

# **ASSOCIATIONS INCORPORATION AMENDMENT BILL 1994**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objectives of the legislation are to streamline the process for incorporation of associations, to introduce administrative efficiencies and to update the drafting of the Act into the modern drafting style.

The proposed amendments contained in the Associations Incorporation Amendment Bill include:—

- The removal of the requirement for the sanctioning of rules by the Director-General;
- A requirement that there be a minimum number of members in incorporated associations;
- A requirement that the management committee members be adults;
- A requirement that unincorporated associations nominate the office bearers of President and Treasurer prior to incorporation;
- A requirement for incorporated associations to nominate a registered office; and
- Removal of most of the post-incorporation activity presently required by the Act.

#### **Reasons for the Bill**

The Associations Incorporation Amendment Bill is required in order to reduce time delays in the incorporation process and to introduce efficiencies in relation to the administration of the Act.

**Estimated cost for government implementation**

The implementation of the Bill will be cost neutral.

**Consultation**

The following departments and organisations were consulted during the drafting of the Bill:—

- Litigation Reform Commission
- Queensland Treasury
- Office of the Cabinet
- Department of Education
- Department of Family Services and Aboriginal and Islander Affairs
- Department of Tourism, Sport and Racing
- Queensland Law Society
- Dr Fletcher of the University of Queensland

No objections to the policy proposals contained in the Bill were received from those parties consulted.

**NOTES ON PROVISIONS**

Details of specific clauses are as follows.

**PART 1—PRELIMINARY**

*Clause 1* states the short title of the Act.

*Clause 2* provides for the commencement day of the Act.

*Clause 3* states that this Act amends the *Associations Incorporation Act 1981*.

*Clause 4* amends section 5.

Omits the obsolete definition of “Commissioner”.

Omits the definitions of “Director-General”, “Minister” and “property” which are included in the *Acts Interpretation Act 1954*.

Omits the definitions of “association”, “Court”, “management committee”, “officer”, “secretary” and “special resolution” which have been replaced by alternative definitions.

The definition of “undesirable name” has been omitted from this section. Part 2B contains provisions relating to undesirable names.

The clause inserts the new definitions of “application notice”, “approved form”, “appointed person”, “association”, “incorporation resolutions”, “interim officers”, “management committee”, “model rules”, “objection notice”, “objector”, “officer”, “own rules”, “parent association”, “president”, “proposed rules”, “register”, “rules”, “special resolution”, “secretary” and “treasurer”.

The clause also omits section 5(2).

*Clause 5.*

Section 5A specifies the procedures required in relation to special resolutions.

Section 5B deals with whether an association has financial gain for its members.

## **PART 2—INCORPORATION OF ASSOCIATION**

*Clause 6* replaces Parts 2-4 of the Act, other than sections 23 to 25.

Section 7 recasts part of the present definition of association in the present section 5 of the Act in relation to the eligibility of the association for incorporation. A new provision is inserted which provides that an association cannot have less than seven members.

The clause also inserts a new provision that, when an association is prevented from incorporating under section 7(1)(e)(iv), the chief executive

may grant the application if the property is held for the main purpose of meeting the medical and associated costs of an individual suffering from a serious medical condition or injury.

Section 8 recasts the present section 8 and provides for the special resolution to incorporate and adopt proposed rules.

Section 9 provides for the appointment of a person to prepare the application for the association to be incorporated under the Act.

Section 10 is a new provision which provides for the election of interim officers. The interim officers must include the president and treasurer for the association.

Section 11 recasts (in part) the present section 9 of the Act and provides for the form in which the application for incorporation must be made. The clause introduces a new provision that states that if the association's proposed rules are not the model rules, the application must be accompanied by a statutory declaration of the appointed person stating that the rules comply with the Act.

Section 12 recasts part of the present section 11 and provides that the chief executive may require the applicant to give further information or documents about the application and publish a notice about the application.

Section 13 recasts part of the present section 11 and provides for objections to an application for incorporation.

Section 14 recasts part of the present section 11 and requires the chief executive to make a decision in relation to the application and to grant or refuse the application.

Section 15 requires the chief executive to give written notice to the association and any objector, of the chief executive's decision to grant or refuse the application.

Section 16 recasts part of the present section 12 of the Act and provides that after the chief executive grants the application for incorporation, the chief executive must register the association and enter the name of the association on the register. The section also provides for the matters that occur on registration.

Section 17 recasts part of the present section 12 and provides for the issue of the certificate of incorporation.

Section 18 provides for the register of associations. The register must

contain certain particulars about each incorporated association.

Section 18A provides that an association must have a registered office and that the secretary must notify the chief executive of any change in the registered office.

Section 18B provides that a person may inspect the register.

Section 18C inserts a provision imposing a penalty for providing false or misleading information in an application, or omitting something from a statement which is, to the person's knowledge misleading in a material particular.

Section 18D inserts a provision imposing a penalty for knowingly giving the chief executive a document containing information the person knows is false, misleading or incomplete in a material particular.

## **PART 2A—EFFECTS OF INCORPORATION**

Section 19 recasts part of the present section 13 and provides that incorporated associations are bodies corporate, have a seal, and may sue or be sued in the corporate name.

Section 19A recasts the present section 21 of the Act and deals with what happens to the property of an association on incorporation.

Section 19B recasts the present section 21A of the Act and provides for the transfer of assets, rights and liabilities on incorporation.

Section 19C recasts part of the present section 21 of the Act and requires the secretary of the association to request the registering authority to record in the appropriate register land or an interest in land gained by the association because of its incorporation under the Act. The request must be made within 30 days after the incorporated association gains the land or interest in the land.

Section 20 recasts the present section 22 of the Act and sets out the general powers of incorporated associations.

## **PART 2B—NAME OF INCORPORATED ASSOCIATION**

Section 21 recasts part of the present section 16 of the Act and provides that an incorporated association must have the word “incorporated” or “inc” as part of and at the end of its name.

Section 21A provides that a person or association must not operate under, or use as its name or title, a name or title that includes the word “incorporated” or an abbreviation of the word.

Section 21B provides that an incorporated association’s name must appear on its seal in legible characters. If an incorporated association’s name does not appear on its seal in legible characters, the use of the seal is not effective.

Section 21C recasts the present section 18 and provides that a document that an incorporated association issues or endorses has the association’s name in legible characters.

Section 22 recasts part of the present section 16 and sets out the procedure which an incorporated association may use to gain exemption from the use of the word “incorporated”.

Section 23 is a new provision providing for a definition of the terms “new name”, “old name” and “proposed new name”.

Section 23A recasts the present section 17 and provides how an incorporated association may apply to change its name.

Section 23B allows the chief executive, on receiving the application to change name, to require the association to give further information or publish an application notice in relation to the application.

Section 23C provides that objections can be made in relation to an application for a change of name.

Section 23D provides that after considering the associations’s application to change its name and any objections, the chief executive must grant or refuse the application.

Section 23E requires the chief executive to advise the association and objectors of his or her decision.

Section 23F provides that if the chief executive grants the association's application to change its name, the chief executive must register the new name for the association and enter the name in the register. The change of name has effect only when it is registered by the chief executive.

Section 23G provides that on registering the new name the chief executive must issue the association with a new certificate of incorporation.

Section 23H provides that the change of name does not:—

- (a) affect the legal personality or identity of the association; or
- (b) affect a right or obligation of the association or anyone else; or
- (c) make legal proceedings by or against the association defective.

The section also states that the change of name does not affect a right, obligation, or benefit the association would have had or enjoyed apart from the change of name. Legal proceedings that may have been continued or started against the association under its old name may be continued or started by or against it under its new name.

Section 24 expands the definition of undesirable name contained in the present section 5 and states that an incorporated association must not have an undesirable name.

Section 24A provides for the sending of notice to an association having or proposing to have an undesirable name.

Section 24B provides that members of an association may apply to the chief executive to have a name which is, or includes, an undesirable name. The application may be made when applying for incorporation or at any other time. The chief executive may grant or refuse the application. Within 14 days after granting or refusing the application, the chief executive must give written notice of the decision to the association.

## **PART 3—RULES**

Section 25 provides for the registration of rules. If an association's rules are the model rules, on registration of the association the chief executive must make an entry in the register stating that the model rules are the rules of the association.

On registration the rules of the association consist of the association's name, the objects of the association and the model rules in the form in which they exist when the association is incorporated.

If an association's proposed rules on its incorporation are its own rules, on registration of the association the chief executive must make an entry in the register stating that the association's rules are its own rules.

Section 25A provides that where a matter is not provided for in the association's own rules but it is provided for in the model rules, the association's own rules are taken to include the additional provision. However, the association's rules may provide that this section will not apply to the association's rules.

Section 26A recasts the present section 28 and provides for the procedure to register amendment of rules. An incorporated association may, by special resolution decide to amend its rules and may apply to the chief executive to have the amendment registered.

Section 26B provides that if the chief executive grants the application for registration of the amendment of the rules, the chief executive must register the amendment.

Section 26C recasts the present section 29 and provides for the effect of amendment of rules.

Section 26D provides that where the association has the model rules and the association amends its rules, the model rules as amended become the association's own rules.

Section 26E provides the chief executive may ask for a copy of the complete rules at any time.

Section 27 provides the secretary must make the rules available to members if asked.

Section 27A provides for the form in which the rules must be kept.



## **PART 4—GENERAL OPERATION OF INCORPORATED ASSOCIATION**

Section 28 is a new provision and provides that the first annual general meeting of the association must be held within 18 months after the day the association is incorporated.

Section 29 provides that the association must hold subsequent annual general meetings at least once each year and within 3 months after the end of the association's previous financial year.

Section 29A provides that the members of the management committee must ensure that the association complies with its rules about the calling and holding of meetings.

Section 30 is a new provision concerning the audit of a newly formed incorporated association. The section provides that if an association is incorporated within 3 months of the end of the association's financial year, the association is not required to comply with section 31 for the financial year in which it is incorporated.

*Clause 7* contains provisions relating to the membership of the management committee.

Section 32A provides that an incorporated association must have a management committee. All management committee members must be adults. The members of the management committee, other than the secretary, must be members of the incorporated association. The secretary may be a member of the incorporated association. The management committee must have at least three members of whom one holds the office of president and another holds the office of treasurer.

*Clause 8.*

Section 35A applies to an incorporated association that did not elect an interim officer as secretary before its incorporation. The members of the association's management committee must ensure a secretary is appointed or elected for the association within 14 days after its incorporation.

Section 35B provides that the management committee must ensure that the association has an appropriate individual as secretary. The secretary of the association must be an individual residing in the State who is member of the incorporated association elected by the association as secretary or a

member of the association's management committee appointed by the committee as secretary or appointed by the management committee as secretary (whether or not the individual is a member of the incorporated association).

Section 35C provides the secretary may be appointed or removed at any time.

*Clause 9.*

Section 36 provides that if an incorporated association appoints or elects a secretary for the association under section 35A, the members of the management committee must ensure the association notifies the chief executive of the appointment or election within 14 days after it happens. The secretary must notify the chief executive of a change in membership of the offices of the president, secretary or treasurer within 14 days after it happens.

## **PART 6A—INCORPORATION OF BRANCHES AND AMALGAMATION OF INCORPORATED ASSOCIATIONS**

*Clause 10.*

Section 43A recasts the present section 19 and provides that members of a branch or group of branches of a parent association may decide to incorporate under this Act, after receiving the written agreement of the parent association and by passing a special resolution. A group of branches may incorporate even if some or all of the branches are already incorporated.

Section 43B provides that after passing the special resolution under section 43A the association must, by resolution of its members, appoint a person to prepare the application for incorporation. The appointed person may do anything necessary or desirable to obtain the incorporation of the association.

Section 43C provides for the modified application of the Act in relation to the incorporation of a branch or groups of branches.

Section 43D deals with obligations of a branch or group of branches. The incorporation of a branch or group of branches of a parent association does not relieve the members of an incorporated branch of a liability or obligation the members had as members of the parent association.

Section 43E provides that a branch must have the word “branch” in its name.

Section 43F contains the meaning of terms of “new association” or “old association” in relation to the amalgamation of associations.

Section 43G provides that an incorporated association may, by special resolution, decide to amalgamate with one or more other incorporated associations to form a single incorporated association.

Section 43H provides that each old association deciding to become a new association, may by special resolution, adopt a single set of proposed rules to apply to the new association and elect interim officers for the new association. The proposed common rules may be the model rules or own rules.

Section 43I provides that the old association must appoint a common appointed person to prepare the application.

Section 43J provides that on receiving an application to amalgamate, the chief executive may require notices to be sent to creditors.

Section 43K is a machinery provision.

Section 43L provides that on registration of the new association the chief executive must issue the new association with a certificate of incorporation.

Section 43M provides that on the incorporation of a new association the assets and liabilities of the old associations become the assets and liabilities of the new association and the incorporation of the old associations are cancelled.

Section 43N places a duty on the secretary of a new association to ask the registering authority of land to record in the appropriate register land or an interest in land gained by the new association because of its incorporation under this Division. The secretary must make the request within 30 days after the new association gains the land or interest in the land.

Section 43O provides that amalgamation does not affect certain rights and liabilities.

*Clause 11* updates the references in section 44 to the Corporations Law.

*Clause 12* specifies that the Supreme Court is the court referred to in section 45, substitutes the word “financial” for “pecuniary” in section 45(1)(d), and updates references in that section to the Corporations Law.

*Clause 13* replaces the present section 46 and redrafts the provision with updated references to the Corporations Law.

## **PART 7B—REVIEWS AND APPEALS**

*Clause 14* This Part inserts provisions relating to reviews and appeals.

Section 50A provides that if a person’s interests are affected by a decision under this Act the person may apply to the chief executive for a review of the decision. A person who may seek a review of a decision is entitled to receive a statement of reasons for the decision.

Section 50B provides for certain time limits with an application for a review and provides that an application for a review must be written and state in detail the grounds on which the applicant seeks a review of the decision.

Section 50C provides that if an application is made under this Part for a review of a decision, the applicant may immediately apply to a District Court for a stay of operation of a decision. The section states the matters which may be provided for in a stay.

Section 50D applies to an application under this Part for a review of a decision. The section provides that the chief executive, on application for review of a decision, to confirm the existing decision, amend it or substitute a new decision.

Section 50E provides who may make an appeal from a decision of the chief executive.

Section 50F provides that an appeal under section 50E against a decision of the chief executive must be made within 28 days after the notice of the decision is given to the person. However, if the notice did not state the reasons for the decision and the person asked for a statement of reasons for the decision mentioned in section 50F(1), the person may make the

application within 28 days after the person is given the statement of reasons. The District Court may extend the period for making the appeal, even though the time for making the appeal has expired.

Section 50G provides the procedure for starting appeals.

Section 50H provides that a District Court to which an appeal against decision lies under this Part may grant a stay of the decision to secure the effectiveness of the appeal. The section states the matters which may be provided for in a stay.

Section 50I provides for the powers of the District Court on appeal.

Section 50J provides that if the District Court substitutes another decision, the substituted decision is, for this Act, taken to be the decision maker's decision.

Section 50K provides for the procedure of the Court.

*Clause 15* omits sections 50-52.

Section 51 provides that Part 10 of the Financial Institutions (Queensland) Code will apply to an investigation of an incorporated association.

Section 51A states the civil liability of officers or employees of the Department for acts done under the Act.

*Clause 16.*

Section 66(1) provides that the chief executive may delegate the chief executive's powers under the Act.

Section 66(2) provides that the chief executive may not delegate the chief executive's powers under sections 22(3) and 24B(4).

*Clause 17* rennumbers the present section 68A as section 68D.

*Clause 18.*

Section 68 provides the regulation making power.

Section 68A provides a regulation may be made about fees and charges payable under the Act. A charge may be a tax.

Section 68B provides the maximum penalty that may be prescribed by regulation for an offence against a regulation.

Section 68C provides what matters regulations may provide for.

## **PART 9—TRANSITIONAL PROVISIONS**

### *Clause 19.*

Section 71 provides for definitions.

Section 72 concerns pending applications.

Section 73 consists of transitional provisions regarding associations incorporated under the former Act.

Section 74 provides for the numbering and renumbering of the Act.

Section 75 provides that this Part expires two years after commencement.

### *Schedule*

## **MINOR AND CONSEQUENTIAL AMENDMENTS**

The schedule provides amendments to the Act to incorporate minor and consequential amendments.

## **PART 10—SAVINGS**

This Part contains the savings provisions.