# Associations Incorporation and Other Legislation Amendment Bill 2019

# Explanatory Notes

## Short title

The short title of the Bill is the Associations Incorporation and Other Legislation Amendment Bill 2019 (the Bill).

## Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- clarify the operation of the *Associations Incorporation Act 1981* (Associations Incorporation Act);
- improve the internal governance of incorporated associations;
- reduce regulatory burden for incorporated associations and charitable entities; and
- streamline, enhance or otherwise improve government processes.

The Associations Incorporation Act was enacted to provide a simple and inexpensive means of incorporation for not-for-profit (NFP) associations whose activities benefit the community. An association may choose to incorporate so that they may be recognised, in the eyes of the law, as an entity with legal identity capable of, among other things, owning property, entering into agreements, borrowing money and taking legal action in its own name. However, the benefits of incorporation are accompanied by certain responsibilities under the Associations Incorporation Act such as the requirement to lodge rules, annual returns, and financial statements with the Office of Fair Trading (OFT).

While the manner in which incorporated associations undertake their activities as well as community expectations about how associations should conduct their operations has changed over time, the Associations Incorporation Act has not undergone substantial reform since 2007. The primary focus of the Bill is therefore to modernise the Associations Incorporation Act and to deliver amendments that will improve the internal governance of associations and reduce red tape in ways that will be beneficial for the sector.

Significantly, the Bill provides that a regulation may exempt classes of association from the requirement to provide annual financial reports to the chief executive. This power will allow the Government to, for example, exempt associations that are registered with the Australian Charities and Not-for-Profits Commission (ACNC) from Queensland Government reporting requirements, thereby resolving an issue in which these associations are required to submit annual financial reports to a Commonwealth and State regulator. The Bill proposes a similar exemption power for classes of entities required to report under the *Collections Act 1966* (Collections Act).

The Bill also contains amendments that will, for example, allow associations to voluntarily cancel their incorporation in certain circumstances, and more readily allow incorporated associations to use communications technology in meetings.

The Bill provides clarification around the role of management committees by introducing penalties for failure to observe basic governance principles, and also improves the internal governance of associations by providing that associations must abide by a grievance procedure. Associations may develop their own grievance procedure for inclusion in their rules (subject to principles outlined in the Bill); however, if they do not wish to do so, the model rule grievance procedure will apply to reduce the implementation burden for associations.

# Achievement of policy objectives

**Objective: To clarify the operation of the Associations Incorporation Act**

*Objects clause*

The Associations Incorporation Act does not specify its purpose or list any guiding principles for its operation. This prevents the reader from being able to gain an immediate understanding of what the Act is about and what it intends to achieve. The Bill inserts an objects clause into the Associations Incorporation Act to facilitate greater understanding of its purpose, which is to provide for a scheme for the incorporation of associations; and matters including the corporate governance, financial accountability, and rules and membership of incorporated associations.

*Clarify adoption of rules*

At the time of incorporation, an association must specify whether its proposed rules are the model rules at Schedule 4 of the Associations Incorporation Regulation 1999 or its own rules. However, it is currently not clear under the Associations Incorporation Act whether an incorporated association may adopt the model rules after its incorporation. The Bill introduces a mechanism to expressly allow incorporated associations to amend their rules in a way that replaces the association's current rules with the model rules currently in force.

**Objective: To improve the internal governance of incorporated associations**

*Duties and obligations of management committee members and officers*

The Bill seeks to provide better governance standards for associations by providing guidance on how management committee members and officers of incorporated associations should meet their governance obligations. It achieves this by imposing obligations on officers to:

- exercise their powers and discharge their duties with care and diligence, in good faith in the best interests of the association, and for a proper purpose;
- not improperly use their position to gain, directly or indirectly, a pecuniary benefit or material advantage for themselves or another person; and

- not improperly use information obtained from their position to gain, directly or indirectly, a pecuniary benefit or material advantage for themselves or another person.

Additionally, the Bill imposes obligations on members of the management committee to:

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

These governance provisions reflect the common law view that management committee members and officers have similar fiduciary duties to those of company directors.

*Dispute resolution*

The Associations Incorporation Act provides that the adjudicator in disputes arising from an incorporated association's rules is the Supreme Court. The Supreme Court was installed as the adjudicator in matters between an association and its members because of its broad power to grant injunctive relief, and to deter frivolous or vexatious claims (with the court able to summarily dismiss an application of a trivial or unreasonable nature).

The Supreme Court will be retained as the adjudicator in matters between an association and its members. However, as the costs of filing with the Supreme Court may be prohibitive for some associations and their members, the Bill introduces a requirement for the rules of an association to provide a grievance procedure and require parties to a dispute to attempt to resolve the matter internally before seeking adjudication through the court system. It is considered that both associations and their members will benefit from a formalised internal dispute resolution process prior to initiation of court action.

**Objective: To reduce regulatory burden**

*Exemption from financial reporting obligations for ACNC-registered entities*

Associations incorporated under the Associations Incorporation Act are required to submit annual financial information to the chief executive. The level of reporting varies between defined classes of associations and is determined by the association's current assets or its total revenue. An estimated 3,759 of the 22,660 associations incorporated in Queensland are also voluntarily registered with the ACNC. Associations that are registered with the ACNC can apply to obtain Commonwealth tax concessions, and other concessions and benefits under various Commonwealth laws. In exchange for the benefits of registration, these associations are required to submit annual financial information to the ACNC commissioner.

Similarly, the Collections Act requires all registered charities, associations whose objects are a community purpose sanctioned under the Act, and promoters of an appeal for support for a purpose to which the Act applies to submit annual financial information to the chief executive. It is estimated that 3,220 of the approximately 4,600 Collections Act entities are also registered with the ACNC and are therefore required to submit financial information to both the State and national regulator.

The Bill amends the financial reporting requirement provisions under both the Associations Incorporation Act and the Collections Act to allow for ACNC-registered entities to be exempt from the State-based reporting requirements. It is intended the exemption will commence by proclamation in time for the 2020/21 financial reporting period. It is anticipated the removal of the duplicated reporting requirements will reduce the regulatory burden for around 16.5% of associations incorporated in Queensland and 70% of charitable entities under the Collections Act.

The Bill also provides the chief executive with the power to direct an incorporated association or an entity with the ability to fundraise under the Collections Act to lodge financial information and documents and to cause the financial information to be audited, verified or examined by appropriately qualified persons as defined in the relevant provision. It is intended that the power will allow the chief executive to obtain financial information where necessary, for example, when investigating a potential breach of the relevant legislation. The power can be exercised on classes of incorporated associations and charitable entities that have otherwise been exempt by regulation from the need to prepare financial statements and have those statements audited or reviewed.

Additionally, the Bill contains amendments to assist in facilitating an information-sharing arrangement between the chief executive and the ACNC, which will ensure the chief executive retains access to financial information in respect of the entities that are proposed to be exempt from Queensland Government reporting requirements.

*Reporting as a smaller incorporated association*

It is recognised that sometimes, unusual and non-recurring circumstances, such as an insurance payout or grant payment, may result in a smaller association having to report as a larger association (and incur the cost of having their financial statements reviewed or audited) because they meet the higher revenue threshold under the Associations Incorporation Act for a particular financial year. Consequently, the Bill amends the Associations Incorporation Act to enable an association to write to the chief executive to seek a declaration that the association is a small or medium association for the financial year and may report in that manner.

*Voluntary cancellation of incorporation*

The Bill helps reduce the regulatory burden for incorporated associations by providing a mechanism whereby an association or an administrator of an association may apply to the chief executive to cancel the incorporation of the association instead of requiring the association to undergo a formal winding up process. The application for cancellation may be made if the association:

- has no outstanding debts or liabilities;
- has paid all fees and penalties applying to it under the Associations Incorporation Act; and
- is not a party to any legal proceeding.

*Use of common seal and communications technology*

The Bill also gives effect to a number of minor amendments to streamline internal processes including removing the requirement for an incorporated association to use a common seal and providing that an association may conduct general meetings using communications technology without the use of such technology to be addressed in the association's rules.

*Voluntary administration*

Incorporated associations are currently not able to place themselves into voluntary administration under the Associations Incorporation Act if they experience financial difficulties. Under the present law, an incorporated association in financial difficulty would need to apply to the Supreme Court for appointment of a provisional liquidator which is often a time-consuming and expensive process.

The Bill applies Part 5.3A of the *Corporations Act 2001* (Cth) (Corporations Act) to provide associations with a formalised process to appoint a voluntary administrator. This will allow associations to appoint a voluntary administrator to assist in overcoming their financial difficulties or optimising the outcome for the association's creditors and members if the association is wound up.

**Objective: To streamline, enhance or otherwise improve government processes**

*Clarification and simplification of vesting powers*

The Bill makes amendments to clarify and simplify the vesting powers under both the Associations Incorporation Act and the Collections Act, transferring the power to vest surplus property from the Governor in Council to the chief executive.

The Associations Incorporation Act is amended to fix an inconsistency between how surplus property is vested in circumstances where the association is wound up by the Supreme Court and where the association has its incorporation cancelled by the chief executive so that both are achieved by gazette notice rather than by regulation.

The Collections Act is similarly amended to provide that when the chief executive is satisfied under a range of circumstances that property obtained under the Act is unlikely to reach the intended beneficiary, the chief executive may vest that property in the public trustee by gazette notice.

*Investigative powers*

The Associations Incorporation Act applies Part 10 of the *Financial Institutions Code 1992* (the Code) to an investigation of an incorporated association. Despite its repeal in 1999, the provisions in Part 10 continue to apply to the Associations Incorporation Act as if the Code had not been repealed. Due to the length of time since its repeal however, the Code is not considered to be reflective of contemporary regulatory best practice for the conduct of compliance investigations or for investigation powers. Additionally, the Code was originally intended to be used for the regulation of certain financial institutions and is therefore not considered to be fit-for-purpose in the context of incorporated associations.

In contrast, the *Fair Trading Inspectors Act 2014* (FTIA), which consolidates inspector functions and powers across a number of Acts within the Fair Trading portfolio, is the most contemporary piece of legislation dealing with inspectorate provisions. In order to provide administrative efficiencies, and consistency and certainty for OFT inspectors, the Bill replaces the application of Part 10 of the Code to the Associations Incorporation Act with the FTIA.

In order to ensure that powers deemed unnecessary for the regulation of incorporated associations are not available for use under the Associations Incorporation Act, the Bill removes an inspector's power to stop or move vehicles, and the power to obtain criminal history reports. Additionally, entry and seizure powers will not apply to a residence.

*Appointment of disaster appeals trust fund committee*

The 2009 Webbe-Weller report into Queensland Government boards, committees and statutory authorities recognised that the appointment of a disaster appeals trust fund committee under the Collections Act by the Governor in Council was administratively onerous and recommended that "the enabling legislation be amended to provide for appointment of members by the chief executive (of the justice portfolio of which the Public Trustee is part) instead of by the Governor in Council."

The Bill provides the necessary amendments to transfer the power to appoint members of the committee from the Governor in Council to the chief executive. It also provides that the chief executive (in addition to the public trustee) is an ex officio member of the committee, and that the chief executive is the chairperson of the committee.

## Alternative ways of achieving policy objectives

Due to their nature, the policy objectives underpinning the Bill can only be achieved by legislative amendment.

## Estimated cost for government implementation

The introduction of governance obligations for management committee members and officers of incorporated associations and the application of the FTIA to the Associations Incorporation Act may impose additional resourcing costs on OFT. It is not possible to quantify these costs as the level of complaint and associated compliance activity cannot be estimated. However, should these costs arise, they will be met from within existing departmental resources.

## Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act). Particular clauses in the Bill which raise concerns in relation to FLPs are discussed below.

**Legislation should have sufficient regard to the rights and liberties of individuals including the right to privacy and confidentiality**

*Clause 42 – Disclosure of information to Commissioner of the ACNC (Associations Incorporation Act)*
*Clause 57 – Disclosure of information to Commissioner of the ACNC (Collections Act)*

The Bill provides for the disclosure of information obtained by the chief executive under the Associations Incorporation Act and the Collections Act to the commissioner of the ACNC. These provisions are intended to support the exemption from State-based reporting requirements of entities that are registered with the ACNC. However, they engender consideration of the privacy and confidentiality of individuals and registered entities.

Pursuant to section 4(2)(a) of the Legislative Standards Act, legislation should have sufficient regard to the rights and liberties of individuals. The right to privacy, and the disclosure of private or confidential information has generally been identified by Parliamentary Committees as relevant to the consideration of whether legislation has sufficient regard to individual rights and liberties. In this case, it could be argued that any potential concerns about privacy and confidentiality issues are outweighed by the industry's strong desire to report financial information once in a way which will satisfy its obligations to both the Queensland regulator and the ACNC.

It should be noted that one of the ACNC's objects is to promote the reduction of unnecessary regulatory obligations on the Australian NFP sector and advocate a 'report once, use often' framework underpinned by the sharing of charity information. In this regard, the ACNC is supportive of the information sharing arrangement included in the Bill and has already entered into similar arrangements with the majority of other jurisdictions.

It should also be noted that there are stringent parameters around the information sharing arrangement to ensure that only certain information is disclosed and that it is disclosed for an appropriate purpose. Specifically:

- the disclosure of information by the chief executive to the ACNC commissioner must be for the purpose of enabling or assisting the commissioner to perform or exercise the commissioner's functions or powers;
- the information disclosed must only relate to an ACNC-registered entity; and
- the information disclosed must have been obtained by the chief executive under the relevant Act (i.e. the Associations Incorporation Act or the Collections Act as the case may be).

*Clause 31, section 70D – Disclosure of remuneration and other benefits*

New section 70D introduces a requirement for management committee members of an incorporated association to disclose to the association's annual general meeting the remuneration paid or other benefits given to management committee members and senior staff, and their relatives.

The right to privacy, and the disclosure of private or confidential information has generally been identified by Parliamentary Committees as relevant to the consideration of whether legislation has sufficient regard to individual rights and liberties.

In this case, while new section 70D may impact on an individual's right to privacy and confidentiality, the provision is intended to facilitate greater transparency and accountability within associations by giving association members who are not on the committee the information necessary to determine whether the remuneration or benefit provided is an appropriate use of the association's funds.

**Legislation should have sufficient regard to the rights and liberties of individuals by ensuring that consequences imposed are proportionate and relevant to the actions to which the consequences are applied**

*Clause 31, Division 2 – Matters of material personal interest and remuneration*
*Clause 31, Division 3 – Duties of officers*

The Bill introduces new governance obligations for management committee members and officers in light of:

- the growing sophistication of the NFP sector and the resulting increase in public expectation that those who hold influential positions within incorporated associations should be held accountable to minimum standards of behaviour;

- the common law view that management committee members and officers have similar fiduciary duties to those of company directors;

- the absence of clear guidance under the Associations Incorporation Act about how management committee members and officers should behave in their roles; and

- the potential benefit that greater legislative guidance will provide to management committee members and officers by potentially reducing the likelihood of intentional or inadvertent breaches of their governance duties.

Pursuant to section 4(2)(a) of the Legislative Standards Act, legislation should have sufficient regard to the rights and liberties of individuals. This includes ensuring that consequences imposed are proportionate and relevant to the actions to which the consequences are applied. As the governance provisions create new penalties, they raise the FLP issue of whether sufficient regard has been given to ensuring that the proposed penalty associated with a breach of each obligation is proportionate to the particular obligation.

The proposed penalties are considered necessary to promote adherence to the principles of good governance and the penalties give weight to the obligations. The maximum penalty amount has been limited to 60 penalty units for a breach of new sections 70B(1), 70B(2), 70C(1), 70E(1), 70F, 70G, 70H, 70I(1); 10 penalty units for a breach of new section 70D(1); and 4 penalty units for a breach of new section 70B(6) and 70C(4) in recognition of the NFP and often voluntary nature of incorporated associations. These penalty amounts are comparable to those applicable in Western Australia for breaches of similar obligations.

It should also be noted that, in accordance with longstanding legislative drafting practice, the penalties are maximum penalties and the judiciary will typically take into account a range of considerations such as whether the office holder or management committee member is remunerated, as well as the size and complexity of the association.

The Bill includes a presumption for officers who rely on information or advice where that reliance was made in relation to information or advice given by certain individuals and was made in good faith. The presumption is provided for in new section 70J. Another presumption is available for an officer who makes a business judgement when exercising their powers and discharging their duties (new section 70E).

Additionally, if a person is accused of breaching their duty to prevent insolvent trading under new section 70I, a defence is available if the accused is able to prove that the debt was incurred without the accused's authority or consent; or the accused did not take part in the management of the association at the time the debt was incurred because of illness or some other good reason; or the accused had reasonable grounds to expect and did expect that the association was solvent at the time the debt was incurred and would remain solvent even if it incurred the debt.

**Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (section 4(3)(e) Legislative Standards Act)**

*Clauses 8, and 61 to 65 – Investigation and enforcement*

The Associations Incorporation Act applies Part 10 of the *Financial Institutions Code 1992* (the Code) to an investigation of an incorporated association. Despite its repeal in 1999, the provisions in Part 10 continue to apply to the Associations Incorporation Act as if the Code had not been repealed. Due to the length of time since its repeal however, the Code is not considered to be a responsive modern repository of regulatory best practice for the conduct of compliance investigations or for investigation powers. Additionally, the Code was originally intended to be used for the regulation of certain financial institutions and is therefore, not considered to be fit-for-purpose in the context of incorporated associations.

In contrast, the *Fair Trading Inspectors Act 2014* (FTIA), which consolidates inspector functions and powers across a number of Acts within the Fair Trading portfolio, is the most contemporary piece of legislation dealing with inspectorate provisions. In order to provide administrative efficiencies, and consistency and certainty for Fair Trading inspectors, the Bill replaces the application of Part 10 of the Code to the Associations Incorporation Act with the FTIA.

Section 4(3)(e) of the Legislative Standards Act provides that legislation should confer power to enter premises and search for or seize documents or other property only with a warrant issued by a judge or other judicial officer. However, common law recognises that power to enter premises can also be permitted with the occupier's consent.

The proposed application of the FTIA to the Associations Incorporation Act will result in inspectors under the Associations Incorporation Act having entry and seizure powers they do not currently have under the Part 10 of the Code. Section 22 of the FTIA confers power on inspectors to enter a place and seize evidence in a number of circumstances, including where no warrant is issued. It is considered that these powers of entry are appropriately limited to circumstances where:

- consent is given and the occupier is provided with relevant information relating to the entry; or
- it is a public place and the entry is made when it is open to the public; or
- the entry is authorised under a warrant; or
- it is a place of business regulated under a primary fair trading Act that is open for carrying on business, or is otherwise open for entry, or is required to be open for inspection under the primary fair trading Act.

The FTIA also provides appropriate safeguards relating to entry powers. For example, sections 25 and 26 prescribe procedures that inspectors must follow when entering a place with consent. This includes the requirement for an inspector to, prior to asking for consent, advise the occupier of the purpose of the entry including the powers to be exercised, that the occupier is not required to give consent, and that the consent may be given subject to conditions and may be withdrawn at any time. If consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent containing relevant details such as the time and day the consent was given and any conditions of the consent.

In order to ensure that powers deemed unnecessary for the regulation of incorporated associations are not available for use under the Associations Incorporation Act, the Bill includes modifying provisions to carve out an inspector's power to stop or move vehicles, and the power to obtain criminal history reports for the purpose of deciding whether an inspector's unaccompanied entry into a place will create an unacceptable level of risk to the inspector's safety. These modifying provisions are inserted by clause 63 of the Bill.

**Legislation should have sufficient regard to the institution of Parliament including by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(b) Legislative Standards Act)**

*Clause 44 – Amendment of s 136 (Penalties under regulations to be limited)*
*Clause 58 – Amendment of s 47 (Regulations)*

Section 4(4)(b) of the Legislative Standards Act provides that legislation should have sufficient regard to the institution of Parliament including by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. Generally speaking, the more serious an offence or penalty is, the more likely that the offence or penalty should be imposed only by an Act of Parliament and not under subordinate legislation.

The Bill increases the maximum penalty that may be prescribed by a regulation made under the Associations Incorporation Act for an offence against the regulation from 4 penalty units to 20 penalty units. The Bill also increases the penalty that may be prescribed by a regulation made under the Collections Act for an offence against the regulation from 6 penalty units to 20 penalty units. The prescription of no more than 20 penalty units for a contravention of a regulation made under the Associations Incorporation Act or the Collections Act is considered appropriate as the former Scrutiny of Legislation Committee (AD 1996/4) has previously considered that the maximum penalty for offences under regulations should generally be limited to 20 penalty units.

**Legislation should not adversely affect rights and liberties, or impose obligations retrospectively (section 4(3)(g) Legislative Standards Act)**

*Clause 16, section 47A – Grievance procedure*

Under the Associations Incorporation Act, an association may adopt proposed rules for the association by resolution passed at a meeting of the association by the votes of at least three-quarters of the association's members who are present and entitled to vote on the resolution. The rules adopted may or may not have a grievance procedure.

New section 47A requires the rules of an incorporated association to set out a grievance procedure, consistent with the principles in the section, for dealing with any dispute under the rules between a member and another member, a member and the management committee, or a member and the association. If the rules of the association do not set out a grievance procedure that is consistent with the prescribed principles in new section 47A(2) to (5), then under new section 47A(6) the rules of the association are taken to include the model rules providing the grievance procedure. Associations and members will be required to make reasonable attempts to resolve their dispute under the grievance procedure in the rules prior to seeking external redress as provided in clause 32 of the Bill.

Pursuant to section 4(3)(g) of the Legislative Standards Act, legislation should not adversely affect rights and liberties retrospectively. In this case, new section 47A(6) can have the effect of replacing part of the rules of the association with certain provisions of the model rules (in respect of a grievance procedure) even though the association's rules have been voted by at least three-quarters of the association. This is considered justified as it is intended to ensure that the members of an incorporated association have access to a fair dispute resolution process.

*Clause 46, section 153 – Financial reporting obligations (Associations Incorporation Act)*
*Clause 60, section 49 – Financial reporting obligations (Collections Act)*

Clause 46 of the Bill inserts a new section 153 which provides that the obligations of an incorporated association or members of the association's management committee under amended part 6, division 2 such as the obligation to keep financial records; prepare annual financial statements, audit reports and verification statements; present financial documents to the annual general meeting; and lodge financial documents with the chief executive apply to an association or its management committee members whether the association was incorporated before or after the commencement of the amended part 6, division 2.

Similarly, clause 60 of the Bill inserts new section 49 which provides that the obligations under new section 31 (keeping financial records) apply to a charity registered under the Collections Act and to an association whose objects are a community purpose sanctioned under the Collections Act whether before or after the commencement of new section 31. New section 49 also provides that the obligations under new sections 32 (preparing financial statements) and 33 (lodging returns) apply to a charity registered under the Collections Act (other than an exempt charity) and an association whose objects are a community purpose sanctioned under the Collections Act (other than an exempt association) whether before or after the commencement of new sections 32 and 33; and a promoter of an appeal for support for a purpose to which Part 3 of the Collections Act applies whether the appeal is made before or after the commencement.

Pursuant to section 4(3)(g) of the Legislative Standards Act, legislation should not impose obligations retrospectively without sufficient justification. In this case, these obligations are not new. They merely replace similar obligations that already exist under the current provisions of the Associations Incorporation Act (see existing sections 59, 59A, 59B, 59C) and Collections Act (see existing sections 31 and 32). Additionally, charities registered under the Collections Act and associations whose objects are a community purpose sanctioned under the Collections Act are already obligated to keep certain prescribed records such as a cash book or statement of amounts received and paid; a petty cash book and any other records required to be kept by the chief executive under section 30 of the Collections Regulation 2008. Incorporated associations are also currently similarly required to keep certain prescribed records under section 9 of the Associations Incorporation Regulation 1999.

**Legislation should have sufficient regard to rights and liberties of individuals including by not reversing the onus of proof in criminal proceedings without adequate justification (section 4(3)(d) Legislative Standards Act)**

*Clause 31, section 70I – Duty to prevent insolvent trading*

Under new section 70I(1), a person who was a member of the management committee of an incorporated association, or took part in the management of an incorporated association, at the time the association incurred a debt commits an offence if the association was insolvent at the time the debt was incurred or becomes insolvent by incurring that debt or by incurring at that time debts including that debt; and immediately before the debt was incurred, there were reasonable grounds to expect that the association was insolvent; or there were reasonable grounds to expect that, if the association incurred the debt, the association would become insolvent.

Under new section 70I(2), it is a defence if the accused proves that:

- the debt was incurred without the accused's express or implied authority or consent;
- at the time the debt was incurred, because of illness or for some other good reason, the accused did not take part in the management of the incorporated association; or
- at the time the debt was incurred, the accused had reasonable grounds to expect, and did expect, that the incorporated association was solvent even if it incurred that debt and any other debts that it incurred at that time.

Section 4(3)(d) of the Legislative Standards Act provides that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

It is considered that the reversal of the onus of proof under new section 70I(2) is justified as the information required to be proven would be readily available to a defendant and would be difficult and/or expensive for the State to prove. The former Scrutiny of Legislation Committee of the Queensland Legislative Assembly had previously noted that reverse onus provisions are, in fact, a natural extension of the basic common law principle that the burden of proving a state of affairs should rest on the person who has superior or peculiar knowledge of the essential facts (AD 2002/6, pp.21-22). In the case of a defence to the offence in new section 70I(1), the accused would have particular knowledge of whether a debt was incurred without their authority or consent and would know whether they had reasonable grounds to expect that the association was solvent at the time the debt was incurred.

## Consultation

Community consultation on the majority of the amendments to the Associations Incorporation Act was largely undertaken through a discussion paper released in 2010 titled *'Possible changes to the Associations Incorporation Act 1981 and the Associations Incorporation Regulation 1999'*. The paper sought feedback on proposed changes "designed to assist associations in their day-to-day operations and bring Queensland in line with other jurisdictions in relation to dispute resolution, the keeping of accounts, eligibility for election to the management committee, the appointment of a voluntary administrator, and disclosure of remuneration and pecuniary interests".

Following developments at the national level, including the establishment of the ACNC, further broad consultation was undertaken through the release of another public discussion paper in 2012 titled *'Supporting Queensland Associations: a modern framework for civil society'*. Key issues canvassed as part of this consultation included dispute resolution and management committee responsibilities.

Consultation was refreshed through the subsequent appointment of a NFP red tape reference group (NFPRRG) which comprised sector and government representatives. The NFPRRG met four times to discuss approaches to reform and ways in which relevant NFP legislation could be modernised.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Consideration of other jurisdiction's legislation has been undertaken in developing the Bill. For the majority of amendments relating to the regulation of incorporated associations, there is comparable legislation in other jurisdictions although details of how they apply may be different.

# Notes on provisions

### Part 1 Preliminary

*Clause 1* provides the short title by which the Bill will be known once enacted.

*Clause 2* specifies the provisions which are to commence on a day to be fixed by proclamation.

### Part 2 Amendment of Associations Incorporation Act 1981

*Clause 3* provides that Part 2 of the Bill amends the *Associations Incorporation Act 1981*.

*Clause 4* replaces the heading of Part 1, Division 1 of the Act.

*Clause 5* relocates the heading of Part 1, Division 2 of the Act.

*Clause 6* renumbers sections 1A and 1B to 1B and 1D respectively.

*Clause 7* inserts a new section 1A to specify the main purposes of the Act.

*Clause 8* inserts a new section 1C to provide that the *Fair Trading Inspectors Act 2014* enacts common provisions for the Associations Incorporation Act and particular other Acts about fair trading.

*Clause 9* amends section 2 to provide that the dictionary in schedule 2 defines particular words used in the Act.

*Clause 10* amends section 6(2) to omit the reference to 'own rules'.

*Clause 11* amends the title of section 9 and clarifies what must be submitted with an application for incorporation by an association that proposes to use the model rules and by an association that does not propose to use the model rules.

*Clause 12* amends section 16(3) to correctly reference the section relating to the lodgement of financial documents with the chief executive.

*Clause 13* amends section 21(b) to provide that an incorporated association may have a common seal.

*Clause 14* amends section 28 to provide for the execution of contracts and other documents by an incorporated association with or without a common seal.

*Clause 15* amends section 31 to provide for consistent references to the common seal of an incorporated association.

*Clause 16* replaces Part 5, Division 1 to clarify the intent of section 46 as it relates to the rules of an association on registration. It also amends section 47 to provide that if a provision of the model rules provide for a matter not addressed in the rules of an incorporated association, the rules of the incorporated association are taken to include the provision of the model rules, unless the association's rules provide otherwise.

Clause 16 additionally inserts a new section 47A which provides that the rules of an incorporated association may set out a grievance procedure, which must include mediation, for dealing with any dispute under the rules between a member and another member, a member and the management committee, or a member and the association. Reasonable attempts must be made to resolve the dispute under the grievance procedure in the rules prior to seeking external redress (see clause 32). If the rules of an incorporated association do not set out a grievance procedure that is consistent with the requirements outlined in new sections 47A(2) to (5), then, as per new section 47A(6), the rules of the association are taken to include the provisions of the model rules providing for the grievance procedure. An incorporated association will not be able to exclude the operation of 47A(6).

*Clause 17* amends section 48 to expressly allow an incorporated association to amend its rules by replacing the association's rules with the model rules.

*Clause 18* amends section 49(2) to clarify the effect of the registration of an amendment to the rules of an incorporated association.

*Clause 19* omits section 51 as it is no longer necessary given the amendment to section 49(2) by clause 18.

*Clause 20* amends section 56 to provide that an incorporated association may hold meetings or permit members to take part in its meetings using communications technology.

*Clause 21* amends section 58 to remove the definitions of 'level 1 incorporated association', 'level 2 incorporated association', and 'level 3 incorporated association'. As incorporated associations will instead be known as large, medium or small incorporated associations, definitions for 'large incorporated association', 'medium incorporated association' and 'small incorporated association' are inserted in section 58. In addition, the clause amends the definitions of 'accountant' and 'auditor', and inserts new definitions for 'another law' and 'verification statement'.

The clause also inserts new definitions for 'audit report', 'financial record', and 'financial statement'.

*Clause 22* amends the financial reporting requirements under the Act by replacing sections 59, 59A, 59B and 59C with new sections 59, 59A, 59AA, 59AB, 59AC, 59B, 59BA, 59BB, and 59C.

New section 59 imposes an obligation on management committee members of an incorporated association to ensure the association keeps proper financial records. A breach of the section attracts a maximum penalty of 20 penalty units for each management committee member of a large incorporated association, or a maximum penalty of 10 penalty units for each management committee member of a medium or small incorporated association.

New section 59A requires management committee members of an incorporated association to ensure the association prepares, unless the association is an exempt association, a financial statement for the last reportable financial year within six months after the end date of each financial year for the association. A breach of the section attracts a maximum penalty of 20 penalty units for each management committee member of a large incorporated association, or a maximum penalty of 10 penalty units for each management committee member of a medium or small incorporated association.

New section 59AA requires management committee members of certain incorporated associations to ensure the association has, unless the association is an exempt association, the financial statement for its last reportable financial year audited within six months after the end date of each financial year for the association. A large incorporated association must have its financial statement audited by an auditor or an accountant. A medium or small incorporated association must have its financial statement audited by an auditor, accountant, or an approved person if the association is required under another law to have its financial statements audited. A breach of the section attracts a maximum penalty of 20 penalty units for each management committee member of a large incorporated association, or a maximum

penalty of 10 penalty units for each management committee member of a medium or small incorporated association.

New section 59AB requires the management committee members of a medium or small incorporated association (that is not required under another law to have its financial statements audited) to ensure the association prepares, unless the association is an exempt association, a verification statement within six months after the end date of each financial year for the association. A breach of the section attracts a maximum penalty of 10 penalty units for each management committee member. This section does not apply to an exempt association.

New section 59AC provides that certain persons must not audit a financial statement for an incorporated association under section 59AA or prepare a verification statement for an incorporated association under section 59AB(3)(a). A maximum penalty of 10 penalty units applies for a breach of the section.

New section 59B requires management committee members to ensure the association presents the financial statement, and the audit report or the verification statement (as the case may be) to the association's annual general meeting for adoption within six months after the end date of each financial year for the association. A breach of the section attracts a maximum penalty of 20 penalty units for each management committee member of a large incorporated association, or a maximum penalty of 10 penalty units for each management committee member of a medium or small incorporated association. It should be noted that new section 59B does not apply to exempt associations. However, a regulation may prescribe particular documents that members of the management committee of an exempt association must ensure are presented at the association's annual general meeting. The requirement to present particular prescribed documents does not extend to ensuring the documents are adopted.

New section 59BA requires incorporated associations to lodge the financial documents presented to the association's annual general meeting under new section 59B (along with a return in the approved form and the prescribed fee) with the chief executive within 1 month after the day the documents are presented. If the association does not comply with the lodgement requirement, a maximum penalty of 4 penalty units may be applied to each of the following persons: the secretary, president, and treasurer of the incorporated association. New section 59BA does not apply to exempt associations.

New section 59BB provides that an incorporated association may, for a financial year, ask in writing that the chief executive make a declaration stating that the association is taken to be a medium or small incorporated association for the financial year so that it can report as if it was a smaller association. The chief executive may only make the declaration if the chief executive is satisfied there are special and unusual circumstances justifying the declaration. For example, a special and unusual circumstance may exist if a medium incorporated association receives a once-off insurance payout or a grant which would increase the association's revenue for a particular financial year and require the association to report as a large incorporated association, unless otherwise declared to be a medium association under new section 59BB by the chief executive. The intent is to enable incorporated associations to report as they normally would had a particular one-off special circumstance not occurred. If the chief executive does make a declaration, the chief executive may impose conditions on the association.

New section 59C requires the secretary of an incorporated association to comply with a request by a member to inspect the association's financial statement, audit report or verification statement. A maximum penalty of 4 penalty units applies if the request is not complied with within 28 days after the request is made. The incorporated association may require the member to pay reasonable costs of giving a copy of a financial document.

*Clause 23* makes a minor clarifying amendment to section 59D that amends the grammar of the provision.

*Clause 24* amends section 59E to provide that the chief executive may approve a person as an approved person for an incorporated association if the chief executive is satisfied the person has the necessary experience or qualifications to conduct an audit of an incorporated association under section 59AA; or prepare a verification statement under section 59AB(3)(a); or audit, verify or examine financial information under section 59F.

*Clause 25* inserts a new section 59F to provide that the chief executive may direct an incorporated association (including an exempt association) to give stated financial information within a stated period and in a stated way; and cause the financial information to be audited, verified or examined by an auditor, accountant or approved person. If the incorporated association does not comply with the direction, a maximum penalty of 20 penalty units may be applied to each of the following persons: the secretary, president, or treasurer of the incorporated association.

*Clause 26* amends the heading of Part 7 of the Act.

*Clause 27* inserts a new Part 7, Division 1 heading.

*Clause 28* amends section 61A to omit subsection (2), which removes the definition of 'rehabilitation period'. An amended definition is included in Schedule 2 (Dictionary).

*Clause 29* amends section 64 to omit subsection (3), which removes the definition of 'rehabilitation period'. An amended definition is included in Schedule 2 (Dictionary).

*Clause 30* amends section 66(1) to provide that the secretary of an incorporated association must be an adult.

*Clause 31* inserts a new Division 2 in Part 7 which includes new sections 70B, 70C, and 70D dealing with matters of material personal interest and remuneration. The clause also inserts a new Division 3 which includes new sections 70E, 70F, 70G, 70H, 70I and 70J to provide for duties of officers of an incorporated association.

New section 70B provides that a member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee. A maximum penalty of 60 penalty units applies to a failure to disclose. The member must also disclose the nature and extent of the material personal interest at the next general meeting of the association. A failure to do so attracts a maximum penalty of 60 penalty units.

However, a member of the management committee is not required to disclose a material personal interest that exists only because the member is an employee of the incorporated association or is a member of a class of persons for whose benefit the association is established; or that the member has in common with all, or a substantial proportion of, the members of the association. For example, an incorporated association may receive rental income from a third party lessee for a property which it holds on trust for the benefit of all members. Proceeds from the rental income is applied to fund the association's activities. A management committee member who benefits from the property being held on trust does not have to disclose this interest as the committee member's interest is no less and no more than that of other members of the association.

If a member of the management committee discloses a material personal interest in a contract or proposed contract under this section, and the member has complied with section 70C(1) or the member's interest is not required to be disclosed because of subsection (3), the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and the member is not liable to account for profits derived from the contract.

Management committee members must ensure that relevant details of a material personal interest are recorded in the minutes of the meeting at which they were disclosed and are provided to a member of the association on request. A failure to abide by this provision attracts a maximum penalty of 4 penalty units for each member of the management committee.

New section 70C provides that a member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must not be present while the matter is being considered or vote on the matter, unless the management committee determines otherwise. A breach of this restriction attracts a maximum penalty of 60 penalty units. The restriction does not, however, apply to a management committee member who has a material personal interest that exists only because the member belongs to a class of persons for whose benefit the association is established; or that the member has in common with all, or a substantial proportion of, the members of the association.

If the management committee decides that a member of the management committee who has a material personal interest in a matter may be present at a meeting while the matter is being considered or may vote on the matter, the management committee must ensure its decision is recorded in the minutes of the meeting and disclosed at the next general meeting of the association. The management committee must also provide the details of committee's decision to a member of the association if requested by the member. A failure to abide by these obligations attracts a maximum penalty of 4 penalty units for each management committee member.

New section 70D provides that the members of the management committee of an incorporated association must ensure the prescribed details of the remuneration paid or other benefits given to certain persons is presented to the association's annual general meeting in the way prescribed by regulation. A breach of this obligation attracts a maximum penalty of 10 penalty units for each member of the management committee.

New section 70E provides that an officer of an incorporated association must exercise their powers and discharge their duties with a degree of care and diligence that a reasonable person in the same position would exercise. A maximum penalty of 60 penalty units applies for a breach of the provision. An officer of an incorporated association who makes a business judgement is considered to have acted with the required degree of care and diligence if the officer makes the judgement in good faith for a proper purpose; does not have a material personal interest in the subject matter of the judgement; is informed about the subject matter of the judgement to the extent the officer reasonably believes to be appropriate; and reasonably believes the judgement is in the best interests of the association.

New section 70F requires an officer of an incorporated association to exercise their powers and discharge their duties in good faith in the best interests of the association and for a proper purpose. A breach of the provision attracts a maximum penalty of 60 penalty units.

New section 70G provides that an officer of an incorporated association must not improperly use their position to gain a pecuniary benefit or material advantage for themselves or another person; or cause detriment to the association. A breach of the provision attracts a maximum penalty of 60 penalty units.

New section 70H provides that a person who obtains information because the person is, or has been, an officer of an incorporated association must not improperly use that information to gain a pecuniary benefit or material advantage for themselves or another person; or cause detriment to the association. A breach of the provision attracts a maximum penalty of 60 penalty units.

New section 70I provides that a person who was a management committee member of an incorporated association or took part in the management of an incorporated association at the time the association incurred a debt commits an offence if the association was insolvent at the time the debt was incurred or becomes insolvent by incurring that debt or by incurring at that time debts including that debt; and immediately before the debt was incurred, there were reasonable grounds to expect that the association was insolvent; or there were reasonable grounds to expect that, if the association incurred the debt, the association would become insolvent. A breach of the provision attracts a maximum penalty of 60 penalty units.

It is a defence if the accused proves that the debt was incurred without their express or implied authority or consent; or at the time the debt was incurred, the accused did not take part in the management of the incorporated association; or had reasonable grounds to expect that the incorporated association was solvent and would remain solvent even if it incurred the debt and any other debts that it incurred at that time.

New section 70J applies if the reasonableness of the reliance of an officer of an incorporated association on information or advice given to the officer arises in a proceeding brought to decide whether the officer has performed a duty under the Act or an equivalent duty at common law or in equity. The provision outlines the circumstances in which an officer's reliance on the information or advice will be taken to be reasonable.

*Clause 32* amends section 72 to provide that an incorporated association or a member of an incorporated association cannot make an application to the Supreme Court for adjudication of a dispute under the rules of the association unless the association or member has made

reasonable attempts to resolve the dispute under the grievance procedure in the association's rules.

*Clause 33* includes a consequential amendment to section 81 to remove the reference to an association's own rules.

*Clause 34* replaces sections 89 to 91 to introduce a new Division 1 in Part 10 which provides for the voluntary administration and winding up of incorporated associations in accordance with new sections 89 and 90. The clause also introduces a new Division 2 in Part 10 which deals with the winding up of an incorporated association by the Supreme Court in accordance with new sections 91, 91A, and 91B.

New section 89 provides that the voluntary administration of an incorporated association is declared to be an applied Corporations legislation matter in relation to part 5.3A and schedule 2 (to the extent it relates to part 5.3A) of the Corporations Act, subject to some changes.

New section 90 provides that an incorporated association may be wound up voluntarily if the association resolves to do so by special resolution. A copy of the special resolution must be lodged with the chief executive within one month after the resolution is passed. Section 90 also provides that the voluntary winding up of an incorporated association is declared to be an applied Corporations legislation matter in relation to parts 5.5, 5.6 and schedule 2 (to the extent it relates to parts 5.5 and 5.6) of the Corporations Act, subject to some changes.

New section 91 prescribes the grounds upon which the Supreme Court may order the winding up of an incorporated association.

New section 91A provides who may make an application to the Supreme Court for the winding up of an incorporated association.

New section 91B provides that the winding up by the Supreme Court under the Corporations Act of an incorporated association is declared to be an applied Corporations legislation matter in relation to parts 5.7 and 5.7B, divisions 1 and 2; and schedule 2 (to the extent it relates to parts 5.7 and 5.7B, divisions 1 and 2) of the Corporations Act, subject to some changes.

Clause 34 also inserts a new Division 3, which includes a new section 91C, which provides that any matter declared under Part 10 of the Act to be an applied Corporations legislation matter is, in addition, an applied Corporations legislation matter in relation to part 5.9, divisions 3 and 4 of the Corporations Act, subject to some changes.

*Clause 35* amends section 92(2) to transfer the power to vest property of certain wound-up incorporated associations from the Governor in Council by regulation to the chief executive by gazette notice.

*Clause 36* inserts a new Part 10AA which provides for the cancellation of an association's incorporation in accordance with new sections 92A, 92B, and 92C.

New section 92A provides that an application to cancel the incorporation of an association may be made if the association has no outstanding debts and liabilities; has paid all fees and penalties applying to it under the Act; and is not a party to any legal proceedings. The application may be made by the association if the association has passed a special resolution

under its rules approving the making of the application or by the administrator of the association if the association is under voluntary administration. Section 92A(3) provides the information which must accompany the application.

New section 92B provides the chief executive with the powers to make any inquiries necessary to establish the validity of the information provided in a declaration for an application to cancel the incorporation of an association. The section also provides the chief executive with the powers to direct an applicant to provide further information or documents to enable the chief executive to decide the application.

New section 92C provides that the chief executive must cancel the incorporation of an association if satisfied of the maters mentioned in section 92A(1). However, if the application is made by the association, the chief executive must not cancel the incorporation of the association unless the association has given the chief executive evidence of the distribution of the surplus assets of the association under the special resolution.

*Clause 37* amends the heading to section 93 to reference cancellation of incorporation by the chief executive.

*Clause 38* amends the heading to section 94A. It also amends the definitions of 'deregistered association' and 'deregistration' to refer to the new provisions which have replaced sections 91 and 93.

*Clause 39* amends section 94D(1)(c) to correct a drafting error to clarify that property is vested in the public trustee rather than the chief executive.

*Clause 40* amends section 106 to provide that the financial year for a former society continues as the financial year of the incorporated association. The reference to section 59 (which deals with level 1 incorporated associations and particular level 2 and 3 incorporated associations) is removed because clause 22 of the Bill replaces the current section 59 with a new section 59 dealing with the keeping of financial records.

*Clause 41* omits sections 119 and 119A as they are no longer required due to the application of the *Fair Trading Inspectors Act 2014* to investigations conducted under the Associations Incorporation Act (see clauses 61 to 65 below).

*Clause 42* inserts a new section 119B which provides that the chief executive may enter into an information sharing arrangement with the commissioner of the Australian Charites and Not-for-profits Commission (ACNC) under which the chief executive may disclose information obtained about an ACNC-registered entity under the Associations Incorporation Act to the commissioner to enable or assist the commissioner to perform or exercise any of the functions or powers of the commissioner.

*Clause 43* amends section 127(1)(d) to correctly reference the new sections 59BA(1) and 59F which provide for the lodgement of financial documents with the chief executive.

*Clause 44* amends section 136 to increase the maximum penalty able to be prescribed under a regulation from 4 penalty units to 20 penalty units.

*Clause 45* amends section 137 to provide that, if a provision of the Act empowers a regulation to prescribe, for a particular purpose, a class of incorporated association, the regulation may prescribe a class by reference to the revenue, assets or other financial characteristics of an incorporated association; or whether an incorporated association is registered under an Act of the Commonwealth or a State; or whether an incorporated association is required to prepare and submit financial statements under an Act of the Commonwealth or a State; or the objects for an incorporated association; or any other matter relevant to the purpose. It should be noted that amendment is not intended to limit or displace the operation of section 24 of the *Statutory Instruments Act 1992* which provides that a statutory instrument may apply generally to all persons and matters or be limited in its application to particular persons or matters; or particular classes of persons or matters.

*Clause 46* inserts a new Part 16, Division 3 in the Act dealing with transitional provisions. The clause inserts a new section 151 which provides that if, before commencement, an application for incorporation of an association was made under section 9 and the application had not been finally dealt with, then the chief executive must decide the application under the Act as in force immediately before the commencement.

New section 152 provides that the requirement under the new section 47A for the rules of an incorporated association to set out a grievance procedure applies whether the association was incorporated before or after the commencement of the new section 47A.

New section 153 provides that the financial reporting obligations under new Part 6, Division 2 applies to an incorporated association or members of the management committee whether the association was incorporated before or after the commencement.

New section 154 provides that the power of the chief executive to enter into an arrangement with, or disclose information to, the commissioner of the ACNC under new section 119B applies in relation to information obtained under the Associations Incorporation Act before or after the commencement.

*Clause 47* renumbers Parts 10AA to 16 as Parts 11 to 18.

*Clause 48* inserts a new schedule 1 to provide modifications to the text of the Corporations Act for new sections 89, 90, 91B and 91C.

*Clause 49* amends the dictionary to remove the definitions of ‘level 1 incorporated association’, ‘level 2 incorporated association’, and ‘level 3 incorporated association’. As incorporated associations will instead be known as large, medium or small incorporated associations, definitions for ‘large incorporated association’, ‘medium incorporated association’ and ‘small incorporated association’ are inserted in section 58 by clause 21.

The clause amends the definitions of ‘audit report’ and ‘financial statement’. It also removes the definition of ‘financial document’ as clause 22 inserts a new definition for the term in new section 59C, and the definition of ‘own rules’.

Clause 49 additionally inserts a revised definition of ‘rehabilitation period’ as it applies to the amended sections 61A (Eligibility for election to a management committee) and 64 (Tenure of members of management committee).

## Part 3 Amendment of Collections Act 1966

*Clause 50* provides that Part 3 of the Bill amends the *Collections Act 1966*.

*Clause 51* amends section 5(1) by removing the definition of 'accounts', and amending the definitions of 'financial statements' and 'records'. It also includes new definitions for 'exempt association', 'exempt charity', 'exempt class', 'financial record', and 'reportable financial period'.

*Clause 52* amends section 19 to omit subsections (2) to (4) to no longer provide that registered charities are, for the purposes of the Act, divided into two classes of exempted and non-exempted charities as determined by the Minister. Exemptions under the Act will be prescribed by regulation as provided in the new definitions of 'exempt association', 'exempt charity', and 'exempt class'.

*Clause 53* amends section 23 to correct a drafting error to reference section 19(15) and not section 19(9).

*Clause 54* replaces sections 31 and 32 with new sections 31, 32, 33, and 33A to provide the financial reporting requirements of registered charities, associations whose objects are a community purpose sanctioned under the Act, and promoters of an appeal for support for a purpose to which Part 3 applies.

New section 31 imposes an obligation on registered charities and associations whose objects are a community purpose sanctioned under the Act to keep proper financial records. A regulation may prescribe particular financial records to be kept by an entity. A breach of the obligation attracts a maximum penalty of 20 penalty units.

New section 32 requires registered charities, associations whose objects are a community purpose sanctioned under the Act, and promoters of an appeal for support for a purpose to which Part 3 applies to prepare a financial statement for the entity's last reportable financial period. A breach of this obligation attracts a maximum penalty of 20 penalty units. The financial statement must be prepared within the period, and include the information, prescribed by regulation and must be audited or verified in the way prescribed by regulation. The regulation can, by virtue of section 24 of the Statutory Instruments Act, prescribe different requirements for particular classes of persons. If a financial statement is required to be audited, the auditor has the powers of an inspector under the Collections Act for the audit. The financial statement and any document relating to the audit or verification of the financial statement must be lodged with the chief executive in the way and within the period prescribed by regulation or as directed by the chief executive. Failure to do so attracts a maximum penalty of 20 penalty units. New section 32 does not apply to exempt charities and exempt associations.

New section 33 requires registered charities, associations whose objects are a community purpose sanctioned under the Act, and promoters of an appeal for support for a purpose to which Part 3 applies to lodge a return, containing such information as prescribed by regulation, with the chief executive. The return must be lodged in the way and within the period prescribed by regulation. Failure to do so attracts a maximum penalty of 20 penalty units. New section 33 does not apply to exempt charities and exempt associations.

A new section 33A provides that the chief executive may direct registered charities, associations whose objects are a community purpose sanctioned under the Act, and promoters of an appeal for support for a purpose to which Part 3 applies to prepare and lodge a financial statement or return, and cause the information contained in the financial statement to be audited or verified by an appropriately qualified person prescribed by regulation. Failure to comply with the direction attracts a maximum penalty of 20 penalty units. To be clear, the chief executive can issue the direction to exempt charities and exempt associations.

*Clause 55* amends section 35 to transfer the power to vest property in the public trustee from the Governor in Council by regulation to the chief executive by gazette notice.

*Clause 56* amends section 35A to provide that, in relation to the disaster appeals trust fund committee, the chief executive (in addition to the public trustee) is an ex officio member of the committee, and that the chief executive is the chairperson of the committee. Importantly, the power to appoint members of the committee is transferred from the Governor in Council to the chief executive. Consequently, each reference to the Governor in Council is amended to instead reference the chief executive. A new subsection (5A) provides that a committee member appointed by the chief executive is to be paid the remuneration and other allowances decided by the chief executive. This replaces subsection (18) which allowed the payment of fees and allowances to be determined by the Governor in Council.

*Clause 57* inserts a new section 35E to provide that the chief executive may enter into an information sharing arrangement with the commissioner of the Australian Charites and Not-for-profits Commission (ACNC) under which the chief executive may disclose information obtained about an ACNC-registered entity under the Collections Act to the commissioner to enable or assist the commissioner to perform or exercise any of the functions or powers of the commissioner.

*Clause 58* amends section 47(3)(zo) to increase the maximum penalty able to be prescribed under a regulation from 6 penalty units to 20 penalty units. Additionally, a new subsection (4) is inserted to provide that, if a provision of the Collections Act empowers a regulation to prescribe, for a particular purpose, a class of association or charity, the regulation may prescribe a class by reference to the revenue, assets, or other financial characteristics of an association or charity; or whether an association or charity is registered under an Act of the Commonwealth or a State; or whether an association or charity is required to prepare and submit financial statements under an Act of the Commonwealth or a State; or the objects for an association or charity; or any other matter relevant to the purpose. It should be noted that new subsection (4) is not intended to limit or displace the operation of section 24 of the Statutory Instruments Act which provides that a statutory instrument may apply generally to all persons and matters or be limited in its application to particular persons or matters; or particular classes of persons or matters.

*Clause 59* inserts a new Part 9, Division 1 heading.

*Clause 60* inserts a new Part 9, Division 2 with transitional provisions. The clause inserts a new section 49 which provides that the obligations under new section 31 about financial records apply to a charity registered under the Collections Act whether before or after the commencement of new section 31, and to an association whose objects are a community purpose sanctioned under the Collections Act whether before or after the commencement of new section 31.

New section 49 also provides that the obligations under new sections 32 and 33 about financial statements and returns apply to a charity registered under the Collections Act whether before or after the commencement of new sections 32 and 33 (other than an exempt charity); an association whose objects are a community purpose sanctioned under the Collections Act whether before or after the commencement of new sections 32 and 33 (other than an exempt association); and a promoter of an appeal for support for a purpose to which Part 3 of the Collections Act applies whether the appeal is made before or after the commencement.

New section 50 provides that if, immediately before the commencement, a person held office under section 35A as a member of the disaster appeals trust fund committee, the person is taken to hold office under section 35A as in force after the commencement. Further, if, before the commencement, a person held office under section 35A(7) as chairperson of the committee, the person stops holding office as chairperson on the commencement.

New section 51 provides that the power of the chief executive to enter into an arrangement with or disclose information to the commissioner of the ACNC under new section 35E applies in relation to information obtained under the Collections Act before or after the commencement.

## Part 4 Amendment of Fair Trading Inspectors Act 2014

*Clause 61* provides that Part 4 of the Bill amends the *Fair Trading Inspectors Act 2014*.

*Clause 62* amends the list of primary Acts contained in section 4(1) to provide that the *Fair Trading Inspectors Act 2014* also enacts common provisions for the *Associations Incorporation Act 1981*.

*Clause 63* inserts a new section 4A to provide that the common provisions are modified so that the powers of an inspector for the *Associations Incorporation Act* do not include powers with respect to stopping or moving vehicles (Chapter 2, Part 3, Division 1) or to obtaining criminal history reports (Chapter 2, Part 4). New section 4A also provides that the power for an inspector to enter a place under section 22(1)(d) includes the power to enter a place (other than a part of a place where a person resides) where an incorporated association carries out its activities, holds its meetings or keeps its records.

*Clause 64* amends the list of primary Acts in section 12(3), which provides that the functions of an inspector under the *Fair Trading Inspectors Act 2014* are in addition to and do no limit any functions the inspector has under the primary Act, to also include the *Associations Incorporation Act 1981*.

*Clause 65* amends the definition of ‘modifying provision’ in schedule 1.

## Part 5 Amendment of State Penalties Enforcement Regulation 2014

*Clause 66* provides that Part 5 of the Bill amends the *State Penalties Enforcement Regulation 2014*.

*Clause 67* amends the entry for the *Associations Incorporation Act 1981* in schedule 1 to remove certain prescribed penalty infringement notice (PIN) offences relating to provisions that are repealed or replaced by the Bill. It also inserts new PIN offences for new section 59, new section 59C(2), new section 70B(6), new section 70C(4) and new section 70D(1).

In addition, clause 67 makes an amendment to provide that an authorised person for service of infringement notices is an inspector appointed under the *Fair Trading Inspectors Act 2014*.

## Part 6 Minor and consequential amendments

*Clause 68* provides that Schedule 1 makes minor and consequential amendments to the Associations Incorporation Act, the Fair Trading Inspectors Act, the *Food Act 2006*, the *Hospital Foundations Act 2018*, the *Liquor Act 1992* and the *Royal National Agricultural and Industrial Association of Queensland Act 1971*.

### Associations Incorporation Act

*Clause 1* amends references to 'prescribed under the regulations' in certain provisions to 'prescribed by regulation' for consistency.

*Clause 2* amends references to 'under a regulation' in certain provisions to 'by regulation' for consistency.

*Clause 3* amends section 27 to replace 'winding-up' with 'winding up'.

### Fair Trading Inspectors Act

*Clause 1* amends sections 5(1) and 7(1) to provide consistent phrasing with sections 6(1) and 8(1).

*Clause 2* amends section 9(1) to provide consistent phrasing with sections 6(1) and 8(1).

### Food Act

*Clause 1* amends section 53(1)(b)(iii) to replace the phrase 'registered office' with 'incorporated association's nominated address'. The change more accurately reflects the operation of the Associations Incorporation Act which requires an association to provide details of its nominated address to the chief executive. An association's nominated address is also used for the service of documents.

*Clause 2* amends section 273(1)(b)(iii) to replace the phrase 'registered office' with 'nominated address'. The change more accurately reflects the operation of the Associations Incorporation Act which requires an association to provide details of its nominated address to the chief executive. An association's nominated address is also used for the service of documents.

## Hospital Foundations Act

*Clause 1* amends section 25(2) to replace the reference to section 31 of the Collections Act with new section 32, and to include a reference to new section 33A(2)(a) as it relates to the chief executive's power to direct an entity to prepare a financial statement. The amendment ensures that the Collections Act, other than section 32 and section 33A(2)(a), applies to a foundation in the performance of its functions and exercise of its powers.

## Liquor Act

*Clause 1* amends the definition of 'incorporated association' in section 4 of the Liquor Act to replace the reference to 'schedule' with 'schedule 2'.

## Royal National Agricultural and Industrial Association of Queensland Act

*Clause 1* amends section 17F(1)(d) to replace the reference to 'section 90(1)(a) to (e)' with a reference to the new section 91 which provides the grounds under which the Supreme Court may wind up an incorporated association.

*Clause 2* amends section 17F(1)(e) to amend the reference to 'section 93' with a reference to 'section 92C or 93'. The amendment is intended to capture both cancellation of an incorporation by the chief executive due to the matters outlined in section 93 of the Associations Incorporation Act as well as the cancellation of an incorporation by the chief executive on application by the association under new section 92C.