

Associations Incorporation and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 99

made under the

Associations Incorporation Act 1981

Collections Act 1966

General Outline

Short Title

Associations Incorporation and Other Legislation Amendment Regulation 2022

Authorising law

- *Associations Incorporation Act 1981* (AI Act), sections 58, 59, 59A, 59AA, 59AB, 59B, 134 and 137
- *Collections Act 1966* (Collections Act), sections 5, 31, 32, 33, 33A, and 47

Policy objectives and the reasons for them

The *Associations Incorporation and Other Legislation Amendment Regulation 2022* (Amendment Regulation) supports Government policy in the regulation of the Queensland not-for-profit sector.

The Amendment Regulation amends the *Associations Incorporation Regulation 1999* (AI Regulation) and the *Collections Regulation 2008* (Collections Regulation) to support the commencement of the *Associations Incorporation and Other Legislation Amendment Act 2020* (AIOLAA).

The Amendment Regulation contains a number of consequential amendments to the AI and Collections Regulations to ensure the Regulations are consistent with the changes to primary legislation brought about by the AIOLAA.

Additionally, the Amendment Regulation makes use of the Government's ability to exempt, by regulation, a class of entities from the financial reporting obligations of the AI and Collections Acts. This exemption ability was inserted into the AI and Collections Acts by the AIOLAA with the intention (as stated in the explanatory speech for the Bill that preceded the AIOLAA) of releasing organisations registered with the Australian Charities and Not-for-profits Commission (ACNC) from their Queensland Government reporting obligations.

The exemption applies to any organisation that fulfils a reporting obligation to the ACNC, unless the organisation is part of an ACNC group-reporting arrangement or is an organisation for which the ACNC withholds the publication of financial information.

The amendment reduces red tape for incorporated associations and entities that conduct fundraising in Queensland, and fulfils a national commitment to harmonise state not-for-profit reporting requirements with the requirements of the ACNC, to the extent those reporting requirements relate to ACNC registrants.

Additionally, the Amendment Regulation removes a provision from the Collections Regulation that would, except for the Office of Fair Trading's (OFT) administrative practices, allow a person to obtain the residential address of a member of a charity's governing body on payment of a fee. The removal of this provision is required in the interests of protecting the safety and privacy of those members.

Achievement of policy objectives

To achieve the policy objectives relating to consequential impacts of the AIOLAA, the Amendment Regulation amends the AI Regulation to:

- transpose into the Regulation the existing qualifications defining accountant and auditor, as contained in the AI Act prior to the commencement of the AIOLAA;
- reflect in the model rules the requirement that the use of a common seal by incorporated associations is no longer mandatory;
- reflect in the model rules that the secretary of an incorporated association must be 18 years or older, as provided for in the AI Act subsequent to the commencement of the AIOLAA;
- insert a drafting note in model rules to advise incorporated associations that requirements for the disclosure of material personal interests is provided for in sections 70B and 70C of the AI Act; and
- update terms and section references changed by the AIOLAA, for consistency with the AI Act.

The Amendment Regulation amends the Collections Regulation to:

- transpose into the Regulation the existing requirements for reporting by non-exempt entities, as previously contained in the Collections Act; and
- transpose into the Regulation the existing qualifications defining accountant and auditor, as contained in the Collections Act prior to the commencement of the AIOLAA.

The policy objectives relating to reduction of reporting requirements are achieved by prescribing exempt classes of incorporated associations, charities and community purpose associations.

An incorporated association or Collections Act entity is of an exempt class if it is registered with the ACNC, and has met its ACNC reporting obligation for the year. This entails that if the exempt entity fails to report to the ACNC, it will be subject to the penalties of the AI and Collections Acts for failing to report. As failure to report is often the only indication given to the chief executive that an association or Collections Act entity has become

defunct, this will allow the chief executive to pursue cancellation of an incorporation, registration or sanction on grounds of failure to report where warranted (subject to appropriate contact and investigation by the OFT).

ACNC registrants are not exempt from Queensland Government reporting requirements if they form part of an ACNC group reporting arrangement, or if the ACNC has agreed to withhold publication of the registrant's financial information.

To qualify for exemption, an incorporated association or Collections Act entity must also provide the ACNC with the identifiers issued by the OFT on the entity's incorporation under the AI Act and/or its registration as a charity or sanctioning of its community purpose objectives under the Collections Act. This will assist the exchange of data between the ACNC and OFT and ensure that OFT can identify which Queensland incorporated associations and Collections Act entities have fulfilled their ACNC reporting obligation.

For incorporated associations, it is necessary to ensure that members are still kept apprised of the association's financial standing, despite the association no longer being required to prepare a financial statement under the AI Act. Accordingly, section 59B of the AI Act (as inserted by AIOLAA) allows a regulation to prescribe documents that exempted incorporated associations (i.e. incorporated associations that are exempt from reporting under the AI Act by virtue of their ACNC registration) must present to the association's annual general meeting. The Amendment Regulation prescribes the same information the association is required to provide to the ACNC. There is no expectation the documents must be provided in hard copy.

To fulfil the objective of removing risks to the safety and privacy of members of a charity's board, the Amendment Regulation amends section 37(1)(d)(iii) of the Collections Regulation to remove the ability of the public to obtain a charity board member's address on payment of a fee.

Consistency with policy objectives of authorising law

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

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

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The key benefit of the Amendment Regulation is certain associations authorised to conduct fundraising in Queensland, and incorporated associations, will no longer need to report to the Queensland Government under the AI Act and the Collections Act.

Harmonised reporting requirements centred on ACNC reporting requirements are a key outcome of national policy work seeking to reduce disparate jurisdictional approaches to the regulation of the Australian not-for-profit sector.

Exemptions from relevant Queensland Government reporting requirements will only apply to ACNC-registered charities in reflection of national agreements, noting also that these entities are more likely to operate across borders.

The remainder of the Amendment Regulation ensures the existing Regulations operate effectively and are consistent with the primary Acts.

The removal of the ability to obtain the address of a member of a charity's governing body eliminates any risk of the OFT's administrative practices being overridden by a legal requirement to release the personal address of a charity's office bearer to someone who may pose a threat to that person.

Consistency with fundamental legislative principles

The Amendment Regulation contains a potential inconsistency with fundamental legislative principles in relation to the sub delegation of powers under the Collections Act. New sections 30C(e) and 30G(e) as inserted into the Collections Regulation by the Amendment Regulation allow the chief executive to determine that an alternative qualification to those prescribed, is appropriate for a person auditing or verifying a Collections Act entity's financial statement.

These subsections retain a delegation that existed in the Collections Act prior to amendment by the AIO LAA and allow small entities to reduce their regulatory costs by applying to the OFT to have a person with equivalent experience to an accountant or auditor, but without current registration, to audit their financial statement. Without the ability for the chief executive to approve other qualifications, the cost of having the financial statement audited by a registered accountant or auditor (up to \$5,000) could consume a significant proportion of a small charity's or association's revenue. Thus, while the sub delegations are potentially inconsistent with s4(5)(e) of the *Legislative Standards Act 1992*, the inconsistency is justified as it is necessary to achieve the policy objectives of AIO LAA and the broader government policy of red tape reduction.

Consultation

Public consultation on the proposal to harmonise State and Territory reporting requirements with those of the ACNC was undertaken nationally from August 2020 and included key Queensland stakeholders. Targeted consultation on Queensland's proposed exemption scheme was also undertaken with key stakeholders in September 2021. The consultation indicated broad support for harmonisation/exemption, though local stakeholders raised issues with other aspects of financial record keeping and reporting (for example by non-exempt entities), which will be the subject of later public consultation to be conducted by the Department of Justice and Attorney-General.

The Office of Best Practice Regulation (OBPR) was consulted on some aspects of the Amendment Regulation in accordance with the *Queensland Government Guide to Better Regulation*. OBPR applied an OBPR-assessable exclusion from undertaking further regulatory impact analysis on the proposed amendment to remove public access to the personal address of office holders and prescribe exemptions from financial reporting. The

exclusion category applied was category (k) – Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.

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