

# Getting ready for the 2024 changes

## Change 1:

### **Qld Office of Fair Trading: Dispute resolution procedures**

Your incorporated associations will need to follow the grievance procedures in the model rules or adopt another complaint procedure into your constitution. This will give associations a formal process to handle internal conflicts and help parties resolve them before they incur legal costs. While the grievance procedure won't become part of the model rules until 1 July, you can read below to see if you would like to use them or adopt your own.

**Note: If you don't have a grievance procedure – check your Model Rules/Constitution.**

**If you wish to follow the model rules' grievance procedure, you won't need to make any changes to your constitution—the model rules procedure will automatically apply.**

**If you wish to follow a custom grievance procedure, you will need to adopt it into your constitution. Go to OFT website for more info.**

**Model Rules grievance procedure** (will overrule Clause 12 - General meeting to decide appeal in current doc)

### **12A Grievance procedure**

1. This rule sets out a grievance procedure for dealing with a dispute under the rules between parties as mentioned in section 47A(1) of the Act.
2. To remove any doubt, it is declared that the grievance procedure can not be used by a person whose membership has been terminated if the rules provide for an appeal process against termination.
3. A member (the aggrieved party) initiates the grievance procedure in relation to the dispute by giving a notice in writing of the dispute: a) to the other party; and b) if the other party is not the management committee, to the management committee.
4. If 2 or more members initiate a grievance procedure in relation to the same subject matter, the management committee may deal with the disputes in a single process and the members must choose 1 of the members (also the aggrieved party) to represent the members in the grievance procedure.
5. Subject to rule 12B, the parties to the dispute must, in good faith, attempt to resolve the dispute.
6. If the parties to the dispute cannot resolve the dispute within 14 days after the aggrieved party initiates the grievance procedure, the aggrieved party may, within a further 21 days, ask the association's secretary to refer the dispute to mediation.
7. Subject to rule 12B, if the aggrieved party asks the association's secretary to refer the dispute to mediation under subrule (6), the management committee must refer the dispute within 14 days after the request.

### **12B Grievance procedure not continued in particular circumstances**

1. This rule applies if— a) a member initiates a grievance procedure in relation to a dispute and the association or association's management committee is the other party to the dispute; or b) the aggrieved party asks the association's secretary to refer the dispute to mediation under rule 12A(6).
2. The management committee does not have to act under rule 12A(5) or (7) if—
  - a) the aggrieved party has, within 21 days before initiating the grievance procedure, behaved in a way that would give the management committee grounds for taking disciplinary action under the rules against the aggrieved party in relation to the matter the subject of the grievance procedure; or
  - b) before the grievance procedure was initiated, a process had started to take action under the rules against the aggrieved party or terminate the aggrieved party's membership, as provided for under the rules, and the dispute relates to that process or to a matter relevant to that process; or
  - c) the dispute relates to an obligation under the Liquor Act 1992 or any other State law to prevent the entry of the aggrieved party to, or to remove the aggrieved party from, premises used by the association, or to refuse to serve liquor to the aggrieved party at the premises; or
  - d) the dispute could reasonably be considered frivolous, vexatious, misconceived, or lacking in substance or the dispute relates to a matter that has already been subject of the grievance procedure.

### **12C Appointment of mediator**

1. If a dispute under rule 12A is referred to mediation:
  - a) the parties to the dispute must choose a mediator to conduct the mediation; or
  - b) if the parties are unable to agree on the appointment of a mediator within 14 days after the dispute is referred to mediation, the mediator must be
    - i) for a dispute between a member and another member—a person appointed by the management committee; or

- ii) for a dispute between a member and the management committee or the association-an accredited mediator or a mediator appointed by the director of the dispute resolution centre.
2. An accredited mediator may refuse to be the mediator, or the director of a dispute resolution centre may refuse to appoint a mediator, to mediate the dispute.
3. If subrule (2) applies, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law. 1. If a mediator is appointed under rule

### **12D Conduct of mediation**

1. If a mediator is appointed under rule 12A, the mediator must start the mediation as soon as possible after the appointment and try to finish the mediation within 28 days after the appointment.
2. Subrule (1) does not apply if the mediator is the director of a dispute resolution centre.
3. The mediator—
- a) must give each party to the dispute an opportunity to be heard on the matter the subject of the dispute; and
  - b) must comply with natural justice; and
  - c) must not act as an adjudicator or arbitrator; and d) during the mediation, may see the parties, with or without their representatives, together or separately.
4. The parties to the dispute must act reasonably and genuinely in the mediation and help the mediator to start and finish the mediation within the time required under subrule (1)
5. The costs of the mediation, if any, are to be shared equally between the parties unless otherwise agreed.
6. If the mediator can not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

### **12E Representation for grievance procedure**

1. A party to a dispute may appoint any person to act on behalf of the party in the grievance procedure. 2. If a party appoints a person under subrule (1) to be the party's representative, the party must give written notice of the appointment to each of the following entities—
- a) the other party to the dispute;
  - b) the management committee;
  - c) if a mediator has been appointed before the party appoints the representative—the mediator.
3. A representative who acts for a party at a mediation must—
- a) have sufficient knowledge of the matter the subject of the dispute to be able to represent the party effectively; and
  - b) be authorised to negotiate an agreement for the party.

### **12F Electronic communication for grievance procedure**

Any meeting or mediation session required under the grievance procedure may be conducted by electronic means if the parties to the dispute and, for a mediation, the mediator agrees.

## **Change 2:**

### **Qld Office of Fair Trading**

#### **Remuneration disclosure**

From 1 July 2024, all incorporated associations will need to disclose remuneration and other benefits at their annual general meeting (AGM), even if the amount to report is zero. This applies to benefits and remuneration given to management committee members, senior staff and their relatives.

Remuneration and benefits may be disclosed as the total value given to all persons, but must include the number of people who benefited. This requirement will provide greater transparency and accountability within associations and enable members to assess if remuneration and benefits paid to key individuals were an appropriate use of the association's resources.

Incorporated associations registered with the Australian Charities and Not-for-profits Commission who are exempt from submitting annual financial reports to OFT are not exempt from this requirement.

#### **How to disclose remuneration and benefits**

Your association must disclose remuneration and other benefits at its AGM in either:

- a document required by the Act to be presented at your AGM (e.g. your financial statements or the information you provide to the ACNC)
- a written remuneration statement for the financial year.
- If your association did not provide remuneration or other benefits, you can state this verbally, but it must be recorded in the AGM minutes.

**NOTE:** These topics should be an agenda item and members notified. The motion should be tabled at the meeting noting the direction group has taken.

### Change 3:

#### **ATO Income Tax Ruling Change - Does your not-for-profit need to pay income tax? ATO and ACNC**

There have been changes to the administration of not-for-profit organisations that self-assess as income tax exempt. If your not-for-profit organisation has charitable purposes, it cannot self-assess as income tax exempt. In order for it to be eligible for income tax exemption, it may need to register as a charity with the Australian Charities and Not-for-profits Commission (ACNC) and be endorsed by the Australian Taxation Office (ATO). You can find out more about income tax exemption for not-for-profits from the ATO.

#### *Charitable not-for-profits –*

Charitable not-for-profit organisations with an Australian Business Number (ABN) must:

- register as a charity with the ACNC, and
- be formally endorsed by the ATO
- to be income tax exempt.

If your organisation is charitable but does not register as a charity with the ACNC, it will be taxable, as it will not be eligible to self-assess as income tax exempt. If your organisation is a taxable not-for-profit, you may need to lodge an annual income tax return (or notify the ATO if a return is not necessary).

#### *Eligibility for charity registration*

To be eligible for charity registration, an organisation must:

- be not-for-profit
- have only charitable purposes that are for the public benefit
- not have any disqualifying purposes (which are engaging in, or promoting activities that are unlawful or contrary to public policy; and promoting or opposing a political party or candidate for political office)
- not be an individual, a political party or a government entity (for example, government departments, local government authorities and entities that are under government control)
- comply with the ACNC Governance Standards
- comply with the ACNC External Conduct Standards (if operating overseas).
- Your organisation must also have an Australian Business Number (ABN) with the right 'entity type' (see our guidance about legal structures for more information).

#### *Charitable purposes*

The definition of 'charitable' covers 12 charitable purposes.

Please read through the list of purposes below and how they correspond to the common types of not-for-profit organisations to see if your organisation has a recognised charitable purpose.

*The 12 charitable purposes set out in the Charities Act are:*

1. advancing health
2. advancing education
3. advancing social or public welfare
4. advancing religion
5. advancing culture
6. promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
7. promoting or protecting human rights
8. advancing the security or safety of Australia or the Australian public
9. preventing or relieving the suffering of animals
10. advancing the natural environment
11. other similar purposes 'beneficial to the general public', and
12. promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country (where that change furthers or opposes one or more of the purposes above).

*If you are unsure if your organisation's purposes align with one or more of these charitable purposes, you should examine its:*

- governing document (constitution or rules)
- activities
- history, and
- how it uses its funds.

**NOTE: This information is collated from the following website: [Review yourself.](#)**

Qld Office of Fair Trading

<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/law-changes/july-2024>

Australian Charities and Not-for-profits Commission

<https://www.acnc.gov.au/organisations-have-been-self-assessing-income-tax-exempt>

ATO

<https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/your-organisation/does-your-not-for-profit-need-to-pay-income-tax>