

PRIORITY CONSULTATION PAPER 1

GRIEVANCE PROCEDURE

Associations Incorporation Regulation 1999



22_190716



Contents

Introduction.....	2
Have your say.....	2
Privacy statement.....	3
Where to find the Amendment Act.....	3
Background.....	4
Purpose of this consultation.....	4
Context.....	4
Text of section 47A.....	5
Mediation versus arbitration.....	6
Specific issues for consideration.....	7
Using an existing grievance procedure external to the association’s rules.....	7
Interaction with disciplinary procedures.....	7
Additional protection for clubs licensed under the <i>Liquor Act 1992</i>	8
Proposed model rule grievance procedure.....	8
Overview: proposed model rule grievance procedure.....	8
Detail of proposed model rule grievance procedure.....	9
Application.....	9
Initiation Phase.....	9
Pre-Mediation.....	10
Mediation Phase.....	10
Timeframes that apply to the engagement of a mediator.....	11
Mediation process.....	11
Failure to resolve dispute by mediation.....	11
Meetings may be held electronically.....	11
Representation.....	11
Next steps.....	12

Introduction

On 16 June 2020, the Parliament of Queensland passed the *Associations Incorporation and Other Legislation Amendment Act 2020* (the Amendment Act). The intention of the Amendment Act, which included changes to the *Associations Incorporation Act 1981* and the *Collections Act 1966*, was to reduce red tape for the Queensland not-for-profit (NFP) sector and safeguard the internal governance of incorporated associations.

When Acts are made or amended, supporting regulations are generally created to define the finer detail of the laws enacted by the Parliament. For matters affecting incorporated associations, the relevant regulation is the Associations Incorporation Regulation 1999.

To support various reforms introduced by the Amendment Act, new regulations are required in the Associations Incorporation Regulation 1999 to provide the details of:

- the **model rule grievance procedure** that will apply by default to all incorporated associations (unless the incorporated association has its own compliant grievance procedure in its rules)
- how **remuneration and benefits** given to management committee members and senior officers (and their relatives) must be disclosed at an association's annual general meeting (AGM), and what information as to remuneration and benefits must be disclosed
- the **financial reporting requirements** under the Associations Incorporation Act and Collections Act, such as exemptions and other financial matters.

The Department of Justice and Attorney-General will be consulting on these and other matters affecting the Associations Incorporation Regulation.

This discussion paper deals with the **grievance procedure** requirement. For further background and discussion papers related to other aspects of the consultation, please visit [the Office of Fair Trading website](#).

Have your say

Submissions can be lodged by email or post at:

Email: nfpconsultation@justice.qld.gov.au

Mail: Not-for-profit subordinate legislation review discussion paper
Office of Regulatory Policy
Department of Justice and Attorney-General
Locked Bag 180
City East QLD 4002

Please include your name, organisation and contact details when making a submission.

Submissions are due by **12 September 2022**.

Privacy statement

Any personal information you include in your submission will be collected by the Department of Justice and Attorney-General (the Department) for the purpose of obtaining comment on this issue. Your submission may also be released to other government agencies as part of the consultation process. Submissions provided to the Department will be treated as public documents. This means that they may be published on the Department's website, together with the name and suburb of each person or entity making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in the submission. However, please note that all submissions may be subject to disclosure under the Right to Information Act 2009, and access to applications for submissions, including those marked confidential, will be determined in accordance with that Act.

If you have any questions regarding the handling of your personal information by the Department, please visit the department's website at: <https://www.justice.qld.gov.au/about-us/information-and-privacy>.

Where to find the Amendment Act

The Amendment Act, and the Acts it amended, can be found at the Queensland legislation website. While respondents are encouraged to view the legislation, it is not necessary to do so in order to participate in this consultation. You can access each Act using the below links:

[*Associations Incorporation and Other Legislation Amendment Act 2020*](#)

[*Associations Incorporation Act 1981*](#)

[*Collections Act 1966*](#)

If you have received this document in hard copy, you can find the Amendment Act and indicative reprints by typing the following link into the address bar of your internet browser:

<https://www.legislation.qld.gov.au/view/html/asmade/act-2020-017/lh>

Background

Purpose of this consultation

The *Associations Incorporation and Other Legislation Amendment Act 2020* (Amendment Act) requires incorporated associations to have a grievance procedure. The procedure may be set out in the association's rules. If it is, it must be compliant with a set of principles outlined at section 47A of the *Associations Incorporations Act 1981* (Associations Incorporation Act).

If the procedure is not set out in the association's rules, the association is taken to be using the model rule grievance procedure.

The purpose of this consultation is to identify a generic grievance procedure that can be inserted into the model rules. The model rules are prescribed at Schedule 4 of the Associations Incorporation Regulation 1999 (Associations Incorporation Regulation).

The model rules exist as default rules for incorporated associations as an alternative to developing their own rules.

The requirement that associations either have their own grievance procedure or observe the model rule grievance procedure ensures coverage across the sector, while also alleviating the burden on existing incorporated associations who do not wish to amend their rules in order to insert their own grievance procedure.

Accordingly, the intent of this consultation is to identify, for the model rules:

a default (model rule) grievance procedure consistent with the principles for a grievance procedure as defined at section 47A of the Associations Incorporation Act.

To assist the discussion, the Department has provided a proposed model rule grievance procedure below. The Department seeks comments on the proposed procedure's suitability, any necessary refinements, or a suitable alternative.

The Department also seeks views on how the rules of an association might recognise grievance procedures that are contained in documents external to the rules. This would allow associations to set down in their rules that they will abide by a grievance or dispute resolution process outlined by an external body (for example, a national affiliate that requires the association to abide by a specific procedure as a condition of membership). This aspect of the consultation is discussed below.

Context

Unlike the equivalent legislation of most other jurisdictions, Queensland's Associations Incorporation Act has not previously required incorporated associations to have a formal process for dealing with disputes regarding the application of the association's rules. While many associations have voluntarily adopted such a procedure, the practice is far from universal amongst associations incorporated in Queensland.

As a result, some association members may not be afforded the opportunity to engage with a dispute resolution mechanism within their association. The only recourse available to these members may be external adjudication by the Supreme Court as provided for under section 71 of the Associations Incorporation Act. Anecdotally, many aggrieved parties abandon disputes because they do not wish to engage with the expensive and legalistic process of making an application to the Supreme Court.

A grievance procedure presents many benefits for associations and their members:

- It allows disputes within associations to be resolved internally via a process that is intended to be fair to all parties, with external intervention a last resort.
- It provides a far more accessible avenue to potential resolution than the Supreme Court.

- It allows aggrieved parties to be heard early in the process and can prevent disputes from developing into more damaging or time-consuming matters.
- It provides a process that may overcome the heightened tension of the parties in dispute.
- It may facilitate more open communication and improve relationships between the parties.
- It allows associations to demonstrate to members that grievances have been handled appropriately.

Previous public consultation has indicated that incorporated associations require the flexibility to develop grievance procedures that suit their own unique purposes, having regard to such things as their objects, the size of their membership, and their means.

In order to provide the necessary flexibility while still ensuring that grievance procedures implemented by associations will be fair, the Amendment Act does not prescribe a specific grievance procedure and instead provides certain fundamental natural justice principles with which a grievance procedure must comply.

Text of section 47A

The principles with which a grievance procedure must comply are outlined in the following full text of section 47A. To summarise section 47A, the procedure:

- **must** address mediation and **may** provide for a person to decide the outcome of the dispute
- requires the mediator, and any person optionally engaged to decide the outcome of the dispute, to be unbiased
- must allow the complainant association member to appoint any person to act on their behalf in the grievance procedure
- must provide each party to the dispute an opportunity to be heard.

Additionally, disciplinary action may not be taken against the complainant member or their representative in relation to the same matter that is the subject of the grievance procedure until the grievance procedure has been completed.

Aggrieved parties will be required to take all reasonable steps to observe the grievance procedure before applying to the Supreme Court for the enforcement of their rights under the association's rules.¹

Full text of section 47A

Please note: *This text provides the principles with which the model rule grievance procedure must comply. This consultation does not seek or contemplate changes to this text. Comments are sought on a model rule grievance procedure that meets the requirements outlined here. For the proposed model rule grievance procedure, see relevant section below.*

47A Grievance procedure

- (1) The rules of an incorporated association may set out a grievance procedure for dealing with any dispute under the rules between—
 - (a) a member and another member; or
 - (b) a member and the management committee; or
 - (c) a member and the association.
- (2) The grievance procedure must include mediation and may provide for a person to decide the outcome of the dispute.

¹ The Amendment Act has amended section 72 of the Associations Incorporation Act to this effect.

- (3) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (4) In applying the grievance procedure, the association must ensure that—
 - (a) each party to the dispute has been given an opportunity to be heard on the matter the subject of the dispute; and
 - (b) the mediator, and any person engaged under the rules to decide the outcome of the dispute, is unbiased.
- (5) If a member has initiated a grievance procedure in relation to a dispute between the member and the association, the association must not take disciplinary action against any of the following persons in relation to the matter the subject of the grievance procedure until the grievance procedure has been completed—
 - (a) the member who initiated the grievance procedure (the complainant member);
 - (b) a member of the association appointed by the complainant member under subsection (3) to act on behalf of the complainant member in the grievance procedure.
- (6) If the rules of an incorporated association do not set out a grievance procedure that is consistent with subsections (2), (3), (4) and (5), the rules of the association are taken to include the provisions of the model rules providing for the grievance procedure.
- (7) To remove any doubt, it is declared that subsection (6) applies even if the rules of an incorporated association provide, as permitted under section 47(3), that section 47(1) does not apply.²

Mediation versus arbitration

In accordance with section 47A, the grievance procedure adopted by incorporated associations must include mediation.

It is important to note that section 47A does not require all disputes within associations to go to mediation. Best practice would suggest that parties are first given the opportunity to resolve the dispute in good faith amongst themselves, with mediation only required if these initial discussions failed to resolve the matter.

It is also important to note that mediation is a process whereby disputing parties meet in the presence of an unbiased and independent person (the mediator). At the meeting, the mediator will attempt to guide the parties to a mutually acceptable agreement.

While the mediator guides the discussion, it is the disputing parties, rather than the mediator, who will determine the outcome of the process and, if possible, the resolution of the dispute.

Mediation therefore differs from arbitration, in which both sides of a dispute present arguments and evidence to an arbitrator, who makes a (generally binding) determination on the matter.

Section 47A **does not require** an incorporated association's grievance procedure to provide for arbitration. However, it does provide that if a person is appointed to determine the outcome of the dispute (that is, to arbitrate), the person must be unbiased.

² Subsection 47(1) of the Associations Incorporation Act provides that the model rules apply in situations where an association's rules are silent on a matter that is addressed in the model rules. However, as provided in subsection 47(3), an association's rules may state that this subsection does not apply to the association. The purpose of subsection 47A(7) is to safeguard against associations that do not have a grievance procedure in their rules from using subsection 47(3) to ensure the requirement to observe the model rules grievance procedure does not apply to them.

Specific issues for consideration

Prior consultation on section 47A has indicated a number of issues that need to be addressed in the development of a grievance procedure. Those issues are discussed below.

Using an existing grievance procedure external to the association's rules

Some associations are already obligated to observe grievance or dispute resolution procedures due to their membership of national or international bodies, or for other reasons. These procedures are generally external to the association's rules, but may be attached to, or referenced in, the rules.

It is considered that the requirements of section 47A can be met if the rules of an incorporated association set out that the association will observe a particular grievance procedure that is specifically *referenced* in the rules. This approach would have the advantages of not requiring associations to:

- import the entire detail of an external grievance procedure into their rules
- lodge changes to their rules when the external grievance procedure changes.

Subject to drafting conventions and stakeholder views, it is proposed that Schedule 3 of the Associations Incorporation Regulation (Matters for Rules) could include a requirement that the rules of an association must include, if the association has its own grievance procedure:

- the association's grievance procedure for section 47A of the Act, or
- the identification of an external procedure that is compliant with section 47A of the Act as the association's grievance procedure.

Consideration should also be given as to whether additional criteria should be applied to the use of an external grievance procedure by an incorporated association. For example, it is suggested that an external dispute resolution or grievance procedure would be appropriate for identification in the rules of a particular association if the procedure is compliant with section 47A **and** the association has either:

- an obligation to follow it in its dealing with (or between) members (for example through the association's membership of a parent body)
- adopted it voluntarily and it is both:
 - relevant to the association
 - maintained by a legitimate existing external entity.

These requirements could be a consideration for the chief executive in the approval of rules that involve external grievance procedures.

Interaction with disciplinary procedures

Section 47A provides that an incorporated association must not take disciplinary action against a person who has initiated a grievance procedure, or the person's representative, regarding the matter that is the subject of the dispute. This provision is intended to protect members who engage the grievance procedure and ensure that they cannot be punished for raising a dispute.

Some stakeholders have raised concerns that a member may use this protection as a form of "immunity" from disciplinary action (for example, by lodging a dispute when it becomes apparent that disciplinary action is ensuing from something the member has done).

In terms of the model rule grievance procedure, it is suggested that this issue can be substantially dealt with through the rules providing for the commencement of the grievance procedure.

For example, a rule could provide that the grievance procedure may not be initiated by a person who is the subject of an unresolved disciplinary procedure (including a procedure to determine whether the person's membership should be cancelled and related appeal processes) in regard to the matter that

is the subject of the dispute. The disciplinary procedure would need to be resolved before the grievance procedure can be initiated, as would any appeal procedure under the rules.

A proposal to this effect is outlined in the proposed model below.

Additional protection for clubs licensed under the *Liquor Act 1992*

Some stakeholders have also raised concerns regarding the possibility of a person invoking the grievance procedure as a means of avoiding removal from the licensed premises of an incorporated association of which the person is a member. They are concerned that persons directed to leave, or refused entry, to licensed premises could use the grievance procedure to remain on or enter the premises.

It is unlikely that the rules of an incorporated association could be deemed to take precedence over a licensee's obligations under the *Liquor Act 1992*. However, clarification of this matter in the grievance procedure may assist licensees to fulfil their obligations under the Liquor Act without fear of a grievance under these circumstances.

Proposed model rule grievance procedure

Overview: proposed model rule grievance procedure

Please note: The procedure proposed below (once refined through consultation) would apply to:

- associations that do not have a grievance procedure in their rules; and
- associations that adopt the model rules after the inclusion of the model rule grievance procedure.

Associations that have their own compliant grievance procedure defined in their rules, including through a reference to a compliant external grievance procedure that the association will observe, will follow that procedure rather than the model rule grievance procedure.

Respondents are reminded that the proposed model rule grievance procedure must be suitable for **all** incorporated associations, regardless of their size, and need not take into account specific needs of particular associations.

General views are sought on the suitability of the proposed grievance procedure for this purpose.

The procedure would ideally find the balance between appropriate good governance practices and demands on the time and commitment of management committee members.

Examples of comparable procedures from other jurisdictions may be found as follows:

- [Western Australia's model dispute resolution process](#) – see Part 4 Division 3 from page 10
- [Victoria's model grievance procedure](#) – see Part 3 Division 3 from page 36

Ideally, Queensland's default process should be no more complex than these examples.

The proposed model rule grievance procedure entails that:

- if an aggrieved party wishes to engage the grievance procedure, they may do so by advising the other party in writing. The grievance procedure may not be engaged by a person who is the subject of disciplinary action about a matter related to the disciplinary action
- the parties must then attempt to resolve the dispute between themselves. If the dispute cannot be resolved within 14 business days, the aggrieved party may, within the next 14 business days, advise the secretary that the matter is to proceed to mediation
- a mediator must then be engaged
- mediation must occur within 28 business days of the mediator's engagement (except where stated below).

Please note: The timeframes outlined above reflect that the majority of management committee members are volunteers who are already giving significant time to the association.

While it is acknowledged that some associations may require disputes to be resolved urgently, those associations should consider developing their own rules to provide a grievance procedure that addresses their needs.

The proposal is described in further detail, with queries and discussion points, below.

Detail of proposed model rule grievance procedure

Please note: The below is **intended to reflect the intent, but not the proposed language, of the model rule provisions**. The Office of the Queensland Parliamentary Counsel is solely responsible for the language of the proposed provisions and will draft the final provisions in accordance with prevailing drafting standards.

Application

1. The grievance procedure applies to disputes under these rules between:
 - a member and another member
 - a member or former member and the management committee
 - a member or former member and the association.

Initiation Phase

2. The aggrieved party may initiate the grievance procedure by advising the other party of the dispute in writing. If the other party is the association or the management committee (as opposed to another member or a member of the management committee), the advice must be provided to the secretary.

Please note: The requirement to advise the other party in writing is for evidentiary purposes. For the model rule grievance procedure, email will suffice.³

3. However, a member may not initiate the procedure if:
 - there is currently a process underway to discipline the member or terminate the member's membership, as provided for in the association's rules, and the dispute relates to that process or to a matter relevant to that process.

³ The *Acts Interpretation Act 1954* defines writing to include any mode of representing or reproducing words in a visible form.

- there is evidence the management committee has become aware of grounds for disciplinary action or termination of the member's membership, as stated in the rules, and
 - the management committee is considering but has not yet formally determined whether to commence a disciplinary or termination procedure and
 - the dispute is related to the matter that would form grounds for the disciplinary action (including any interim immediate action taken by the association in response to the matter).

Questions

1. Where a person attempts to initiate the grievance procedure, but the management committee is aware of grounds for disciplinary action, should the management committee be required to decide whether or not to act on those grounds within a certain timeframe?

4. Subrule (3) applies to the member until the completion of the disciplinary or termination procedure (including any disciplinary or termination procedure arising from the management committee's consideration of grounds for disciplinary or termination action), and any associated appeal provisions provided for in these rules.
5. A member may also not initiate the procedure relating to:
 - the member being refused service, asked to leave, or refused entry to, any premises of the incorporated association that is licensed under, or the subject of a permit issued under, the *Liquor Act 1992*
 - a matter for which the parties have already undergone mediation, or a matter substantially related to or substantially similar to such a matter.
6. An ex-member of the association may initiate the grievance procedure only in relation to the execution of the rules providing for the disciplinary or termination procedure under which the member's membership was cancelled.

Pre-Mediation

7. The parties to a dispute initiated under subrule (1) must then attempt to resolve the dispute between themselves in good faith.
8. If the dispute has not been resolved within 14 business days of the dispute coming to the attention of both parties, including through one party's refusal to discuss the matter, the matter must proceed to the mediation phase.

Mediation Phase

9. If the parties to a dispute are unable to resolve the dispute between themselves within the time required by subrule (8), the aggrieved party must, within 14 business days, advise the association's secretary that the aggrieved party wishes to take the matter to mediation. If the dispute is between a member and another member, the aggrieved party must also advise the management committee of:
 - the parties to the dispute
 - the matters that are the subject of the dispute, and
 - the attempts made by the parties to resolve the dispute in accordance with subrule (4).
10. The management committee must ensure the matter is referred to mediation.

11. The mediator must be:
- a person appointed by agreement between the parties
 - in the absence of agreement:
 - if the dispute is between a member and another member—a person appointed by the management committee, or
 - if the dispute is between a member and the management committee or the association—an accredited mediator, or the Director, Dispute Resolution Centre.
12. A mediator appointed by the agreement of the parties or by the management committee may be (but does not have to be) a member or former member of the association. In no circumstances will the mediator be someone who:
- has a personal interest in the dispute, or
 - is biased in favour of or against any party.

Timeframes that apply to the engagement of a mediator

13. Mediation must occur within 28 business days of the appointment of the mediator. However, if the mediation is referred to the Director, Dispute Resolution Centre, the mediation must occur on the date identified by the Dispute Resolution Centre (including as amended by the Dispute Resolution Centre).

Mediation process

14. The mediator to the dispute, in conducting the mediation, must:
- give each party every opportunity to be heard; and
 - allow due consideration by all parties of any written statement submitted by any party; and
 - ensure that natural justice is accorded to the parties throughout the mediation process.
15. The mediator must not determine the dispute.

Please note: The purpose of mediation is to guide disputing parties to a mutually acceptable outcome.

Failure to resolve dispute by mediation

16. If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

Meetings may be held electronically

17. Any meeting or mediation session required by this grievance procedure may be conducted remotely by electronic means if agreed to by the parties and (where relevant) the mediator.

Representation

18. A party to a dispute may choose another person to represent them in any matter relating to this grievance procedure. The nomination is to be provided in writing to the other party, the management committee and, if relevant at the time the person consents to be the representative, the mediator.
19. A representative attending a mediation must have knowledge of the dispute, be able to reflect the party's interests and concerns in the dispute, and be authorised to negotiate an agreement.

Next steps

The relevant amendments to the Associations Incorporations Act commenced on 22 June 2022. However, the amendments will not have practical effect until a model rule grievance procedure is prescribed in the Associations Incorporation Regulation.

The Department will refine the proposed model rule grievance procedure based on the results of this consultation.

The model rules grievance procedure will apply by default to all incorporated associations that do not make their own grievance procedure rule. Sufficient time will be provided for associations to determine their preferred approach prior to the formal commencement of the model rules.