

Recent law changes for incorporated associations



Introduction

Legislative changes have been introduced to reduce red tape and improve governance practices for incorporated associations in Queensland. These legislative changes were introduced with the passing of the *Associations Incorporation and Other Legislation Amendment Act 2020* (Qld). Some of these changes have already come into effect, while the remaining changes are expected to come into effect on 22 June 2022.

The following is a summary of the changes deemed most applicable to Queensland race clubs. Clubs are encouraged to consider the application of these changes in the context of their specific circumstances and should seek to update their rules and internal practices where required.

Clubs are encouraged to contact Racing Queensland for assistance if they wish to bring their rules into line with the most recent legislative changes for incorporated associations in Queensland.

Law changes that took effect on 22 June 2020

The following changes took effect on 22 June 2020. Clubs should undertake a review of their current rules and governance processes to ensure they comply with these changes.

Clarifying adoption of model rules

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

Racing Queensland ('RQ') is currently preparing its own version of the model rules which are specifically being designed for use by Queensland race clubs. It will be up to clubs to decide whether they wish to continue using their own rules, or replace their rules with either the OFT's or RQ's version of the model rules.

It should be noted that a number of race clubs around the State are operating with a set of rules which may need updating to ensure they are compliant with the provisions of the *Associations Incorporation Act 1981* (Qld) ('the Act').

Management committee eligibility for people with convictions

The timeframe in which people convicted of the certain offences can sit on the management committee of an incorporated association has been reduced from 10 years to 5 years. This 5-year period begins on the later of the following dates:

- the day the conviction is recorded;
- the day the person is released from prison (if applicable); and
- the day any other court order relating to the conviction or term of imprisonment is satisfied.

Clubs should note that this amendment only applies to certain offences. Whether a conviction affects a person's eligibility to sit on a management committee depends on the type of offence and how they were convicted. A person may be ineligible to sit on a management committee under the Act if:

- they have been convicted of any indictable offence; or
- they have been convicted of a summary offence and sentenced to a period of imprisonment (other than in default of payment of a fine).

Introduction of voluntary administration

Committee members now have the option to voluntarily appoint an administrator to place the incorporated association into voluntary administration if they are experiencing financial difficulties. The administrator will assist in the management of the financial affairs of the incorporated association if it cannot pay its debts or as an alternative to applying to the Supreme Court for the appointment of a provisional liquidator. Clubs should be aware that this option is available to them however it is encouraged that consultation is conducted with RQ prior to the appointment of an administrator.

Introduction of voluntary cancellation

An incorporated association can now opt to apply for voluntary cancellation, rather than going through a lengthy, formal winding up process. To cancel the incorporated association, they must apply to the OFT, and the association:

- must not have any outstanding debts or liabilities;
- must have paid all applicable fees and penalties under the *Associations Incorporation Act 1981*; and
- must not be a party to any legal proceedings.

Clubs should be aware that this option is available to them as a simplified winding up process.

Other amendments

- The maximum penalty that may be prescribed for an offence under the *Associations Incorporation Regulation 1999* has been increased from 4 penalty units to 20 penalty units. This change will apply to new (or amended) offences prescribed by regulation after 22 June 2020.
- If an incorporated association uses technology such as video conferencing to hold its general meetings, the provision of using this technology no longer needs to be stated in its rules.
- If an incorporated association is wound up by the Supreme Court or its incorporation has been cancelled by the OFT, the OFT will provide notification of how surplus assets, property or money is vested by gazette notice rather than by regulation.

Law changes expected to take effect in June 2022

The following changes are expected to commence on 22 June 2022. Clubs should prepare for these changes by reviewing their rules and internal practices well in advance of their effective date.

Internal grievance procedure in place

An incorporated association will have to have an internal grievance procedure or dispute resolution process in place by 22 June 2022, and this may be outlined in Club rules.

Under the grievance procedure a member may appoint any person to act on their behalf and each party involved will be given an opportunity to be heard. The grievance procedure must also provide for unbiased mediation if the dispute cannot be initially resolved amongst parties. If an incorporated association wants to use their own customised dispute resolution process, they will need to include it in their rules by passing a special resolution.

If the association doesn't have a grievance procedure in place by 22 June 2022, it will need to observe the grievance procedure contained in the OFT model rules. These will be developed by OFT and be made available before this law change takes effect. This will give clubs time to determine whether they wish to adopt the grievance procedure outlined in the model rules or adopt their own.

Clubs should seek to put an internal grievance procedure or dispute resolution policy in place by 22 June 2022 or the procedure outlined in the OFT model rules will automatically apply. This procedure is yet to be published by OFT.

It should be noted that an internal grievance procedure will form part of RQ's model rules for race clubs which are currently being finalised and will be made available for use by Queensland race clubs prior to the effective date of this amendment.

RQ would also strongly recommend that clubs consider having procedures in place for dealing with grievances or disputes involving *external* parties such as participants or members of the public (i.e. patrons).

Duty to prevent insolvent trading

Members of the management committee of an incorporated association will have a positive duty to prevent the association from trading while insolvent. If a person was a member of the management committee of an association (or took part in the management of the association) when a debt was incurred, in circumstances where there were reasonable grounds to expect that the association was insolvent, or that the association would become insolvent by incurring that debt, then a person commits an offence under the Act.

Racing Queensland has prepared a guidance note in relation to the duty to prevent insolvent trading for committee members of race clubs. Committee members and other officers of Queensland race clubs are encouraged to familiarise themselves with their [duty to prevent insolvent trading](#).

Clarifying duty of care and diligence

The standard of care and diligence that management committees are expected to apply will be better clarified to help management committee members and officers meet their duties and exercise their powers. Committee members and other officers of an incorporated association must exercise their powers and duties with the degree of care that a reasonable person in the position of officer of that association.

Not profiting from position

A committee member or officer of an incorporated association will not be able to use their position, or information obtained from their position, to:

- gain a benefit or material advantage for themselves or another person; or
- cause detriment to the association.

Clubs should include this requirement in their Committee Code of Conduct.

Disclosure of personal interests

Committee members will have to disclose when they have material personal interests in a matter. This will help improve internal governance and give members greater transparency. Clubs should include this requirement in their Conflict of Interest Policy (if they haven't already done so).

Disclosure of remuneration

At the association's annual general meeting, committee members will have to disclose remuneration or other benefits given to them, to senior staff and to their relatives. The details of what must be disclosed, and how, will be introduced by regulation. Clubs should await further details from the OFT in this regard.

Disclosure of material personal interest

If a committee member has a personal interest in a matter being considered at a committee meeting, the member will not be able to be present at the meeting or vote on the matter unless permitted to do so by the committee. Clubs should include this requirement in their Conflict of Interest Policy (if they haven't already done so).

Secretary must be 18 or older

Secretary will be required to be 18 or older aimed at improving the governance standards of associations. Clubs are encouraged to consider amending their rules to ensure they comply with this requirement.

Other amendments

- It will be optional for organisations to use a common seal in executing certain contracts rather than regulation.
- The *Fair Trading Inspectors Act 2014* (FTIA) has been amended to include investigations under the *Associations Incorporation Act 1981*. The application of the FTIA will result in Office of Fair Trading inspectors having entry and seizure powers, including the power to enter a place where an incorporated association carries out its activities, holds its meetings or keeps its records.