

CURRENT ISSUES INFORMATION SHEET 2002/3

Associations Incorporation Act

From the 24 April 2002, the *Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002* amended two sections of the Associations Incorporation Act. Section 3 has been amended to delete the words "personally or by post" so that now a special resolution to alter the constitution of an association need not be given "personally or by post", but rather "as required under the association's rules". If the association has adopted the current model rules, this means as per Rule 27. Rule 27 specifies that for a special resolution, notice must be given in writing. Associations with their own rules may vary this requirement.

The second section that is amended is section 93 dealing with the cancellation of incorporation of an association. The amendments allow more flexibility for the Department to deal with "the last known secretary or other officer of the association" rather than the last "secretary".

In 2001, the *Associations Incorporation Act 1981* was amended in several sections:

- ◆ Section 70 has been amended to increase the amount of insurance required from \$1,000,000 to \$1,100,000 in respect of death or bodily injury occurring upon the property of the incorporated association.
- ◆ Section 18 has been amended to allow the public to inspect the Department's registers of incorporated association information by computer, once they are computerised.
- ◆ Section 48 has been amended to place beyond doubt that an amendment of an association's rules is ineffective until it has been registered by the chief executive.
- ◆ Section 59 is amended to expand the range of persons who can audit an incorporated association. A member of the National Institute of Accountants who has completed certain specified study (other than an associate) is now included, as well as an auditor registered under the *Corporations Act 2001*.
- ◆ Section 61A is amended to include bankruptcy as a ground of disqualification for the eligibility of a person to be elected a management committee member.
- ◆ Some minor amendments to correct errors and provisions of the new *Corporations Act 2001* have been made.

The Regulations to the *Associations Incorporation Act 1981* have also been amended.

- ◆ Section 10 of the Regulations now requires financial institution accounts kept by incorporated associations to be 'in Queensland'.
- ◆ Schedule 5 of the regulations containing additional accounting requirements has a new provision being, 'Payments of \$100 or more must be made by cheque or electronic funds transfer'.
- ◆ A new schedule of fees came into effect on 3/12/01. The annual return fee is now \$32.40 and application to incorporate \$91.90.

The Associations Incorporation Manual has been updated (Update 11) by Caxton Legal Service Inc to include the 2001 amendments.

The Collections Act

From the 24 April 2002, the *Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002* amended the *Collections Act 1966* by inserting a new section 8A which allows the chief executive of the Department to delegate powers under the Act to another public servant. This should be of little consequence to most organizations.

In 2001 the *Collections Act 1966* was amended and the Manual has also been altered.

- ◆ A wider range of persons are permitted as auditors in line with the Associations Incorporation Act as noted above.
- ◆ The provisions in section 29 are amended to simplify the constitutional provisions that a charity is required to have under the Act.
- ◆ Amendment of the registration process in respect to public advertising of the application;

- ◆ The objection process to registration under the Act;
- ◆ Repeal of the constitutional requirements required by the Regulations (as opposed to those in the Act itself) for a charity under the Act;
- ◆ Alteration of the investment rules for charities;
- ◆ Annual accounts filing extension and transitional rules; and
- ◆ Abolition of the requirement that an income and expenditure account, balance sheet and a return of office bearers must be in the approved form.

Future Developments

The Department of Fair Trading has been engaging in a complete review of the legislation. The review has not yet been finalised.

The *Mental Health Act 2000* contains some minor amendments to both the Associations Incorporation Act and the Collections Act and these provisions are not effective until assented to by the Governor. It is expected that this may occur in 2002.

Current Issues

Association Statistics

The Department currently has 19,529 incorporated associations on the register as at 31 March 2002. There are 792 charities registered under the Collections Act and 2873 community organisations. 9,866 companies limited by guarantee are registered as at 31 March, 2002 in Australia under the *Corporations Act 2001*.

Insurance

Many incorporated associations are finding that it is difficult and/or more expensive to insure their activities. This has been a general matter of concern with media reports around Australia about the insurance problems generated by the collapse of some large insurance companies and then the events in America. Various state governments have started to address the issues and some are considering capping the liability of volunteers, while others are considering community association access to government assisted insurance schemes. Refer to CPNS Current Issues Information Sheets 2002/1 & 2.

Filing of Notices with the Department

The Department is strictly enforcing the time limits set out in the Associations Incorporation Act for the filing of forms. In most cases the Act requires that the forms are filed with the Department within **ONE MONTH OF THE PASSING OF THE SPECIAL RESOLUTION**. Examples are s 35(3) for the filing of change of name or s 48(2A) for an amendment to the rules. The consequences of failing to do so is that the whole procedure of notice and meetings has to be repeated.

Associations in Financial Difficulties

A number of incorporated associations, particularly some of those with gaming machines have been experiencing financial difficulties. Under the *Corporations Act 2001*, companies are able to appoint administrators to their businesses which is an alternative to winding up the company. This is frequently used in companies to good effect, but is not available to incorporated associations. As a result of this, incorporated associations are at a disadvantage compared to companies.

Further Resources:

Progress of Queensland Legislation <http://www.legislation.qld.gov.au>

Department of Fair Trading <http://www.consumer.qld.gov.au>

Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology <http://cpns.bus.qut.edu.au>

To join the e-mail discussion group for Queensland incorporated associations send an e mail to m.mcgregor@qut.edu.au asking to be added to the e mail discussion group for incorporated associations.

This Current Information Sheet was issued on 1 May 2002. Events, policy and laws alter rapidly and you should seek independent advice before acting on any matter raised in this publication. This publication's source is <http://cpns.bus.qut.edu.au>.