

Changes to Queensland's Incorporated Associations Act are likely to present both challenges and opportunities for Incorporated Associations

Queensland is set to introduce a number of new legislative changes that will impact the myriad of pubs, clubs, cooperatives and associations operating as Incorporated Associations. With many hospitality and community clubs currently under financial pressure as a consequence of COVID-19, changes to the Queensland Incorporated Associations Act are set to include a number of provisions from the Corporations Act.

Changes to Legislation

Changes have been introduced to reduce red tape and improve internal governance for the 22,900 incorporated associations in Queensland. These changes were introduced by Queensland Parliament with the passing of the *Associations Incorporation and Other Legislation Amendment Act 2020 (Amendment Act)* and will have a staggered introduction.

Historically, distressed or insolvent Incorporated Associations either applied to the Office of Fair Trading for its assistance to determine a way forward, or applied to the Supreme Court to be wound up. The Amendment Act expands the options for Queensland Incorporated Associations by introducing Chapter 5 of the *Corporations Act 2001 (Cth) (Corporations Act)*

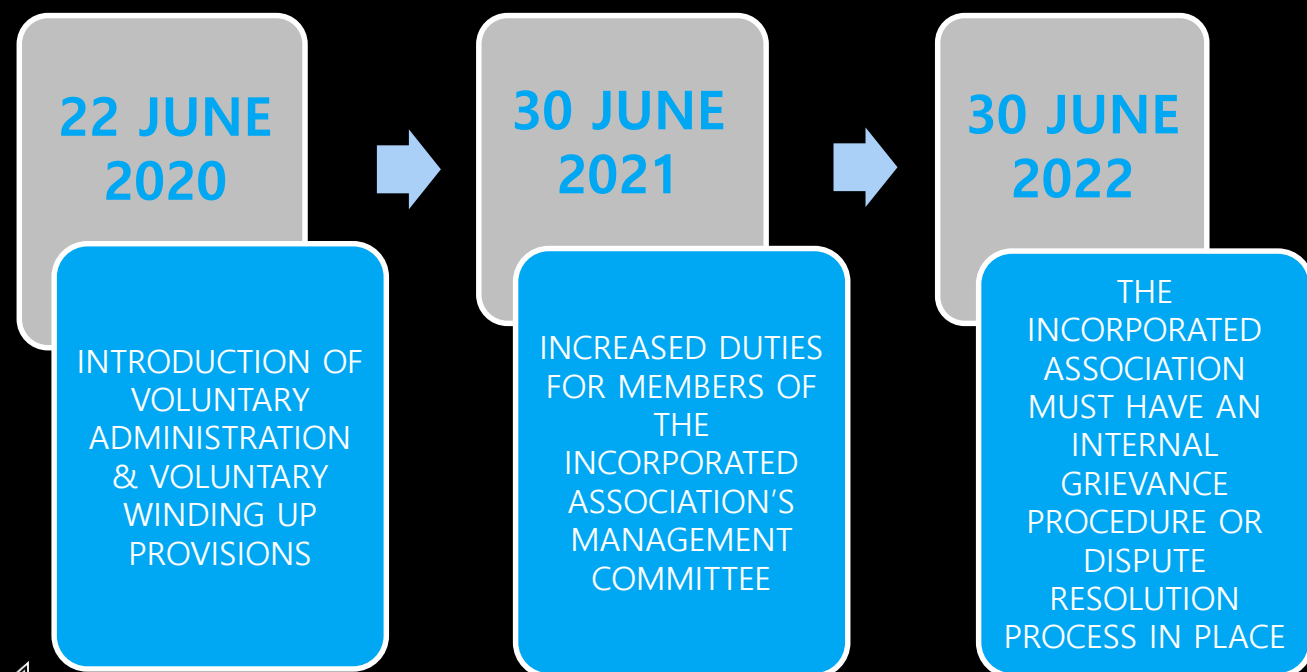
Part 5.3A will provide Management Committees (MC) with a mechanism to maximise the prospects of a financially distressed Incorporated Association continuing in existence or, if that is not possible, to achieve a better return to creditors than would be achieved by its immediate liquidation. Part 5.5 & Part 5.6 will allow the MC to pass a special resolution to voluntarily wind up the Incorporated Association if that is appropriate.

Management Committee Duties

The Amendment Act has included the equivalent of directors' duties (refer tiles below) to be imposed on the MC of Incorporated Associations as well as the requirement that MC members must:

- disclose material personal interests;
- disclose remuneration or benefits paid/given to MC and senior staff members, and their relatives; and
- prevent insolvent trading.

Penalties apply for breaches of duties and for not disclosing conflicts of interest.



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Early warning signs of financial distress

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of respondents to the recent *Australian Sport Foundation's* survey highlighted that they feared for their club's solvency. 80% of respondents feared ongoing reductions in core revenue streams.

COVID-19 has caused economic disruption and change. The Amendment Act will provide both further challenges but also opportunities for struggling Incorporated Associations to utilise formal restructuring mechanisms to maximise the prospects of Incorporated Associations continuing into the future.

Incorporated Associations exhibiting "Early Warning Signs" (or lead indicators) of financial distress, such as those set out opposite, may wish to seek expert advice on turnaround and restructuring opportunities, including whether the restructuring mechanisms brought about by the Amendment Act will be appropriate.

Are you ready?

In preparation for the staggered introduction of the new legislation, MCs may wish to ensure their Association is ready for these changes by:

1. Reviewing and amending the constitution, policies and procedures to ensure MCs adopt and comply with the changes.
2. Ensuring that MC members are aware of and understand duties imposed on them personally and how it will impact their day-to-day operations of the Association.
3. Consider "Early Warning Signs" of distress and the solvency position of the Association.

Should you or your Association need further information or assistance, please contact McGrathNicol on (07) 3333 9800 or visit www.mcgrathnicol.com

