EDUCATION, EMPLOYMENT AND SMALL BUSINESS COMMITTEE

Members present:

Ms LM Linard MP (Chair)
Mr BM Saunders MP
Mrs SM Wilson MP
Mr N Dametto MP
Mr MP Healy MP

Staff present:

Ms E Jameson (Acting Committee Secretary)
Ms A Beem (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE ASSOCIATIONS INCORPORATION AND OTHER LEGISLATION AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 3 FEBRUARY 2020

Brisbane

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The committee met at 11.08 am.

L'BARROW, Mr Steve, Director Investigations and Enforcement, Office of Fair Trading, Department of Justice and Attorney-General

McKARZEL, Mr David, Executive Director, Office of Regulatory Policy, Department of Justice and Attorney-General

SCOTT, Mr Martin, Director Policy and Projects, Office of Regulatory Policy, Department of Justice and Attorney-General

THOMSON, Ms Victoria, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General

CHAIR: I now declare open the public briefing into the Associations Incorporation and Other Legislation Amendment Bill 2019. I welcome representatives from the Department of Justice and Attorney-General. Thank you for your written briefing on the bill and response to issues raised in submissions, which are available on the committee's web page. I invite you to provide a short briefing on any matters that may not have been covered in your written briefing, but as this is our first opportunity to have a briefing generally we are very appreciative of the comments and the information you give us here today, particularly given you have been privy to some of the comments that have been made today in the earlier hearing. That would be beneficial to us.

Ms Thomson: Thank you, Chair, for your invitation to provide the committee with a briefing on the Associations Incorporation and Other Legislation Amendment Bill 2019. Between 2010 and 2016 the Department of Justice and Attorney-General sought to canvass community consultation and opinion on potential changes to the Associations Incorporation Act 1981 and the Collections Act 1966. This occurred via the release of two public discussion papers and the establishment of a not-for-profit red tape review reference group with the aim of resolving a number of issues important to the not-for-profit sector deemed to be restricting that sector's ability to improve its efficiency and effectiveness.

Amendments arising from this consultation are contained in the Associations Incorporation and Other Legislation Amendment Bill 2019. The bill seeks to modernise certain parts of the Associations Incorporation Act and reduce the unnecessary regulatory burden for incorporated associations. It also progresses amendments to the Collections Act to the extent that these are necessary to achieve consistency with the proposed Associations Incorporation Act amendments. For example, the bill responds to the emergence of the Australian Charities and Not-for-profits Commission, the ACNC, into the regulatory environment by providing a framework under which ACNC registered entities can be exempt from state based reporting requirements. This is consistent with the trend towards national harmonisation for not-for-profit financial reporting requirements.

The bill also contains a number of proposals aimed at improving the internal governance of incorporated associations. Whilst we recognise the good work that associations do in the community, the Associations Incorporation Act currently contains no guidance as to the role of a committee member and their duties to the association. The importance of good governance in not-for-profit organisations has recently been highlighted by the 2017 inquiry into the New South Wales Returned Services League and related entities which found a lack of accountability and transparency, inappropriate use of funds and significant deficiencies in governance and financial controls. Needless to say, this presented a significant risk to the integrity of that organisation.

This bill seeks to improve the governance of incorporated associations in Queensland to reduce the likelihood of such issues emerging. Accordingly, the bill clarifies the role of an incorporated association's management committee through new obligations that require, for example, the disclosure of material personal interests and that officers exercise their powers and discharge their duties with care and diligence. Obligations of this nature are nothing new to the regulation of incorporated associations and exist in one form or another in associations incorporation legislation in most other jurisdictions.

The proposed obligations reflect general governance principles with which management committee members and office holders of associations would be expected to already adhere in accordance with community expectations. The requirement for incorporated associations to have a grievance procedure in their rules also seeks to improve the governance of incorporated associations. The reform is consistent with the philosophy that incorporated associations are independent, self-governing bodies and as such any disputes within the association should be resolved between the parties themselves, with external intervention a last resort.

To address a matter that has been raised in submissions, I can advise that the bill provides the grievance procedure must meet certain principles, such as enable a member to appoint any person to act on their behalf, to provide each party to the dispute with an opportunity to be heard and to provide for independent mediation if parties cannot come to an agreement. If the procedure provides for arbitration, the arbiter must be an unbiased party. Aside from these prescribed high-level principles, incorporated associations are free to determine the procedural mechanics by which they will meet these high-level principles. It is recognised that some parent associations require local level associations to follow an already established grievance procedure.

I note the Queensland Law Society's concerns from its submission to the committee that the bill may impede an association from adopting particular national or international procedures with which an association is to abide. However, it is intended that the local associations may simply refer to the parent association's grievance procedure in their rules, provided that the grievance procedure document meets the principles that I have just described. It is also intended that the provisions providing for grievance procedures will commence two years from assent. This will provide for the development, in consultation with the sector, of a grievance procedure for the model rules and will also provide incorporated associations with sufficient time to resolve any existing disputes and develop their own grievance procedures if they wish.

The bill proposes that associations that do not develop their own compliant grievance procedure will be compelled to follow the model rule grievance procedure. This approach is intended to ensure that all incorporated associations have a compliant grievance procedure whilst also easing the implementation burden for incorporated associations.

The bill also proposes to modernise the enforcement powers pertaining to the Associations Incorporation Act by applying the Fair Trading Inspectors Act 2014. This will provide inspectors with certain entry and seizure powers that they currently do not have. These powers are not out of step with those that are applied to incorporated associations in other jurisdictions and generally in Queensland legislation. It should also be noted that the Fair Trading Inspectors Act provides appropriate safeguards relating to entry powers including procedures that inspectors must follow when entering a place with consent. Additional entry powers will not apply to a place where a person resides.

Before I conclude, I would like to advise that many of the amendments contained in the bill require certain details to be prescribed in the Associations Incorporation Regulation. The department intends to consult on these details and on the regulation generally should the bill pass. I thank the chair for the opportunity to appear today. I am happy to answer any questions that the committee may have about the bill.

Mr DAMETTO: I thank the department for coming along this morning to provide that statement and give us a public briefing on the bill before the House. Most people who have submitted on the bill have been concerned about the lack of consultation with industry. Could you please speak to why the department has maybe skipped a step here and/or reduced the amount of time or the amount of stakeholder engagement before this bill was put together?

Ms Thomson: The majority of the proposals in the bill have arisen from that period of consultation. As I said before, some of the reforms were canvassed through an initial discussion paper released in 2010 and then subsequently in 2012. Consultation was refreshed through that not-for-profit review reference group that met four times between 2014 and 2016. Members of that group included the Queensland Law Society, the Queensland University of Technology, Clubs Queensland, the Brisbane City Council, and a number of charity representatives and government departments. The reference group did not meet to present a consensus view of recommendations but, as I said, those discussions informed the policy development. I will ask David McKarzel to further elaborate on the processes for public consultation and the development of the bill.

Mr McKarzel: Almost every provision in the bill, particularly in relation to the corporate governance requirements, was canvassed in one of the three processes that have occurred over the last several years. The difficulty that we face as policymakers is that there are differing views about whether or not certain things should happen and where the balance should lie. In some cases and

on some of the issues that have been raised there are differing views. The bill provides for a particular view. For instance, it provides for principles of a grievance procedure but does not prescribe a grievance procedure, whereas there would be stakeholders who would say, 'You should just put in a grievance procedure.'

What we tried to do is meld in the views of as many stakeholders as possible with some basic principles. One of the principles we tried to follow is that associations should be as free as practically possible to determine their own rules and to run their own associations. You will see that where there are issues where the bill does not necessarily reflect all of the stakeholders' views, often it is about the government having to come to a decision and strike a balance.

The priority in this reform space is that we are now the only state without the kind of corporate governance protections that exist in other states for associations of any kind. Just as importantly, the sector has been rightly out there publicly saying that they have dual reporting requirements between the state and the Australian Charities and Not-for-profits Commission. One of the things this bill does is give the government the power to make a regulation to remove that double reporting requirement. A number of the corporate governance issues have been acted on in the bill so as to give the public enough comfort so that, although reports will no longer be coming directly to the state government and will be going to the Commonwealth, there are additional protections in place for associations and their members and the funds they administer.

Mr DAMETTO: I want to go on the record that as a committee member I am concerned that the two large stakeholders, including the Queensland Law Society that just gave evidence, felt there was not enough public consultation on this bill before it was put together. It is good to have your response. Thank you very much.

Mr McKarzel: If the member is okay with me responding—

Mr DAMETTO: Of course.

Mr McKarzel:—the other issue I should have mentioned is that a lot of the bill provides powers for a regulation to be made in respect of a whole pile of matters. There will be a process, if the bill passes, to reform the Associations Incorporation Regulation. There will be full consultation on that along the lines that stakeholders have raised. As we know, the devil is in the detail. You will note that a lot of the bill is about the power or the ability for a regulation to provide for something. However, the detail will be in the regulations and/or the model rules, which is a schedule to the regulation. That will be a full process that I suspect will take most of this year to finish, if the bill passes.

Mr HEALY: David, thank you for that. That certainly does clarify one of my questions, which was very similar to the one that Nick asked. You say that we have not covered off in a few areas and that we have left that open. Does that not leave the interpretation open? No-one wants to be overgoverned and we try to put guidelines in place, but it is a very fine line. Does that create issues? I know you almost answered that in your last response.

Mr McKarzel: It is a balancing act, particularly in relation to the grievance procedure. There was a temptation for the government to just say, 'Okay, here is the grievance procedure. You will follow it,' and that is it. What the bill provides is a set of principles against which an association, if it wants to adopt its parent company's code of conduct in respect of a grievance procedure or wants to develop its own—remembering that a change to that association's rules would require a special resolution at the AGM with two-thirds majority. As long as the grievance procedure meets those principles that are in the act, it will reflect the size, the activity of the association, the values of the association, what they care about and what is reasonable, whether they are big or small, or the kind of activity for which the people have come together in that association.

Mr HEALY: There are guidelines there; it is just—

Ms Thomson: Correct.

Mr HEALY:—fitting them in.

Mr McKarzel: Yes. The other issue is that we have tried to make it as easy as possible. If you are an association that does not want to worry yourself about creating a grievance procedure, we will have model rules outlining the grievance procedure which we will consult on in detail as part of the consultation on the regulation that I referred to earlier. If you are an association and you do not take any action on the grievance procedure issue, the model rules grievance procedure will become your—

Mr HEALY: That will be the standard?

Mr McKarzel: Yes.

Mr HEALY: Without any significant disruption—

Mr McKarzel: You will not have to do anything; that will be the default process. However, you get a say in that process when you engage in the consultation process, which we have to finish by the end of the year.

Mr HEALY: Victoria, I know you were sitting here earlier when the other parties were presenting. There was a document waved around and some concern that it was released and then it was not seen again. Can you speak to me about that? Was that meant to go back out there? Has there been a misinterpretation? I know there are non-vested interests here who want the best outcomes. I appreciate the job you do. You are probably one step above us in relation to the jobs we have, but it is about finding that fine line. That does not make sense; I will have to go back and change that one. Where was that document going? Was it to go back out?

Ms Thomson: I have only been in the position for some total of three months and unfortunately I do not have the history with the consultation process, but my colleagues here may be able to add a little bit more detail. If the committee would think it useful, I can also come back to the committee with some more detail around the consultation process.

Mr HEALY: It was mainly about that particular document, because that was a specific point of reference. Your opening statement belies the fact that you have been there for such a short time. It was a wonderful opening statement.

Ms Thomson: Thank you. I will reiterate what David McKarzel has said. There will be an absolute commitment to the ongoing consultation around the detail. What this bill seeks to do is set those high-level principle levels. The fundamental philosophy around this is that they are independent, self-governing bodies. We understand, as the Queensland Law Society said, that you have some very small and some very large associations. Again, there is no one-size-fits-all approach to this.

I cannot speak to that paper; I will have to throw that to David or Martin. In terms of the consultation moving forward, that certainly is something we will be consulting heavily on so that we do get a model that is fit for purpose, that people can work within given the nature of their associations, that they can govern themselves and actually own it rather than having the government bestow it on them.

Mr McKarzel: The particular issue that Myles raised—and I am not trying to dodge this—does predate me. I do not rule out that it was possible there may have been an offer to put a further draft out. Having said that, I do not recall anything further than that. If it did not go out, that is regrettable. As part of Victoria's offer to provide you with the whole background to our consultation, we can confirm what has actually happened there.

Suffice it to say, I do not think the draft document that Myles had is very far off the actual views of the relevant stakeholders. Some of the things that the stakeholders have been saying about where they do not like the detail are yet to be discussed via the regulation and the model rules. I do not think the broad framework about the idea of getting rid of duplicative reporting, having a grievance procedure available and having some basic corporate governance that exists in all the other states and territories is significantly in dispute. Effectively, the bill gives the government the power to do that but it is prescribed in a regulation, and, again, the regulation will be subject to consultation.

Mr HEALY: I appreciate that from both Victoria and David. I get that, but at the end of the day there may have been a perception—and this is yet to be established—that there was a document that was going to go back through a process of consultation. That is the expectation. That is all I raise. It is an observation more than anything.

Ms Thomson: Chair, with your permission, we will come back to the committee with some further information.

CHAIR: Sure. That would be much appreciated. Thank you.

Mr SAUNDERS: The first thing that came through the QLS report—I enjoy reading the Queensland Law Society reports, and I myself am worried about this—was the no-warrant entry. I am an old bushy. We really like to have a warrant if people are going to enter our property or whatever. That did concern me. Can you provide me an example of these powers of entry? It does concern me that there is no warrant needed to enter in the course of their job. Let's be honest, there are some people who will overstep their powers no matter whether they are in the department or not. Are there safeguards put in place so they do not?

Ms Thomson: In terms of the powers of the inspector, it is proposed that the Fair Trading Inspectors Act 2014 will apply. It has been in existence for some time. It is worth noting that the powers of inspectors to enter depend on the nature of the property they are to enter. For example, an inspector cannot enter somebody's place of residence unless they have their consent or a warrant.

The powers of entry are consistent with powers of entry in other Queensland legislation, for example workplace health and safety powers of inspectors, and in other jurisdictions. In terms of the member's question around inspectors doing the right thing, bearing in mind that my inspectors do work within other legislative frameworks—the Public Service Act, code of conduct, internal procedures, internal policies—I might ask the director of investigations and enforcement, Steve L'Barrow, to answer the member's question from his extensive experience in the fair trading scheme.

Mr L'Barrow: I acknowledge the concern that you raise. With modern regulatory frameworks, being proactive in our activities is at forefront. We are trying to find issues that happen before they blow out and become major problems. One of the other pieces of legislation that is regulated through the Fair Trading Inspectors Act relates to property agents. As you would be aware, property agents handle vast amounts of money through their trust accounts. As a part of our proactive enforcement or compliance regimes, we go to their premises unannounced, look at their books, make sure everything is okay and make sure they are not diddling any money out of owners' pockets.

The same sorts of principles apply when looking at associations. I am not saying that we will march into every single association around Queensland, but we need to structure some sort of proactive compliance regime to be able to walk onto the premises and say, 'Can I have a look at your books, please?,' make sure everything is okay and walk out knowing that everything is fine, rather than waiting for a complaint 12 months or two years down the track where we find that hundreds of thousands of dollars have been taken from the kitty. That is the type of situation where we like to use those sorts of powers—unannounced visits and very light touch compliance.

Mr SAUNDERS: Thank you for that clarification. The other issue I have concerns remuneration. Say I belong to Club XYZ. I would like to know exactly. I am across the issue of commercial-in-confidence. My pay is up there. Every dollar I earn and everything I do is visible, because I am taxpayer funded. If I am a member of a club and I am paying dues, I want to know exactly how much. I think the department has moved on this the wrong way. I want to know how much the chief executive officer is getting, how the structure is broken down, how much we are paying Clubs Queensland and what its structure is, because my dues are going there. If it is good enough for politicians, departmental staff and so on, it is good enough for the club industry. As a member, when I go to vote or I go and talk to my management committee, I want to know what my chief operating officer or my bar manager is getting. We should be looking harder at that. Why did you change it?

Mr Scott: Queensland is the first jurisdiction to move into this space in respect of incorporated associations. This is one area where no other jurisdiction has a similar requirement. We do prescribe the detail in the regulation. At this stage, the intent is that it would be a band or a lump sum figure of all payments. That is for basic privacy reasons. I take your point. One consideration is that the remuneration that must be disclosed relates to family members. You might have a son, daughter or cousin who works at the bar and they would be captured by the requirement. That is one reason we went to the non-personal disclosure. It is a Queensland first.

Mr SAUNDERS: As I said, I have been involved in clubs where we do not know what the CEO gets paid. Then we find out through the grapevine that he or she is on $157,000 a year and the KPIs are not being met. As a voting member of that club, I would like to know.

Mr Scott: Fair enough. I guess you will see the lump sum that is there and members are free to ask questions.

Mr McKarzel: I understand the member's position completely. It goes back to what I said earlier: it is a balancing act. You have a number of stakeholders saying, 'It is none of anybody's business,' you have your quite reasonable position and you have various positions from various stakeholders all the way in between. The government has to make a call and balance it at some point. Where we have landed—again, it will be subject to consultation—is at least a band. Martin can correct me on this, but there would be nothing stopping an association from going a step further in its own rules and requiring it. This is about a minimum standard of transparency that we say everyone should have to adhere to. Yes, it is a little bit of a light touch in terms of providing for a range, but that is not necessarily obligating for a range; it is putting in a minimum.

CHAIR: I seek your clarification about an issue Clubs Queensland raised. The second dot point of page 1 of their submission states—

- the potential for misuse of the proposed 'dispute resolution procedures' by association members who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association;

I think you were in the room, though, when their general manager raised this issue and concerns in respect of the liquor licensing legislation dealing with issues in that respect. Can you clarify if there is any outstanding issue there? I saw your responses to submitters' concerns, but they felt that further clarification was definitely warranted in that respect.

Mr McKarzel: First, I think we need to focus on what the provision provides for. It basically is there as a protection. If a person has initiated a grievance process, the act contemplates that they should not be affected by or punished for doing that process. In other words, if the grievance procedure is initiated on a particular matter, the bill is providing that you cannot then get thrown out basically on that matter until the grievance process is gone through. If a person puts in a grievance procedure and there has been no initiation of disciplinary action, then the grievance procedure follows its process.

CHAIR: But if there has?

Mr McKarzel: If it has, then the act is silent on it. The act does not say that the relevant procedure in terms of disciplinary action has to stop. The detail of how you initiate a grievance procedure, natural justice and all the rest of it will go into the model rules. There are a variety of ways this can be dealt with. If we are talking about the same matter, there can be parallel processes or a process where the matters that are dealt with in one process are dealt with equivalently in the other process if it is in terms of providing procedural fairness and if the arguments are the same. There is no direct prohibition against a discipline procedure proceeding if it is started, regardless of whether a grievance procedure is in place. In our view, the place to grapple with that is in the model rules. As I said earlier, we will consult on the model rules, and that will be one of the issues we will have to grapple with. The intention in the act is just to stop somebody being punished for starting a legitimate grievance process and finding themselves effectively under a disciplinary process for having put in a grievance which the act and, ultimately, the association's rules will provide for.

CHAIR: Thank you. I am mindful that we are out of time. I thank the department for coming today, for the written briefing you provided and for the additional information you have put on record. I understand that you will provide some additional information. Our secretariat will provide the date for that, in consultation with you. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the public briefing closed.

The committee adjourned at 11.41 am.