

PRIORITY CONSULTATION PAPER 2

# DISCLOSURE OF REMUNERATION

Associations Incorporation Regulation 1999



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## 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 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 **disclosure of remuneration**. 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](mailto: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 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 on 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. For interested parties, links are provided as follows:

[\*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

Previous public consultation on associations incorporation legislation resulted in support for the disclosure of remuneration paid to management committee members.<sup>1</sup> A disclosure requirement is also consistent with general governance advice provided to the Not-for-profit (NFP) sector in publications released by a number of organisations including the Australian Institute of Company Directors (AICD), Certified Practising Accountants (CPA), and the Australian Charities and Not-for-profits Commission (ACNC).

Accordingly, the *Associations Incorporation and Other Legislation Amendment Act 2020* (Amendment Act) inserted a new section 70D into the Associations Incorporation Act to provide for the disclosure of certain details regarding how committee members are remunerated.

As a result, management committees will be required to ensure that details of the remuneration or other benefits given to certain people are disclosed at the association's annual general meeting (AGM). The details of what exactly must be disclosed, and details of the way in which the information is to be presented to the AGM, are to be prescribed in the Regulation. The requirement will apply from the date on which the Regulation commences.

#### Full text of section 70D

**Please note:** This provision of the Associations Incorporation Act 1981 cannot be changed or contradicted by the Regulation. Consultation concerns what is to be prescribed in the Regulation to support section 70D.

#### 70D Disclosure of remuneration and other benefits

(1) The members of the management committee of an incorporated association must ensure the **prescribed details** of the remuneration paid or other benefits given for the financial year to the following persons, if any, is presented to the association's annual general meeting **in the way prescribed by regulation**—

- (a) each member of the management committee of the association;
- (b) each senior staff member of the association;
- (c) each relative of a person mentioned in paragraph (a) or (b).

Maximum penalty for each member of the management committee—10 penalty units.

(2) In this section—

**relative**, of a person, means a spouse<sup>2</sup>, parent, sibling, child, grandparent or grandchild of the person.

**remuneration**—

- (a) includes salary, allowances and other entitlements; and
- (b) does not include reimbursement of out of pocket expenses.

**senior staff member**, of an incorporated association, means a person who—

- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the activities of the association; or
- (b) has the capacity to significantly affect the association's financial standing.

<sup>1</sup> Through the 2010 consultation paper *Possible Changes to the Associations Incorporation Act 1981 and the Associations Incorporation Regulation 1999* and the 2012 consultation paper *Supporting Queensland Associations: A Modern Framework for Civil Society*.

<sup>2</sup> The *Acts Interpretation Act 1954* (Qld) defines spouse to include de facto partner and civil partner.

## Discussion

The obligation to disclose remuneration is intended to facilitate greater transparency and accountability within associations. It will provide association members who are not on the management committee with the information necessary to determine whether the remuneration and benefits given to key people are an appropriate use of the association's resources.

The requirement does not undermine the fact that some committee members and senior staff who are engaged for their expertise or on a full-time basis, may clearly be deserving of remuneration as determined in accordance with the association's needs, means and values.

There are indications that only around 19% of directors within the Australian NFP sector are remunerated, and that these directors are most likely to be engaged by larger organisations. The AICD's *NFP Governance and Performance Study 2019* indicated that only 1% of NFPs with turnover of less than \$1M remunerated directors, compared to 45% of NFPs with turnover above \$10M. The study also recorded views that the responsibilities of NFP board members are increasing, potentially beyond what could reasonably be expected of volunteers.

Disclosure requirements may therefore become even more relevant over time. They may also make some association members more open to the idea of remunerating committee members, thus making remuneration a more appealing method of attracting more experienced people to the role or potentially rewarding committee members for their performance.

It is important, however, to consider the detail of how disclosure requirements are prescribed in the Associations Incorporation Regulation. If the requirements for remuneration are too prescriptive or too exhaustive, they may create unnecessary regulatory burden for management committee members. Burdensome or intrusive disclosure requirements may also dissuade potential candidates from nominating for a position on a management committee.

On the other hand, if the requirements are too loosely defined, members and management committees will be uncertain about whether the obligation under the new section 70D has been met, and the transparency intended through the insertion of section 70D may not be achieved.

### **Matters for the regulation**

The Associations Incorporation Regulation is required to prescribe for section 70D:

- what details of the remuneration and benefits must be disclosed; and
- how the details are to be presented to the AGM.

LGFT seeks views on those details.

The Regulation cannot provide for changes to section 70D

## What details of the remuneration and benefits must be disclosed?

### Defining remuneration and benefits

For the purposes of section 70D, remuneration is considered to capture:

- salary, wages and allowances
- commissions and rewards.

Benefits are broader and may include:

- termination and post-employment benefits paid by the association, including retirement benefits
- payment of membership fees by the association, or waiver of membership fees
- payment of personal insurance premiums by the association

- use of the association’s services or property for private purposes – e.g. a motor vehicle, house, office or secretarial services (for free or at a discounted rate)
- education fees paid by the association
- medical fees paid by the association
- rental expenses
- personal travel expenses including airfares
- a gift paid for with the funds of the association (but not including, for example, a gift paid for by a collection from members for the specific and stated purpose of providing the gift)
- utilities and other general household expenses paid by the association, and
- benefits from related-party transactions.

### Questions

1. Broadly, are there any other things that might be considered remuneration or benefits that are not listed above?
2. Are there considerations around any of the remuneration or particular benefits listed above (or any other benefits) that should prevent their disclosure?

## Disclosure requirements

### Salary, wages, allowances, bonuses and rewards

The intent of the disclosure requirement is to inform members as to how the association’s money is being spent. Factoring in the considerations outlined in the preceding discussion, there are multiple viewpoints as to how appropriate disclosure is best achieved.

For the principal consideration of disclosure of salary, wages, allowances, bonuses and rewards, there appears to be two options:

- aggregated reporting, where remuneration paid to committee members would be reported as a single lump sum figure, with similar aggregated figures reported for senior staff and relatives, or
- individualised reporting, where remuneration paid to specific individuals is disclosed.

Examples are provided within the discussion below.

### Aggregated reporting

The main benefit of aggregate reporting is that it balances issues of privacy and regulatory burden while ensuring the basic intention of the provisions are met. However, it could be argued that aggregate reporting does not provide sufficient information to enable members to adequately assess how the association’s money is being spent. An example of an aggregated disclosure statement would be:

*For the period 1 July 2022 to 30 June 2023, a total of \$116,000 was paid to management committee members in salary/wages. A further \$320,000 was paid to senior staff. A total of \$24,200 was paid to the relative of a committee member who is employed at award rates at the bar in a part-time capacity.*

### Individualised reporting

In contrast, individual reporting provides members with a high level of detail that easily allows them to see exactly what amount of association funds are being spent on remuneration and benefits. However, management committee members and senior staff may consider individualised reporting an

inappropriate intrusion into their personal affairs. An example of individualised disclosure, for management committee members, is as follows:

*For the period 1 July 2022 to 30 June 2023, the following was paid in salary and wages:*

<i>B Dickinson</i>	<i>President</i>	<i>\$60,000</i>
<i>S Harris</i>	<i>Treasurer</i>	<i>\$20,000</i>
<i>D Murray</i>	<i>Secretary</i>	<i>\$25,000</i>
<i>N McBrain</i>	<i>Committee Member</i>	<i>\$11,000</i>

*Mr Harris was paid a performance bonus of \$5,000 for reaching contractual milestones.*

### Comparators and considerations

There is a wide divergence in views regarding whether or not the disclosure of salary, wages, allowances, bonuses and rewards should be aggregated or individualised. The following considerations and comparators may be relevant to respondents' considerations:

- The ACNC will be requiring *large* charities (defined as those with annual revenue above \$3M) whose key management personnel include more than one individual to disclose remuneration on an aggregate basis. However, Queensland's disclosure requirements are universal and cannot be applied solely to large and/or ACNC-registered associations.
- Publicly listed companies are required to present a remuneration report to shareholders at every annual general meeting showing the board's policies for determining the nature and amount of remuneration paid to key management personnel (which includes any director). Remuneration details are to be listed for each relevant individual. While it might be considered that management committees are accountable to members in the same way that directors of listed companies are accountable to shareholders, it might also be considered that incorporation is intended as a lower cost/lower burden method of obtaining corporate identity.
- Any disclosure requirement prescribed for section 70D will be a minimum standard. If aggregate disclosure were to be prescribed as the requirement in regulation, associations would still be free to require more complete voluntary disclosures (such as individualised disclosure) through their rules or by other methods if desired by members or required by the association's specific circumstances. Were individualised disclosure to be prescribed as the requirement in regulation, however, associations could *not* elect to provide aggregate disclosures to the AGM, as this would not meet the minimum standard.

#### Questions

3. Should disclosure of salary, wages, bonuses and allowances be on an aggregate basis or an individualised basis?
4. If aggregated, is there a view that bonuses and rewards should nevertheless be disclosed on an individualised basis given these are likely to be of significant interest to the association's members?
5. Are there any other options, or any other matters that should be taken into account when considering individualised or aggregated disclosure?

### Benefits

Unlike salary, wages and allowances, which should be relatively simple transactions, benefits may take many forms and are not always straightforward. For example, the use of the association's car could be a benefit to an individual depending on the circumstances of its use.



A management committee member who uses the association's car to do the association's work is not receiving a benefit. A management committee member who personally pays for the petrol needed to do that work, and is then reimbursed by the association, also does not receive a benefit.

However, a management committee member who is provided a car by the association on the understanding that the car will be used for both the committee member's personal needs and to allow the committee member to do the work of the association *is* receiving a benefit and the estimated cost to the association of that benefit would need to be disclosed. The disclosure need only relate to the *estimated* value of the committee member's personal use of the car.

It may be difficult to see how an aggregate recording of benefits of this nature could give a meaningful or accurate indication of the nature or value of the benefit received by committee members. A disclosure that simply stated \$5,000 in benefits were paid by the association would not, for example, identify to members potentially problematic conduct such as the use of association funds to pay for personal phone bills, or the costs of accommodating a committee member's relative in association funded accommodation.

It is therefore uncertain whether aggregate disclosure of benefits presents any value to the association. Accordingly, in respect of benefits, respondents are asked to consider whether disclosure of benefits should involve:

- identification of who received the benefit
- details of what the benefit was, and
- the costs incurred by the association in providing the benefit.

An example of such individualised disclosure is as below:

*The association incurred the following costs in providing benefits to committee members:*

• <i>Personal use of association's motor vehicle - S Harris</i>	\$320
• <i>Personal use of office equipment - D Murray</i>	\$50
• <i>Use of association-owned property for accommodation - B Dickinson</i>	\$3,250

### Potential for a benefit disclosure threshold

Consideration should also be given to whether the disclosure of benefits should only be required in circumstances where the amount or monetary value of the benefit is over a particular threshold.

To illustrate, a disclosure threshold already exists at section 305 of the *Gaming Machine Act 1991*. Section 305 requires category 2 (club) licensees to give to the commissioner a statement of benefits provided by the licensee to particular persons. The statement must include the name of the person to whom the benefit is given, the nature of the benefit, and the amount or monetary value of the benefit. However, disclosure is only required **if** the total amount or monetary value of the benefit is more than \$1,000.<sup>3</sup>

A disclosure threshold for benefits would reduce the burden for incorporated associations and ensure that the association did not need to keep tabs, for example, on every free pie and lemonade that a management committee member received while volunteering in the canteen (along with other non-committee volunteers who received the same benefit).

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<sup>3</sup> The amount of \$1,000 is prescribed under section 46A of the Gaming Machine Regulation 2002 (Qld) pursuant to section 305(7) of the *Gaming Machine Act 1991* (Qld).

On the other hand, a benefits disclosure threshold could also allow potential exploitation – for example, a bar tab for committee members could be run up to the value of \$1,000 and charged to the association without a disclosure requirement. In arriving at a balanced view on this matter, it should be noted that:

- any provision of money or funds directly to a person could be exempt from the benefits threshold, and
- associations have the ability to implement their own controls around the issue of benefits.

**Please note:** The disclosure requirement will not apply to any benefit that a relevant person is entitled to receive by virtue of their membership of the association.

### Questions

6. Do you support the reporting of benefits in the individualised manner referred to above? If not, what other options might be considered?
7. Should there be a disclosure threshold for benefits, and if so, what should it be?

### Related-party transactions

It is expected that *any* transaction that results in a benefit to a person referred to in section 70D(1) at a cost to the association should be disclosed to the membership. This approach captures a range of related-party transactions, for example:

- contracts for equipment or services that the association enters into with a management committee member, a relative of a management committee member, or a company of which the management committee member (or relative) is a director
- leases or rental contracts that the association enters into with a landlord who is a management committee member, a relative of a management committee member, or a company of which the management committee member (or relative) is a director.

It is acknowledged that arrangements of this nature often arise through the connections of the association's membership, including those of members serving on the management committee. Products and services obtained through these transactions may therefore represent excellent and otherwise unobtainable value for the association and it is not suggested that related-party transactions within associations are uniformly inappropriate.

However, related-party transactions carry the inherent risk of conflict of interest. Management committee members are required to disclose conflicts of interest during decision-making processes in accordance with section 70B of the Associations Incorporation Act.

Accordingly, associations should still ensure that related-party transactions are maintained and monitored with the utmost transparency. It is therefore proposed that the details of what must be disclosed for section 70D should include related-party transactions.

It is further proposed that to be of any benefit, disclosure of related-party transactions would need to provide the detail of the transaction, including:

- the identity of the management committee member, senior staff member or relative with whom the related-party transaction is entered
- the annual amount paid for the transaction by the association, and
- what the transaction provides the association.

Management committees would not be prevented from also stating the benefits that the arrangement provides to the association when they make the disclosure. For example, they would be free, but not obligated, to disclose comparisons to the usual market rates that would apply if the service or product was sourced externally from an unrelated party.

Please note the following potentially relevant considerations:

- For the purposes of the disclosure requirements, employment contracts would not be considered related-party transactions. Remuneration arising from these contracts will however be captured by the basic disclosure requirements of section 70D.
- The Commonwealth Government has announced that from the 2022-23 financial year **all** ACNC-registered charities will be required to report related-party transactions in their annual reporting to the ACNC.

### Questions

8. Is the proposed level of disclosure for related-party transactions appropriate?
9. Are there any other considerations that need to be taken into account? For example, could the value of such arrangements be considered commercial-in-confidence? If so, are there any circumstances where a related-party transaction could be disclosed without a dollar value, along with a declaration that the consideration paid by the association is equivalent fair market value for the service (or better than fair market value)?

### How details must be disclosed to the AGM

The requirement of section 70D is that the prescribed details of remuneration must be disclosed to the association's AGM.

Broadly speaking, it would appear appropriate for the details of remuneration and benefits to be contained in a document describing the financial affairs of the association. Therefore, the logical place for the disclosure of remuneration may be in the association's annual financial statement.

This approach has an added benefit in that associations are already required to present their annual financial statement to the AGM. The requirement to include the prescribed details of remuneration and benefits in the annual financial statement could therefore leverage off the existing presentation requirement relating to the association's annual report.

Disclosure of remuneration and benefits in the annual financial statement would also potentially streamline the conduct of AGMs – for example, by not requiring a separate agenda item for the disclosure of remuneration and benefits, and by not requiring a separate document dealing with the disclosure of remuneration and benefits to be prepared. This would assist associations with compliance and would reduce the risk of the disclosure not being made. It would also ensure that remuneration requirements were subject to external verification by an accountant or auditor, were the financial statement required to be subjected to external verification.

### Effect of ACNC reporting exemption on disclosure of remuneration and benefits

An estimated 12% of Queensland's incorporated associations are exempt from preparing a financial statement to the definition and standards outlined in the Associations Incorporation Act by virtue of their ACNC registration.

ACNC-registered associations incorporated in Queensland are, despite their exemption from reporting to the Queensland Government, still required to present certain documents to the AGM. The relevant documents are prescribed in a regulation.<sup>4</sup> To ensure members of ACNC-registered Queensland associations remain appropriately informed of the association's financial standing, it is prescribed that the ACNC registrants must present the AGM with the information they have submitted or propose to submit to the ACNC.

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<sup>4</sup> See subsection 59B(2) of the Associations Incorporation Act.

While some of these exempt associations prepare a financial statement for the ACNC, other exempt associations are only required to complete the ACNC's annual information statement (AIS), which may not provide for disclosure of remuneration and benefits.

It is important to note that there is **no exemption** from the requirement to disclose remuneration and benefits to the AGM under section 70D. The requirement applies to all associations incorporated in Queensland, regardless of whether they are registered with the ACNC.

### A possible solution

To provide flexibility for all Queensland incorporated associations, it is suggested that incorporated associations could be allowed to disclose the prescribed information about remuneration and benefits to the AGM in *either* the annual financial statement **or** in a separate statement of remuneration and benefits. The separate statement of remuneration and benefits will accommodate ACNC registrants who are not required to prepare a financial statement. While there would be no requirement for the separate statement of remuneration and benefits to be provided to the Office of Fair Trading (OFT), the statement would be prescribed as a record that must be retained by the association<sup>5</sup> (if the information is not contained in its annual financial statement). This would allow the OFT to request the statement were there any allegations that the disclosure had not been made.

#### Questions

10. Is it appropriate for associations to have the option of making the necessary disclosure either within their annual financial statement, or in a separate statement of remuneration and benefits?
11. If the disclosure is made in a separate statement of remuneration and benefits, should the statement be subject to the same level of external professional verification (audit or review) that would apply to the association's financial report under the Associations Incorporation Act?

### Further considerations

#### ***Disclosure where there are no remuneration and benefits***

DJAG understands that the majority of incorporated associations will not have remuneration or benefits to disclose. This is particularly true of small associations.

It is considered a declaration or statement that no remuneration or benefits were paid would be good governance practice, particularly as it would assure the association the requirements of section 70D have been complied with. Alternatively, a prescribed requirement to disclose "no remuneration or benefits" could be seen as unnecessary burden on small associations, who would run the risk of non-compliance with the Act should they fail to observe such a procedural disclosure requirement.

#### Questions

12. Should management committees be required to make a formal statement or declaration that no remuneration or benefits were received by or paid to the relevant persons?
13. Could the statement or declaration that no remuneration or benefits were received be given verbally at the AGM (and recorded in the minutes) – at least for small associations?

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<sup>5</sup> For subsection 59(2) of the Associations Incorporation Act.

## Next Steps

The relevant amendments to the Associations Incorporations Act commenced on 22 June 2022. However, the amendments will not have practical effect until the details of remuneration that must be disclosed are prescribed in the Associations Incorporation Regulation. The Department will develop necessary amendments to the regulation based on the results of this consultation.