hour for two mediators. The Department of Justice and Attorney-General, which administers the DRC Act, advises not all not-for-profit organisations are charged a fee but organisations having the capacity to pay are usually charged a fee. Current trends suggest more than 50% of not-for-profit organisations and/or members of such organisations would be charged a fee. Based on a standard mediation involving two parties and a timeframe of four hours, a minimum cost of $1400 (including preparatory interviews and mediator debrief) could be expected. This cost would need to be compared to the costs that could be incurred in going to QCAT or the Supreme Court, including the costs of obtaining legal advice and the costs of representation. These costs are not as easy to quantify as the costs incurred in pursuing mediation, as they will vary from lawyer to lawyer and on the nature of the dispute. The total costs would also be significantly influenced by decisions made during the process, including the decision at any stage of the process to settle a matter prior to final determination.

Associations which do not already have a dispute resolution process in their rules will have to either adopt the version prescribed in the Model Rules or develop their own process. Following amendment of their rules, associations must apply to OFT to register the amendment, incurring a minimal cost of $15.95.

2.1.4.2. Community

As most members of associations are volunteers, if a more easily accessible dispute resolution process results in more disputes being pursued by members, this may act as a deterrent in attracting volunteers to an association and to the management committee. That said, such a process may attract membership to associations, as it provides a more accessible mechanism for resolving disputes should these arise.

2.1.4.3. Government

Low negative impacts on government are expected from this proposal.

Whenever an association amends its rules, the association must apply to OFT to register the amendment, incurring a cost of $15.95. As a result of the proposed new dispute resolution requirement, there will be an increase in the number of such applications, as many associations will not presently have a dispute resolution process within their rules and will therefore need to amend their rules in order to comply with the requirement. It is not clear how many associations will need to make such an amendment.

The additional application volume represents an increase in OFT's workload. However, this should be able to be absorbed and it is unlikely the volume would require new systems or staff to manage this work.

1. Do you believe there is a need for a new dispute resolution process?
2. If 'yes' to question 1, do you agree or disagree Option 2 is the way to achieve this?
3. If 'yes' to question 1, are there any other ways this could be achieved?
4. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?
5. Are there any other issues about dispute resolution or impacts which need to be considered?

2.2. Age of the secretary of an association (proposed amendment to the Act and Regulation)

2.2.1. Background

Members of the management committee of associations must be adults. However, the relevant provision in the Regulation does not specify the secretary need be a member of the management committee. The secretary is not, therefore, required to be at least 18 years, and anecdotally it appears sometimes students (under this age) are appointed to the position.

The secretary plays a vital role in managing the association, even if the secretary is not an actual member of the management committee. The duties of the position may include the following:

- calling meetings, and ensuring members are provided with an agenda, notice of issues being voted on, and copies of minutes;
- taking Minutes of meetings, including recording attendance, voting outcomes, and general business discussed;
- completing actions arising from meetings;
- maintaining a register of members, and managing applications for new memberships; and
- attending to both day-to-day and urgent correspondence.

The secretary, in conjunction with either the president, treasurer or another person nominated by the management committee, is also one of the persons presently authorised under the Model Rules to sign cheques.

The *Corporations Act 2001* (Cth) (s.204B) provides persons must be at least 18 before they can be appointed as secretary to a Corporation. Similarly, there is a minimum age requirement in associations legislation in other jurisdictions including New South Wales and Victoria in relation to the 'public officer' who undertakes the same role as the secretary.

2.2.2. Issues

The issue is whether, given the role and responsibilities of a secretary, this position should only be held by someone over the age of 18 years. Some associations may consider appointment of the secretary should be a matter for the management committee. However, this needs to be balanced against the level of responsibility which may come with the position, and the benefit of clarifying whether or not the secretary must be an adult. The main options are outlined below.

Option 1 - Maintain the status quo, in which case only secretaries who are members of the management committee need be at least 18.

Option 2 **-** Amend the Regulation (and the Model Rules in the Regulation) to ensure all secretaries of an association are at least 18. This would also require a complementary amendment to the Act.

Option 3 – Amend the Regulation (and the Model Rules in the Regulation) to require associations to decide whether the age of the secretary should be restricted and also what any such restriction should be, and to then include this decision in their rules.

2.2.3. Preferred option

Stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because the important role and functions of a secretary requires the position to be held by a person of an appropriate age. A review of the Act in 2007 revealed 72% of stakeholders were in favour of the secretary being an adult. Some stakeholders considered the secretary to be a 'de facto' member of the management committee, and others stressed the importance of the role, given the secretary is often responsible for actioning the decisions of the management committee, in addition to co-ordinating and minuting meetings of both the association and of the management committee. The ability under the Model Rules for the secretary to sign cheques was also of concern, and regardless of whether the association has a large or small income stream, proper control of outgoings is of critical importance to members. Further, having robust funds management processes may also impact on whether an association is able to secure government and other funding.

There was also strong stakeholder support for requiring the secretary to actually be a member of the management committee. Option 2 does not go this far, as such a change may unreasonably limit the persons who could be secretary (and would be out of step with other preferred options in this Paper, designed to reduce red tape for associations by devolving the duties of the committee and/or giving associations more freedom in managing their funds). Many associations indicated they already mandate the secretary must be a member of the management committee, and therefore the impact of Option 2, in terms of requiring associations to make changes to their present organisational structure, will be moderate, at most.

Option 1 is not preferred because it is not appropriate to make any distinction between a secretary who is a member of the management committee and a secretary who is not. In each case the secretary carries out important functions and exercises an important role, and for the reasons described above, should therefore be at least 18 years of age. Further, the Model Rules do not distinguish between secretaries who are and are not members of the management committee.

Option 3 is not preferred because the important role and functions of a secretary requires the position to be held by a person of an appropriate age. Arguably then, the age of the secretary is not a matter which should be left to the discretion of individual associations. Further, and as noted above, it is common practice for many associations to require their secretary to be a member of the management committee (and by implication, to be at least 18 years), and therefore this discretionary option is less compelling because it would appear many associations are developing a specific, 'best practice' way of addressing the issue.

2.2.4. Impacts of preferred option

2.2.4.1. Incorporated associations and members

It is possible some incumbent secretaries are not presently 18 years, and may therefore be required to relinquish this position. This Consultation Paper is expected to prompt information about the incidence of secretaries being less than 18 years, however it is reasonable to assume at this stage the incidence of this is probably very low, and therefore the impact of this amendment is expected to be minimal.

2.2.4.2. Community

No negative impacts are expected from this proposal, other than to exclude persons under 18 years from being eligible to be secretary.

2.2.4.3. Government

No negative impacts on government are expected from this proposal. Government would benefit from the greater clarity that would result from this change.

6. Do you believe changes are needed about age of the secretary?
7. If 'yes' to question 6, do you agree or disagree Option 2 is the way to achieve this?
8. If 'yes' to question 6, are there any other ways this could be achieved?
9. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?
10. Are there any other issues about age of the secretary which need to be addressed?

2.3. Funds Management - Signatories for cheques (proposed amendments to the Regulation)

2.3.1. Background

The management committee has the general control and management of the administration of the affairs, property and funds of the association, including all expenditure which must be approved or ratified at a management committee meeting.

It is important there are transparent and accountable processes for funds and account management.

Under the Model Rules (and the Regulation itself), cheques must be signed by two persons, one of whom must be the president, secretary or treasurer, and one of three other members with authority from the management committee to sign cheques.

2.3.2. Issues

The issue is, where an association makes a payment by cheque, who should be required to sign the cheque? It may be argued Associations, through their management committee, should be able to decide who signs cheques on behalf of the association.

One problem identified by stakeholders was the practice of one management committee member signing a number of blank cheques at once, and then the requisite second signatory adding their signature and the amount either when they become available to do so or when the need to issue the cheque arises. In terms of funds management and control, this is a particularly poor practice for any organisation however it does highlight the difficulties faced by some associations in complying with the present requirements. This is because not all of the necessary signatories may be available at the same time - particularly busy management committee signatories.

The main options are outlined below.

- Option 1 **-** Maintain the status quo, by not changing the Model Rules (and the Regulation). As such, associations which adopt the Model Rules must ensure cheques are signed by the president, secretary or treasurer and one of three other members of the association as authorised by the management committee.

- Option 2 **-** Amend the Model Rules (and the Regulation) to enable cheques to also be signed by two of the three members nominated by the management committee.

- Option 3 – Amend the Model Rules (and the Regulation) to no longer prescribe the persons required to sign a cheque.

2.3.3. Preferred option

For the purposes of consultation, stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because enabling cheques to also be signed by any two members as nominated by the management committee will likely improve business efficiency for associations. Under the proposed change, the two signatories to a cheque must be either (a) two members of the management committee, or (b) one member of the management committee and one of the three members authorised by the management committee to sign cheques, or (c) two of the three members authorised by the management committee to sign cheques. Requiring cheques to be signed by two members of the association (one of which must be the president, the secretary or the treasurer) and one of three other authorised members with authority from the management committee to sign cheques is not always practical.

Option 1 is not preferred because, as discussed above, it may not always be practical or efficient to comply with the current requirement. In particular, the incidence of practices such as one signatory signing a blank cheque highlights the need to build greater efficiencies into the Model Rules.

Option 3 is not preferred because the question of who is authorised to sign cheques is sufficiently important for it to be specifically provided for in the Model Rules, as it is goes to the heart of good governance and accountable funds management.

2.3.4. Impacts of preferred option

2.3.4.1. Incorporated associations and members

The present signatory requirements assist in controlling financial outgoings, and the preferred option is in keeping with this principle by requiring the management committee to identify those additional members who may also sign cheques. Further, any association concerned about the proposed, arguably less stringent requirement may continue to limit the persons who may be signatories to cheques (and may, in fact, still implement additional controls). As such, the likely impact of this amendment will be to provide greater flexibility to associations, without exposing the association to any meaningful risk of funds misuse.

2.3.4.2. Community

No negative impacts are expected from this proposal, as the proposal (being of a minor administrative matter) would be unlikely to affect community confidence in the integrity and good management of associations.

2.3.4.3. Government

No negative impacts for government have been identified.

11. Do you believe changes are needed about who may sign cheques?

12. If 'yes' to question 11, do you agree or disagree Option 2 is the way to achieve this?

13. If 'yes' to question 11, are there any other ways this could be achieved? (For example, by extending the signatories to include employees of an association, or allowing the management committee to nominate more than three members to be signatories).

14. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

15. Are there any other issues about who may sign cheques which need to be addressed?

2.4. Funds management - Cheques, electronic funds transfer and petty cash accounts (proposed amendment to the Regulation)

2.4.1. Background

Currently, payments by associations of $100 or more must be made by cheque or electronic funds transfer. This is a requirement of the Model Rules and additional accounting requirements in Schedule 5 of the Regulation. Only payments less than $100 may be made out of the petty cash account.

2.4.2. Issues

The issue is whether the amount of payments required to be made by cheque or electronic funds transfer should be increased (thereby also increasing payments which may be made from the petty cash account). Having regard to the impact of inflation, the existing limit of $100 is arguably now too low, and needs to be increased to reduce the administrative burden on associations. Payments by cheque allow outgoings of funds to be more easily traced than payments by cash, and this in part explained the low limit for amounts which must be paid by cheque. However, today it is common for associations to make payments electronically, which also enables outgoings to be traced and therefore reduces the need for cheques.

The main options are outlined below.

- Option 1 **-** Maintain the status quo, and continue to require payments of $100 or more to be made by cheque or electronic funds transfer and continue to restrict payments which may be made from petty cash accounts to $100 or less.

- Option 2 **–** Amend the Regulation to increase payments which must be made by cheque or electronic funds transfer from $100 to $500, and thereby also increase the amount of payments which may be made from the petty cash account to $500 or less.

- Option 3 – Amend the Regulation to require associations to decide the amount which must be paid by cheque or electronic funds transfer, and to then include this decision in their rules.

2.4.3. Preferred option

For the purposes of consultation, stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because the current amount of $100 is too low and needs to be raised to account for inflation. The proposed new threshold amount of $500, although considerably higher than the present amount, is a realistic point between funds required to meet day-to-day/recurrent outgoings and one-off/significant expenditure. This option, directly aimed at reducing red tape requirements, will increase operational efficiencies for associations, whilst maintaining a reasonable degree of control of funds outgoings.

Option 1 is not preferred because given the relative modern-day value of $100, it is inefficient to expect associations to deal with such amounts by way of cheque or electronic funds transfer.

Option 3 is not preferred because the purpose of reforming the threshold of monies which must be paid by cheque is to facilitate business efficiency and recognise the effect of inflation, while recognising adequate funds control may be achieved by making other rules. That is, few associations may feel it necessary to require amounts of less than $500 to be paid by cheque, so providing additional discretion in this regard may be of little benefit. In any event, an association seeking stricter controls on outgoings may still implement their own rules about payments by cheque.

2.4.4. Impacts of preferred option

2.4.4.1. Incorporated associations and members

As the proposed new $500 threshold is still a relatively small amount, this change should have no negative impacts for associations in terms of managing financial outgoings. There remains a possible risk any financial mismanagement would have an increased impact, however, if the funds are transferred electronically, such outgoings are easily able to be tracked, and any association concerned about the level of the new threshold may still implement other monetary controls.

2.4.4.2. Community

No negative impacts are expected from this proposal, as the proposal (being of a minor administrative matter) would be unlikely to affect community confidence in the integrity and good management of associations.

2.4.4.3. Government

No negative impacts on government are expected from this proposal.

16. Do you believe changes are needed about payments by cheque?
17. If 'yes' to question 16, do you agree or disagree Option 2 is the way to achieve this?
18. If 'yes' to question 16, are there any other ways this could be achieved?
19. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?
20. Are there any other issues about payments by cheque which need to be addressed?

2.5. Funds management - Keeping an account with a financial institution in Queensland (proposed amendment to the Regulation)

2.5.1. Background

The Regulation requires associations to keep an account with a financial institution in Queensland. This does not reflect modern electronic banking and communication practices, and there is no equivalent restriction in the other States and Territories.

2.5.2. Issue

The issue is whether the current requirement for associations to keep an account in Queensland with a financial institution should be removed. When the requirement was first included, banking usually occurred at the branch of a financial institution, whereas today banking is mostly conducted electronically. As such, not all financial institutions maintain physical branches in every jurisdiction, and therefore the requirement to keep an account actually within Queensland limits an association's choice of financial institutions. Given the diversity in size and type of associations, this freedom of choice is important to ensure an association has a financial institution which best suits its needs.

The main options are outlined below.

- Option 1 **-** Maintain the status quo, and not change the present banking arrangements.

- Option 2 **-** Amend the Regulation to remove the restriction that incorporated associations must keep an account in Queensland with a financial institution.

2.5.3. Preferred option

Stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because removing the current restriction will give associations greater flexibility and enable them to choose banking arrangements which best suit their needs. It will also bring Queensland in line with other jurisdictions. Such an amendment offers improved choice for associations in their banking arrangements.

Option 1 is not preferred because maintaining the status quo will continue to restrict associations in their choice of banking arrangements with little corresponding benefit.

2.5.4. Impacts of preferred option

2.5.4.1. Incorporated associations and members

As this amendment does not require any change to an associations present banking arrangements, but merely offers improved choice, the impact is expected to be minimal.

2.5.4.2. Community

No negative impacts for the community have been identified.

2.5.4.3. Government

The present requirement for an account to be held in Queensland is primarily to assist the Office of Fair Trading investigate serious complaints of financial mismanagement within associations, and to determine if an association is still operating. Under this proposal, if an association held its accounts interstate, the government would incur the cost of serving documents interstate in order to access those accounts, as the powers of Fair Trading inspectors do not extend beyond Queensland borders. Although this is a potential negative impact for government, the likelihood of this scenario is remote, and would only happen where the association management refuses to provide access to their accounts in the course of an investigation.

21. Do you believe changes are needed about account keeping requirements?

22. If ‘yes’ to question 21, do you agree or disagree Option 2 is the way

to achieve this?

23. If 'yes' to question 21, are there any other ways this could be achieved?

24. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

25. Are there any other issues about account keeping requirements which need to be addressed?

2.6. Eligibility for election to the management committee (proposed amendment to the Act)

2.6.1. Background

Presently under section 61A of the Act, a person is not eligible to be elected to a management committee if the person has been convicted (i) on indictment; or (ii) summarily and sentenced to imprisonment, other than in default of payment of a fine; and the rehabilitation period in relation to the conviction has not expired.

Under section 3(2) of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, a rehabilitation period only applies where an offender was either not imprisoned or was imprisoned for not more than 30 months.

Therefore, if a person has been sentenced to imprisonment for more than 30 months, the person will never be eligible for election to a management committee.

There is currently no restriction on eligibility for election of people who have been:
summarily convicted of an offence and are not sentenced to imprisonment; or
summarily convicted and sentenced to imprisonment, in default of payment of a fine.

Queensland, South Australia, the ACT and the Northern Territory are the only jurisdictions whose laws preclude eligibility for election to a management committee based on criminal history. A review of the Act in 2007 revealed that 53% of stakeholders were in favour of amending the eligibility criteria for persons with a criminal history.

2.6.2. Issue

The issue is whether persons with serious convictions should still be eligible for election to the management committee. Arguably, strict caveats on eligibility will ensure the necessary probity expected of members of an association's management committee, although it is equally arguable such caveats should be consistent with those applicable to like organisations and in other jurisdictions. Although the present restrictions do not

prevent any person from becoming a member of an association, they would stop many highly valued members from taking a more active role in the association through serving on the management committee.

The main options are outlined below.

- Option 1 - Maintain the status quo, meaning persons who served more than 30 months imprisonment for an offence (whether they were either convicted on indictment, or convicted summarily), do not have a rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, and are therefore not eligible for election to a management committee. There would continue to be no restriction on eligibility for election of people who have been summarily convicted of an offence and are not sentenced to imprisonment, or have been summarily convicted and sentenced to imprisonment in default of payment of a fine.

- Option 2 - Amend the Act, so the period of disqualification is more closely aligned with the disqualification provisions in the *Corporations Act 2001* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, but differs from those provisions by continuing to have no restriction on eligibility for election of people who have been summarily convicted of an offence and not sentenced to imprisonment. The disqualification would then be (a) for persons convicted summarily or on indictment, and sentenced to a period of custody (whether or not suspended), other than summary convictions where a sentence of imprisonment was ordered in default of payment of a fine, five years from the end of that period of custody, or (b) for persons convicted on indictment, and not sentenced to a period of custody, five years from the date of the conviction.

- Option 3 – Amend the Act, so the period of disqualification mirrors the disqualification provisions in the *Corporations Act 2001* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. Those provisions automatically disqualify a person under various circumstances, including where they have been convicted of an offence related to (a) a decision made in operating a business, (b) an act which may negatively affect the financial standing of a business, or (c) dishonesty punishable by imprisonment. Similarly to Option 2, the period of disqualification under these provisions is either five years from the end of a period of custody, or if no period of custody was ordered, five years from the date of the conviction. The rationale for this period of disqualification is the appropriateness of a person to be elected to the management committee, rather than using the length or type of a sentence imposed, and as such it would be irrelevant whether the person was convicted summarily or on indictment.

- Option 4 – Amend the Act to no longer prescribe any period of disqualification for persons convicted of offences.

2.6.3. Preferred option

For the purposes of consultation, stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because removing the present restriction on the eligibility of persons with certain criminal convictions being elected to the management committee will not only benefit such persons, but also give associations greater freedom as to who they may elect to this committee.

It will also align Queensland more closely with the 5-year period of exclusion in some other jurisdictions and will be similar to the period of disqualification provisions contained in section 206B of the *Corporations Act 2001* (Cth) and section 279 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006,* except that in Queensland, there would continue to be no restriction on people with summary convictions where no imprisonment is ordered or people with summary convictions where imprisonment is ordered in default of payment of a fine. Queensland, South Australia, the ACT and the Northern Territory are the only jurisdictions whose laws preclude eligibility for election to a management committee based on criminal history.

Option 1 is not preferred because maintaining the status quo is out of step with like restrictions in comparable legislation, and also deprives associations and the community of the services of persons who would otherwise not be eligible for election to the management committee.

Option 3 is not preferred because it would impose a disqualification period on persons who do no not have such a restriction under the present law. For example, under this option, a person convicted summarily of an offence of dishonesty punishable by imprisonment would face a five-year period of disqualification even if not sentenced to custody. Whilst such an outcome would increase the likelihood of only persons of the utmost probity being elected to the management committee, it may also substantially decrease the number of persons who, were it not for the particular conviction, would prove a valuable asset to the association by serving on the management committee. Further, the consultation feedback arising from the previous discussion paper did not support extending the present restrictions. Although for the purpose of harmonisation, there is merit in more closely aligning Queensland's disqualification provisions with those in the *Corporations Act 2001* (Cth) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006,* Option 2 affords a more straight-forward way of achieving this by building upon the existing Queensland law instead of replacing it with something substantially different when there does not currently appear to be a compelling reason for doing so.

Option 4 is not preferred because restrictions of this type are found in similar legislation, in relation to the persons who may serve in decision-making or financial positions within organisations. These restrictions not only ensure persons elected to those positions are

honest, reliable and trustworthy, but also assist in maintaining the community's perception of an association's probity and accountability. Whilst the preferred option acknowledges the present restrictions for associations may be too severe, and out of step with other jurisdictions, there remain compelling reasons against removing restrictions altogether.

2.6.4. Impacts of preferred option

2.6.4.1. Incorporated associations and members

Given many associations deal with substantial funds and rely on government and community monetary support, the probity of management committee members is of critical concern. Obviously then, persons with serious prior convictions for offences of dishonesty may present a risk factor to such associations. However, the proposed amendment does not give such persons an automatic right to be on the committee, nor does it preclude either the committee enquiring as to the person's criminal history or the association members declining to elect the person on the basis of any such history. Therefore, the impact of this proposed amendment is expected to be low, and will be even less where the management committee undertakes adequate screening of potential committee members (and, where doubts remain, limits the financial or other powers of the person if they are elected).

2.6.4.2. Community

Election of persons with prior criminal convictions (especially for offences of dishonesty) to the management committee may negatively impact on community confidence in some associations. This would be particularly so where accountability and probity are key to the association's activities, such as where fund-raising activities (often involving significant amounts of money) are undertaken. However, this proposal does not negate the other probity requirements of the Act and Regulation, and therefore any such negative impact could realistically be expected to be low.

2.6.4.3. Government

No negative impacts on government are expected from this proposal.

26. Do you believe changes are needed about eligibility for election to the management committee?

27. If 'yes' to question 26, do you agree or disagree Option 2 is the way to achieve this?

28. If 'yes' to question 26, are there any other ways this could be achieved?

29. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

30. Are there any other issues about eligibility for election to the management committee which need to be addressed?

2.7. Appointment of voluntary administrators (proposed amendment to the Act)

2.7.1. Background

The Act does not provide voluntary administration procedures. These procedures are therefore not available if associations experience financial difficulties, despite their potential usefulness and capacity to resolve issues in a way which suits all parties. In some instances, administrators are appointed by banks holding security over the association's mortgage, but the bank's interests differ from those of the association and will not necessarily give priority to the needs of the association, its members or other creditors.

If Part 5.3A of the *Corporations Act 2001* (Cth) were available to associations, this would allow associations to appoint a voluntary administrator. Under the present law, an association in financial difficulty would need to apply to the Supreme Court for appointment of a provisional liquidator, which is a time-consuming and expensive process. The delay in securing this appointment may jeopardise confidence in the association, and there have been incidents of this causing governments to withdraw their funding and creditors refusing to continue dealing with the association. Further, the cost of applying to the Supreme Court may only worsen the association's financial problems.

KPMG, Chartered Accountants of Cairns, support the import of Part 5.3A, and provided examples of the difference voluntary administration provisions can make to associations facing financial difficulty. Public consultation conducted in February 2005 revealed overwhelming support (76% of respondents were in favour) for amendments to the Act to enable appointment of a voluntary administrator. Other States (including New South Wales, Victoria, South Australia and Tasmania) have all incorporated Part 5.3A into their association's legislation.

2.7.2. Issues

The issue is whether the voluntary administration provisions of the *Corporations Act 2001* (Cth) should be available to associations. Arguably, being able to appoint a voluntary administrator would greatly assist associations overcome periods of serious financial difficulty. Conversely, it may discourage some associations from trying to resolve the financial problem themselves by, for example, restructuring their operations or electing a new management committee.

The main options are outlined below.

- Option 1 - Maintain the status quo, in which case associations experiencing financial difficulties will not have the benefit of appointing a voluntary administrator.

- Option 2 - Amend the Act to import Part 5.3A of the *Corporations Act 2001* (Cth).

2.7.3. Preferred option

For the purposes of consultation, stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is preferred because allowing associations to appoint a voluntary administrator, pursuant to Part 5.3A of the *Corporations Act 2001* (Cth), will greatly assist associations overcome periods of serious financial difficulty. Even if the administrator is unable to navigate the association out of such difficulty, and it is wound up, the actions and guidance of the administrator should optimise the outcome for the association's creditors and members.

Option 1 is not preferred because it is important to provide associations with a cost-effective way of accessing the assistance that administrators could provide to assist the association overcome a period of financial difficulty.

2.7.4. Impacts of preferred option

2.7.4.1. Incorporated associations and members

As the amendment would only affect associations already in financial difficulty, and any decision by the administrator to wind up the association would only be made where this accords with the best financial course, any negative impact is expected to be minimal. There will be a strong positive impact on associations due to the expertise administrators can bring to help an association through a period of financial difficulty.

2.7.4.2. Community

No negative impacts are expected from this proposal, as the proposal would be unlikely to affect community confidence in the integrity and good management of associations. Members of the community dealing with associations would benefit from the expertise administrators can bring to help an association with which they may have contractual or other financial relationships through a period of financial difficulty.

2.7.4.3. Government

No negative impacts on government are expected from this proposal.

31. Do you believe changes are needed about appointment of voluntary administrators?

32. If 'yes' to question 31, do you agree or disagree Option 2 is the way to achieve this?

33. If 'yes' to question 31, are there any other ways this could be achieved?

34. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

35. Are there any other issues about appointment of voluntary administrators which need to be addressed?

2.8. Disclosure of remuneration of management committee members (proposed amendment to the Act)

2.8.1. Background

For the majority of incorporated associations, the management committee operates on a voluntary basis. Depending on the size and activities of an association, the duties of the committee may be extensive, encompassing high-level accounting, contractual and staffing issues. In the case of very large associations, such as those with multi-million dollar assets and/or turnover, the skills, experience, workload and probity demanded of the management committee is extremely high, and equivalent to what is expected from directors of a company.

As such, it is not unreasonable to expect some associations to offer remuneration to their management committee members. Doing so recognises the commitment and skills of these persons, and also assists in attracting persons of higher calibre to take on these roles. A recent review of annual returns lodged with OFT indicated although remuneration paid to committee members is not a common practice, it does occur, usually in the very largest associations.

Remuneration may take the form of a salary, or other reward or incentive such as provision of a vehicle for both work and private use. Presently, the Act does not require an association to disclose to its members any remuneration given to management committee members. The review of annual returns lodged with OFT revealed some associations which pay remuneration do already disclose this, usually by noting it as an expenditure line item (such as honorariums, board/meeting expenses or board of management expenses).

2.8.2. Issues

The issue is whether associations should disclose the remuneration of management committee members. Arguably, this would ensure greater transparency and accountability within associations, and would also give those not on the committee of an association the information necessary to determine whether such remuneration was an appropriate use of the association's funds. Conversely, no other jurisdictions require disclosure of remuneration to individual committee members. The *Corporations Act 2001* (Cth), which regulates companies in Australia, only requires publicly listed corporations to disclose remuneration details for key management personnel, including the top five groups of executives and top five company executives who earn the highest remuneration. However, there is no similar requirement for companies limited by guarantee, which are similar to incorporated associations (in that they do not usually make any distribution of profits). The Productivity Commission finalised a review of executive remuneration in January 2010, but it did not recommend an extension of the disclosure requirements beyond publicly listed companies.

The main options are outlined below.

- Option 1 – Maintain the status quo and not require associations to disclose the remuneration of committee members.

- Option 2 – Amend the Act to require associations to disclose the remuneration of their committee members, however such remuneration is paid.

- Option 3 – Amend the Act to require associations to disclose the remuneration of their committee members, however such remuneration is paid, but only require such disclosure where the assets and/or turnover of the association is above a certain threshold.

2.8.3. Preferred option

For the purposes of consultation, stakeholders are asked to consider whether option 2 should be the preferred option.

Option 2 is the preferred option because it would increase transparency and accountability, particularly for larger associations where members of the management committee may receive significant remuneration. However this option will benefit members of all sizes of associations, as they will be better informed about whether their management committee members are being remunerated, and will therefore be in an informed position to determine if this is an appropriate use of the association's funds. Although many of the largest associations already adopt accounting and reporting procedures beyond what is prescribed under the present law, including disclosure of any remuneration paid to the management committee, Option 2 would enshrine such a

practice to not only make it a binding legal requirement, but to also provide clarity and uniformity in relation to how the disclosure is to be made.

Option 1 is not preferred because the funds of all sizes of associations are always a significant matter for an association, and members would benefit from improved transparency as to how those funds are expended. Even where associations presently disclose any remuneration paid to management committee members, this practice is not uniform or enforceable because it is not prescribed under legislation.

Option 3 is not preferred because the need for disclosure and accountability applies evenly across all associations, despite the amount of remuneration paid in the largest associations being likely to far exceed the amount paid in smaller associations. This need for transparency is also important for smaller associations, given funds may be scarcer, general accounting controls may be less formal, and there is the possibility of resentment and misunderstandings to develop where remuneration issues are not disclosed to persons outside the management committee.

2.8.4. Impacts of preferred option

2.8.4.1. Incorporated associations and members

The amendment would only affect those associations which remunerate their management committee members, and most associations where this occurs would likely be the largest associations which already disclose such remuneration as part of their usual accounting and reporting practices. Therefore from a 'red tape' perspective, the impact of this amendment is expected to be low. However, members of all sizes of associations will benefit from improved transparency in relation to how the association's funds are applied. There may also be concerns about the impact on the privacy of remunerated committee members. However, there may be disclosure of remuneration in any event, for example, when remunerated positions are advertised.

2.8.4.2. Community

No negative impacts are expected from this proposal, as the proposal would likely increase community confidence in the integrity and good management of associations.

2.8.4.3. Government

No negative impacts on government are expected from this proposal.

36. Do you believe changes are needed about disclosure of remuneration of committee members?

37. If 'yes' to question 36, do you agree or disagree Option 2 is the way to achieve this?

38. If ‘yes’ to question 36, are there any other ways this could be achieved?

39. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

40. Are there any other issues about disclosure of remuneration of committee members which need to be addressed?

3. Disclosure of pecuniary interests of management committee members (proposed amendment to the Act)

3.1.1. Background

Although the management committee of any incorporated association plays a vital role in deciding the activities, direction and future development of the association, the consequences of such decisions are far more significant in the case of large associations with substantial assets and/or turnover, and for those associations which are in receipt of government funding to provide important community services. However regardless of whether the association is a small club or has a multi-million dollar turnover, the need for the management committee members to act in the best interests of the association when making these decisions is paramount.

The probity of decisions made by the management committee may fall into doubt where one of the committee members stands to benefit from the outcome of the decision, usually due to commercial or other interests outside the association. Such interests are variously referred to in legislation as a ‘pecuniary interest’ or ‘material personal interest’, or as being the cause of a ‘conflict of interest’.

Ideally, no management committee member would have an interest in the outcome of decisions made by the committee, other than the interest shared by all members to want to see the association continue to achieve its purposes and thrive. Such a goal is equally applicable to directors of companies making decisions on behalf of their shareholders and is subject to similar challenges. In recognition of this, directors in companies are obliged under the Corporations Act 2001 (Cth) to disclose any pecuniary interest (called ‘material personal interest’) they may have in a decision before the board, so (depending on the nature of the interest) the director may either be excluded from the vote, or be allowed to vote in the context of all other directors being fully aware of how the decision may impact on that interest.

Presently, the Act does not require management committee members to disclose any pecuniary interest or conflicts of interest,, and does not prohibit committee members from voting when such an interest exists.

The Model Rules in the Associations Incorporation Regulation 1999 prohibit members of the management committee from voting on a contract or proposed contract if the member has an interest in the contract or proposed contract, and if the member does vote, the member's vote must not be counted. As not all associations adopt the Model Rules the obligation is not uniform.

A review of the Act in 2007 revealed 82% of stakeholders were in favour of committee members being required to disclose their financial interests when dealing with contracts, and also from being prohibited from voting when such an interest exists.

3.1.2. Issues

The issue is whether management committee members should be required to disclose any direct or indirect pecuniary interest or any conflicts of interest they may have in a matter to be decided by the committee, and if such an interest exists, whether the committee member should be prohibited from voting on the matter to be decided. Such matters would normally involve a contract to be entered into by the association, although a contract is not necessary for there to be a potential conflict of interest.

Arguably, such a disclosure requirement would ensure greater probity and accountability within associations, and ensure decisions of the management committee are made purely in the best interests of the association and its members. In NSW the relevant legislation requires committee members to disclose any direct or indirect interest in a matter which raises a conflict with the proper performance of the committee member's duties in considering the matter, and prohibits a member with such an interest from voting on the matter. In Victoria, Western Australia, South Australia, the ACT and the Northern Territory, the relevant association's legislation requires committee members to disclose any direct or indirect pecuniary interest in a contract or proposed contract, and prohibits a member with such an interest from voting on the matter.

However those same jurisdictions, with the exception of NSW and Western Australia, do allow a member with a relevant pecuniary interest to still take part in deliberations with respect to the matter. A committee member may have the pecuniary interest because they have, for example, some useful expertise and experience in the field in which the association operates. If committee members with a pecuniary interest were always excluded from deliberations around matters concerning that interest, their specialist skills and knowledge would not be available to the other committee members in deciding such matters. Likewise, the committee may resolve the potential conflict of interest (once disclosed) is slight or not material, and would welcome that member's contribution and vote on the matter.

Associations which receive funding from the Department of Communities, prescribed requirements in the Housing Regulations 2003, the Disability Service Regulation 2006 and the Community Services Regulation 2007 oblige funded organisations to keep and implement policies about identifying, declaring and dealing with any conflicts of interest of its management committee members ('executives'), employees and volunteers.

The main options are outlined below.

- Option 1 – Maintain the status quo, and not require management committee members to disclose any pecuniary interest or conflict of interest they may have in a matter to be decided by the committee, and if such an interest exists, not to prohibit them from voting on the matter to be decided.

- Option 2 – Amend the Act to require management committee members to disclose any direct or indirect pecuniary interest in a matter to be decided by the committee, and if such an interest exists, prohibit the member from voting on the matter to be decided. However, the member may continue to take part in deliberations in relation to the matter. The minutes of the meeting of the management committee will then record the disclosure.

- Option 3 - Amend the Act to require management committee members to disclose any direct or indirect pecuniary interest or conflict of interest in a matter to be decided by the committee, but if such an interest exists, not to automatically prohibit the member from voting on the matter to be decided, but rather leave it to the committee to determine if the member may still vote. Whether or not the member is permitted to vote, they may continue to take part in deliberations in relation to the matter. The minutes of the meeting of the management committee will then record both the disclosure and whether the member making the disclosure was allowed to vote on the matter.

3.1.3. Preferred option

Option 3 is preferred because it would impose greater probity and accountability requirements on associations, whilst still giving the management committee flexibility to allow a committee member with a disclosed pecuniary interest or conflict of interest to deliberate and vote on a decision where appropriate. This option aligns with the disclosure principles contained in the Corporations Act 2001 (Cth) and the Government Owned Corporations Act 1993. In the former Act, the law requires disclosure from a director with a material personal interest, whilst still allowing the director to vote. In the latter Act, the law requires a code of conduct to be implemented in relation to disclosure of conflicts of interest by directors and senior executives, and how such conflicts are to be managed. Further, the ability

for members with a pecuniary interest to still take part in deliberations, even if prohibited from voting, aligns with the associations laws in most jurisdictions.

Option 1 is not preferred because management committee members are expected to operate with a high degree of probity and accountability. It should therefore be a binding requirement for potential conflicts of interest to be declared by committee members prior to voting on a matter where such conflict may arise.

Option 2 is not preferred because the management committee should still have the flexibility to allow a committee member with a declared pecuniary interest to deliberate and vote on the matter related to that interest. It may not always be the case that the potential conflict of interest is sufficiently material to warrant the member in question being excluded from deliberations and/or voting – ultimately, disclosure is the critical element, and from there it is a matter for the now-informed committee to decide the most appropriate way forward. Such an approach may also encourage committee members to advise of a potential conflict of interest, including cases where the member is uncertain about whether the matter is significant enough to raise with the committee.

3.1.4. Impacts of preferred option

3.1.4.1. Incorporated associations and members

Associations would likely need to develop their own policies to guide their decision making in such circumstances. For associations which adopt the Model Rules, management committee members are already prohibited from voting on a contract or proposed contract if they have a conflict of interest. Any negative impacts from this proposal would be balanced with the increase in the overall probity and accountability of management committee decisions, and ensure committee members do not use their position to gain a personal benefit.

3.1.4.2. Community

No negative impacts are expected from this proposal, as the proposal would only increase community confidence in the integrity and good management of associations.

3.1.4.3. Government

No negative impacts on government are expected from this proposal. Government would benefit from working with associations which are uniformly obliged to operate in a way which recognises the potential impact of conflicts of interest within the association.

41. Do you believe changes are needed about disclosure of pecuniary interests or conflicts of interest of management committee members?

42. If ‘yes’ to question 41, do you agree or disagree Option 3 is the way to

achieve this?

43. If 'yes' to question 41, are there any other ways this could be achieved?

44. Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

45. Are there any other issues about disclosure of pecuniary interest of management committee members which need to be addressed?

4. Other issues requiring feedback

Other matters dealt with in the Regulation, including the Model Rules, have been examined to determine whether changes are required. As noted above, targeted consultation has taken place on these provisions. The issues identified and the reasons for refraining from making changes are outlined below. Feedback is sought on the proposed response to these issues.

4.1. Adoption of amended Model Rules

4.1.1. Background

Incorporated associations are required to have documented rules. When associations resolve to incorporate they may decide to adopt the Model Rules or their own rules. It is estimated about 8,000 associations have their own rules. As is apparent from this paper, the Model Rules in the Regulation may be amended from time to time.

Once associations become incorporated and adopt the Model Rules, neither the Act nor the Regulation make any provision as to what should happen if the Model Rules are amended. The amended Model Rules will be put on the Department's website as an example of best practice, but it is up to individual associations whether or not to adopt the updated rules.

An issue to be considered is whether, when the Model Rules are amended, such amendment applies automatically to an association which has adopted the Model Rules. In order to exclude any updated provisions of the Model Rules which conflict with or are not contained in an association's own rules, associations would have to amend their own rules to that effect.

4.1.2. Preferred option

Associations should have ownership of their rules and the choice of adopting amended Model Rules or not. If updated Model Rules were made to apply automatically, this would change rules which associations made the conscious decision to adopt, and may lead to confusion for associations and their members. However, the Model Rules are an example of best practice, and if these rules change, it is also arguable associations

should have to comply with the changed Model Rule unless they specifically decide a different rule is more appropriate for their particular circumstances.

It is proposed to retain the status quo because it is important to provide freedom and flexibility to associations to decide whether or not to adopt changes to the Model Rules. Making mandatory the adoption of amendments to the Model Rules is not preferred because while the Model Rules are an example of best practice, given the wide variance in the type and size of associations, the Model Rules, amended or otherwise, may not suit every association.

4.2. Members

4.2.1. Classes of membership

The issue of classes of membership has been considered. Examples of classes of membership (for example, ordinary membership, life membership or honorary membership) could be provided in the Model Rules as a guide to associations. At present there is a disparity between the requirements in the information about classes of membership required in the Model Rules and the information required by associations that adopt their own rules.

4.2.2. Information about classes of members in the rules

While there is a disparity in requirements about classes of membership in the Model Rules and the information required by associations which adopt their own Rules, administratively, the same information is requested of associations who make their own rules when they complete the forms required to register their association.

4.2.3. Register of members

Model Rule 13 sets out particulars for each member which must be kept in a register of members. There is no current requirement to include in the register a description of the class to which each member belongs. Such a requirement, whilst it would enhance the accuracy of the register, would involve the continual updating of the register by the association.

4.2.4. Preferred option

While making changes would arguably provide further guidance for associations, such changes may make the Model Rules longer, more complex and confusing and impede the capacity of associations to determine what is best for their association. For example, if membership classes are provided in the Model Rules, some associations may think their membership must include all of these classes. There may be too many variables to make this workable. For example, with respect to voting rights, some associations use a points system depending on the number of years a member has belonged to the association, while other associations may only allow life members that

pay an annual membership fee a vote. On balance, it would appear introducing different sets and subsets of Model Rules for a wide variety of associations may cause confusion.

4.3. Office Holders

4.3.1. Background

Once an association has passed a resolution to incorporate, the association must elect interim officers including a president and treasurer. On becoming incorporated, interim officers are taken to hold their offices until elected or appointed. Election of interim officers is a requirement of the Act so upon incorporation a management structure is already in place. The issue arises then as to the status of the 'interim officers' following incorporation and whether or not the Model Rules should make provision for appointment or validation of appointment of office holders after incorporation.

The Act provides the interim officers elected prior to the incorporation of the association are taken to hold their offices until elected or appointed by the incorporated association. However, there are no provisions in the Model Rules regarding appointment or validation of appointment of those officers. The Model Rules could be amended to validate, after incorporation, the appointment of office bearers holding those positions prior to incorporation

4.3.2. Preferred option

It is proposed to retain the status quo because in all respects, office holders hold power without any need for the Model Rules to provide for a validation process. Such officers are only 'interim officers' because when they were initially elected the association had not yet been incorporated. Such officers are taken to hold their office once the association becomes incorporated and until they are elected or appointed by the incorporated association.

4.4. Making decisions, voting and proxies

4.4.1. Background

Matters to be decided by associations are put to a general meeting and decided by a majority of members present, each entitled to one vote under the Model Rules. If a member is unable to attend a meeting to vote there is provision in the Model Rules for the appointment, in writing, of a proxy. The Model Rules provide a proxy does not have to be a member of the association. While the Model Rules provide for proxy votes, not all associations may want proxies or they may want to restrict the circumstances in which proxies are approved or the number of proxies an individual can hold. It is also recognised there may be instances where proxies can appear to decide issues against the votes of the majority of members present at the meeting. Some jurisdictions, for

example, New South Wales, limit to 5 the number of proxies able to be carried by each member.

4.4.2. Preferred option

It is proposed to retain the status quo. Associations can choose not to adopt this part of the Model Rules and can make their own Rules in relation to proxies. Proxies are to ensure absent members have voting power therefore such a restriction is for associations themselves to decide, bearing in mind associations are varied in their structure. In practical terms, appointment of proxies should enable the broadest possible participation in decision making by the members of an association.

46. Do you believe any changes are required with respect to adoption of any changes to the Model Rules?

47. Do you believe changes are required to the Model Rules concerning:
    - Classes of membership?
    - Information about classes of members?
    - Register of members?

48. Are changes required to the current position in the Model Rules regarding office holders?

49. Are any changes required to the Model Rules with respect to making decisions, voting and proxies?