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 HEARING—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 10.29 am.

CHAIR: Good morning. I now declare open this public hearing for the Education, Employment and Small Business Committee's inquiry into the Associations Incorporation and Other Legislation Amendment Bill 2019. I would like to acknowledge the traditional owners of the land on which we meet this morning and pay my respects to elders past, present and emerging. My name is Leanne Linard, member for Nudgee and chair of the committee. With me today are Mr Michael Healy, member for Cairns; Mrs Simone Wilson, member for Pumicestone; Mr Bruce Saunders, member for Maryborough; and Mr Nick Dametto, member for Hinchinbrook.

The bill was introduced into the parliament on 26 November 2019 and referred to the committee for examination. The committee must report to parliament by 21 February 2020. The purpose of this public hearing is to hear evidence from stakeholders who made submissions as part of the committee's inquiry into the bill. The committee will also hear from and ask questions of representatives from the Department of Justice and Attorney-General.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to, or excluded from, the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. All those present today should note that it is possible you may be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode. The program for today has been published on the committee's web page and there are hard copies available from committee staff.

FLOCKHART, Mr Doug, Chief Executive Officer, Clubs Queensland

NIPPERESS, Mr Dan, General Manager, Clubs Queensland

CHAIR: I thank you for your written statement. I invite you to make an opening statement.

Mr Nipperess: Clubs Queensland would like to thank the committee for the opportunity to provide a submission in relation to the amending bill, principally in relation to the Associations Incorporation Act. The committee is in receipt of Clubs Queensland's submission and thanks the director-general, David Mackie, for his responses to our submission.

Clubs Queensland supports the comments broadly made by the Queensland Law Society in relation to the short time frame allowed for responding to this bill, specifically noting that such reforms should only proceed on the basis that detailed consultation has been undertaken with the stakeholders working with incorporated associations and the incorporated associations themselves. Clubs Queensland urges the committee to recommend that the bill not be progressed further until wider consultation has been undertaken with stakeholders.

I will use the remaining time to highlight our main areas of concern with the amending bill. Firstly, in relation to the new section 1(c) and the amendments to the Fair Trading Inspectors Act, Clubs Queensland maintains its view that the new entry provisions for Fair Trading inspectors should still be subject to obtaining a warrant. Clubs Queensland supports past submissions made by the Queensland Law Society in relation to this point and that the grounds for entry should be tested before a court of relevant jurisdiction by way of application for a warrant.

In relation to the insertion of the new section 70D regarding the disclosure of remuneration benefits, Clubs Queensland thanks the director-general for his comments that the prescribed regulation will require that associations specify the total remuneration paid to all relevant persons as a single value, as recommended in its submission. The disclosure of individual remuneration benefits would compromise the commercial-in-confidence nature of remuneration structures and have information privacy issues which have not yet been considered by stakeholder consultation, as has been suggested by the director-general's response. There is also further clarity required in relation to the term 'relative' subject to that provision.

Regarding the insertion of the mandatory grievance resolution procedures, Clubs Queensland maintains its position that such amendments should allow a registered and licensed club to follow disciplinary procedures to be able to terminate the membership of a member without the requirement to follow a grievance resolution procedure. Clubs have liquor licences and therefore obligations under the Liquor Act to maintain order at licensed premises. Many instances will require clubs to follow its disciplinary procedures, terminate membership and issue venue bans on members who cause disturbances on a licensed premises, and the current amendments potentially restrict clubs as licensees from discharging their obligations under the Liquor Act. Thank you very much. I welcome the committee's questions.

CHAIR: I note that the submission from Clubs Queensland is largely supportive of the proposed amendments, though?

Mr Nipperess: Correct.

CHAIR: I am interested in Clubs Queensland's understanding that there may be an issue with incorporated associations following their established disciplinary processes. My recollection is that the department's advice is that it will not restrict those. Is there something particular that makes you feel that it will?

Mr Nipperess: Our concern would be that, if a membership is terminated pursuant to the provisions of a club's constitution or its rules, that member may still have access to the grievance resolution procedure, which may allow mediated outcome, when in fact the decision of the incorporated association of the club was to actually terminate that person's membership with the organisation.

CHAIR: Is your concern still live? Have you had a chance to see the department's response to that issue?

Mr Nipperess: Clubs Queensland has considered the response and maintains that concern. If that is not the case, though, we would be interested to hear from the director-general in relation to that point.

Mrs WILSON: In your experience, how long does a dispute process take?

Mr Nipperess: In many instances it can take a number of days, up to a number of months. Principally, we see disputes in licensed clubs relating to issues pursuant to the Liquor Act. Those are disturbances on a licensed premises. The majority of membership terminations that a club deals with are in relation to potentially physical acts of violence or abuse made against staff members of the registered and licensed club. Under the Liquor Act there are obligations on the licensees, as well as pursuant to the associations act, to afford procedural fairness and natural justice when terminating somebody's membership. We would like clarification in relation to that grievance resolution procedure and the requirement for a mediation and how that would potentially affect an instance dealt with that may not be open to mediation or a dispute that does not require mediation.

Mr SAUNDERS: I cannot get my head around this remuneration issue. My remuneration is public. Whatever I own and whatever I buy is on the public record, because the public pays my wage. I am a member of a club that pays into Clubs Queensland to be a member. I think I have the right as a club member to know where my dues are going and how much is being paid to members. Why are you so against it?

Mr Nipperess: Clubs Queensland considers that the remuneration structures for principally management personnel of registered and licensed clubs should be maintained as commercial-in-confidence. The corresponding definitions in the Australian Accounting Standards for such organisations as a company limited by guarantee would require the disclosure of management and board related expenses and remunerations as a total in sum, which is reflective of this amending bill and what we understand to be the position of the director-general. We are supportive of the disclosure of management personnel in a way that replicates the Corporations Act principles.

Mr SAUNDERS: You are not for individual amounts to be disclosed?

Mr Nipperess: That is right.

Mr SAUNDERS: But it occurs across a lot of industries in which I have been involved. I do not see the difference. That is what I cannot get my head around. It is a wage. With all of the contributions through Clubs Queensland, with my club being a member, we should know. That is my opinion, anyway.

Mr Nipperess: Thank you.

Mr DAMETTO: Thank you for coming along this morning to give some evidence and to back up your submission with some comments. I am looking for a little more clarity around your comment concerning the proposal to allow Fair Trading inspectors to enter the association and seize property without the association's consent and without a search warrant. I am supportive of your comment. I do not think inspectors should have that right. I think there should be a warrant before anyone enters someone's property to either seize or go through property. This seems to be something that has followed through from other legislation that has passed this term, especially the vegetation management legislation. How would this affect a business and why do you see it as a negative change to the legislation?

Mr Nipperess: We draw back to the Queensland Law Society's past commentary, research and submissions in relation to this point and push the committee's attention there. We note the director-general's response in relation to the entry power only being used in circumstances where they have a reasonable belief that there has been a contravention of the legislation. Where there are instances, though, of a Fair Trading inspector having that power that has not been tested, you are really taking away from the procedure and natural justice of the entry itself. As we pointed out, being able to make submissions before a court of relevant jurisdiction, before a magistrate, to have that warrant provided would act as a mechanism to protect the interests of that club or that incorporated association in relation to the actual disclosure or retention of records and property potentially.

CHAIR: Is it your concern that if an organisation or a club essentially determines that somebody should lose their position then they will have this grievance procedure to further extend? I want to clearly understand that, because it is already best practice that there be a grievance process internal. I am really just trying to get my head around your key issue in regard to the obligations under the Liquor Act.

Mr Nipperess: Our concern is that if a member was to create a disturbance on a licensed premises the club would have an obligation under its constitution to follow its termination provisions, to follow due process and natural justice and to allow that particular person to appear before the committee to respond to the allegations against them. To have that power for an incorporated association, and specifically a licensed club, to therefore terminate that person's membership pursuant to the constitution and issue a venue ban under the Liquor Act, we want clarity that the grievance resolution procedure would not take away from the incorporated association's power to do that.

CHAIR: Okay. There being no further questions, thank you for coming in and thank you for the submission.

DEVINE, Ms Wendy, Principal Policy Solicitor, Queensland Law Society

McGREGOR-LOWNDES, Emeritus Professor Myles, Member, QLS Not for Profit Law Committee, Queensland Law Society

MURPHY, Mr Luke, President, Queensland Law Society

CHAIR: Thank you for your submission to the committee, as always. Would you like to make an opening statement.

Mr Murphy: Thank you for allowing the society to appear this morning at this public hearing. In opening, I respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Mianjin. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations and pay deep respects to all elders past, present and future. The Queensland Law Society, as most of the committee will be aware, is the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. We are a fiercely independent and apolitical representative body upon which we believe government and parliament can rely to provide evidence which promotes good, evidence based law and policy.

Specifically in relation to this bill, we raise a number of key issues. The first is that the society commends the government on seeking to modernise the Associations Incorporation Act 1981. However, as highlighted in our submission, the society considers that there are other reforms which are also required but which are not presently addressed in the bill. The QLS recommends that this bill is not progressed until wider consultation occurs by way of a comprehensive review of the Associations Incorporation Act and the regulatory approach to fundraising legislation generally.

The society is concerned that the proposed amendments represent a significant change, shifting from the light-touch regulatory framework of the original act to an onerous corporate regulatory regime, and there may be unintended consequences, with new community endeavours electing not to use the act and the current incorporated associations and choosing to migrate to other legal forms.

In the Law Society's view, a revised version of the model rules needs to be released for consultation prior to the bill being progressed. We have also recommended that Queensland adopt the approach that the current version of the model rules at any one time apply to all associations and not the model rules that were in place at the time of association's incorporation.

In relation to the grievance procedure proposed in the bill, the department in its response of 17 January suggests that the bill is not intended to require the grievance procedure to be followed 'prior to taking disciplinary action against a member', and we consider that this must be clarified in the bill itself. In relation to the remuneration disclosure requirements, the department's response of 17 January indicates that the regulation will require associations to specify the total remuneration paid to all relevant committee members, staff and relatives as a single aggregated value. If this is the intent then we recommend that this, again, be set out in the primary legislation. I will hand over to Professor McGregor-Lowndes, who wishes to express a broader policy concern.

Prof. McGregor-Lowndes: There are two issues. We received a draft discussion paper in July 2016. There were about 10 or 12 representatives, mainly from large organisations—yourtown, the Fundraising Institute, the RSL, Clubs Queensland and the Law Society. We went through that discussion paper, and minutes were produced. We never saw that paper again. It was drafted to go out for public consultation. We never saw it again.

From the recorded minutes of Ms Woo, who is legendary in OFT but I believe has now taken retirement, she thanked the reference group for their input and closed the meeting. She advised that their feedback would be considered in a redraft of the paper and the paper would be circulated back. I do not think the Law Society has any record of the paper being circulated back. There was discussion prior to that about having a longer than four-week public discussion point.

In my view, we have not had a public discussion of this paper. Our very long submission is more for a policy paper for discussion which has traditionally always come out. We seem to have skipped a step in the policy consultation process. I might add that that policy consultation process also had the ability of educating the sector widely about what was coming up, so you have very few submissions.

The second point I want to make is that, from a broad policy perspective, the incorporated association legislation came in as a real saviour for small associations which were too small to foot the compliance and audit costs of becoming a company limited by guarantee. But there were a number of cases, some of which involved members of parliament who were on committees, where

committees of unincorporated associations were personally liable for the debts of the association. You had businessmen who ran businessmen clubs and they were risk-takers so they ran an air show or a rodeo—some of the most risky things you could ever do as a community organisation—and something happened and they got sued and lost their houses. They were extreme examples.

The Associations Incorporation Act came in as a saviour for those situations. It was meant to be a low-touch, low-cost regulatory regime for small associations to have some respite, with limited personal liability so it was the association which was liable and not the committee members—and it worked admirably. That is what the register is today. I do not know—perhaps the department can tell you what their statistics are now. The last statistics I saw showed that four in five associations had less than a hundred members, four in five associations did not have any employees, four in five associations had less than $100,000 in income and four in five associations had less than $50,000 in assets. The register has a whole lot of really small organisations which have come from community groups just to get that registration.

Then just after the Associations Incorporation Act came in you had poker machine clubs, and some of them became extraordinarily large. In terms of the policy settings in other states, in New South Wales you cannot run gaming machines unless you are a company limited by guarantee, so they have a higher touch regulatory regime for poker machine clubs—a lot of money, fidelity issues and criminal issues et cetera. In Victoria they have the policy setting where the office of fair trading in that state could tap a large association on the shoulder and say, 'You are too big and complex for an incorporated association regime. Off you go and become a company limited by guarantee.' The latter policy position has been in a number of policy proposals by OFT over the last two decades—to give a power to the OFT to move people on—but Clubs Queensland and others have said, 'No, we don't want that. We want our poker machine clubs to be left as incorporated associations.'

What we have now is a register full of small organisations with a couple of big ones. We find that the proposals are now replicating largely the corporate law reforms with higher touch regulation, higher cost regulation, but it really is only for a small percentage of the very large organisations. In my view, it would have been preferable to give the OFT power to move on the big clubs into a company limited by guarantee regime. What are the unintended consequences? I think small unincorporated associations are not going to want to come into this regime anymore. They will stay outside of this regime and perhaps adopt other risk management strategies to deal with the personal liability of committee members and other deficits of not having a corporate legal persona. Doing that is a little expensive and getting insurance is a little more difficult, but it can be done.

At the other end, the big poker machine clubs, I would suspect, are going to look very hard at moving out of the incorporated associations regime into becoming companies limited by guarantee. The act does not serve anybody except those who are caught in the middle, who do not want to go back to being unincorporated associations and who are too small and lack the resources to become companies limited by guarantee.

In our view, particularly for the insolvent trading and other provisions, there are some reasons for the defences in the corporations law being better for committee members who are not replicated in the Associations Incorporation Act, so you may have a positive driver for large clubs to move out to get the defences in the corporations law. As high-level policy, that is my view of what the unintended consequences may be.

Mr Murphy: It is because of those policy concerns that the Law Society's position is that there should be greater consultation on it. The concerns are readily capable of being addressed, but it does require further consultation with the industry and all stakeholders so that a heavier touch regulatory regime can be applied to appropriate entities and not be a burden on those whom we think benefit from the protection that the act has always intended to provide.

CHAIR: Thank you for your opening statement. We will move to questions. Luke, having read your submission, is the greater concern of the Law Society that there are a large number of additional elements you would like included or is it what is contained in there or is it equally so—you would like it to have gone further and to have included more elements but also you have some concerns, as I know you do, in respect of inspector powers and things like that? Is it just that you felt that it should go further and include more matters?

Mr Murphy: Chair, if you do not mind, I might let Professor McGregor-Lowndes answer that.

Prof. McGregor-Lowndes: There are some matters that have been left out which I thought were worthy of considering if you were reviewing the act. The disaster provisions reply to the Weller report. We have had the Celeste Barber bushfire fundraising which is all on the internet—everybody is on Facebook. This does not capture the digital problems. The Collections Act definition of 'advertisement' does not refer to digital. The definition states—

Advertisement, for the definition *appeal for support*, includes any method of conveying information to the public, whether by writing or pictorially or otherwise, including by any circular, leaflet, newspaper, publication, or other document, by any placard, poster, or sign, or by any public announcement ...

CHAIR: That is my question, Professor McGregor-Lowndes. That is outside the scope of the bill. Is it your contention that it should go further?

Prof. McGregor-Lowndes: Yes. You only get a window every six years the way our parliament works. If QCOSS or community organisations were here, they would have the trade-off of 'Do we go now because we are never likely to see it before this parliament ends or do we just accept it with all the deficiencies and just get something on the table?' That is the raw choice that they have. From a Law Society perspective, we think that if there could be consultation it would improve for matters that are not included and also for matters that are included but require clarification for the betterment of the act. We have no axe to grind. We want to facilitate incorporated associations.

Internal disputes are the real bugbear of lawyers. They are up there with dividing fences disputes. It is so expensive. It is so inappropriate that they have let the dispute fester to the point that they have to go to lawyers. We think mediation would be good but it is not clear. There are some technical issues that need to be sorted out. It will just create more problems and more disputes if you are not that clear.

CHAIR: That is a nice segue to my second question. Yes, as members, we do have a bit of experience with issues around dividing fences and neighbour disputes. We appreciate the complexity of those disputes, absolutely. Again, you may defer the question, Luke. I am interested in the grievance procedures proposed in the bill. Does the Law Society think they are sufficient to resolve disputes and avoid unnecessary litigation going to the Supreme Court?

Prof. McGregor-Lowndes: I think they are a step in the right direction, but there are a few tweaks. I did not bring it with me, but we can put it in a further submission. There was an appeal court decision in Western Australia.[1] They have a mediation provision and an association did not renew somebody's membership and they wanted mediation. The legislation said that members could get mediation. Were they are a member when they were not renewed? We think those technical issues need to be refined so it is really clear that they can get grievance or mediation and how this interlocks with disciplinary proceedings. There may be some organisations that need to act quickly. For example, where there are child issues or historical sexual abuse or whatever, they have to act immediately when they are delivering community services.

The other thing is that we have some very large international organisations which have codes of conduct which are almost implied or impressed from overseas and we want to see how they interrelate. We can only do that if you go to the public and have consultation with the Rotaries, the Zontas and the Lions to see how this mediation is going to work, unless you give the OFT some wriggle room to exempt them if it produces some unintended consequences.

CHAIR: Technical issues aside, though, I would think it is a fairly positive step in the right direction in that we are trying to avoid unnecessary litigation in the Supreme Court, given the time and expense involved.

Mr Murphy: There is absolutely no doubt about that and that is something that the society is fully supportive of. Our concern is to make sure that the proposal is effective. One of the fundamental problems that the legal profession always strikes—and we have touched on it in the submission—is that what starts as often a personality dispute within membership evolves into an argument about how the rules are being applied and that then takes over the whole process. That defeats the purpose of what was the original dispute and it prevents an earlier resolution being reached. Any mechanism that enables an earlier mediation—an earlier opportunity for resolution—is positively supported. We just want to make sure that we don't, by having a regime that may be inconsistent with guidelines that the association may have forced on it by international parent organisations, you get yourself into exactly what we are trying to avoid. As the professor mentioned, giving the office some wriggle room to possibly exempt particular organisations, provided there is still this very clear regime that will apply, can avoid a lot of angst.

Prof. McGregor-Lowndes: In other states—other jurisdictions—they have used the equivalent of QCAT or the Magistrates Court to hear these things. These disputes are really meant for magistrates or QCAT. They are local in the area, they hear it and they give the people their day in

[1] QLS Not for Profit Law Committee member), referred to a case from Western Australia. This was raised in the context of the grievance resolution processes in the bill. The full name of the case is Kavanagh and Pine Valley Pistol Club Incorporated [2020] WASAT 11 (Kavanagh) (WA State Administrative Tribunal, Mr D Aitken, Senior Member, 16 January 2020).

court. It is over relatively quickly. They give the baddies a clip over the ear and the community knows that and everything is settled. You have to wait for a long time to get to the Supreme Court. I pulled the stats of cases that have reached our Supreme Court and, compared to other states' judicial hearings, they are very low. The department has, to its credit, for the last two decades included a policy that these be heard by Magistrates Courts or tribunals and they have been knocked back for some reason every time. I am still of the view that mediation is great, but it should be coupled with QCAT or the Magistrates Court as an intermediate section before the Supreme Court. Because they cannot get that finality of having somebody in authority to listen to them, they just fester on and hurt the association and it is appalling to see.

Mr HEALY: Thanks very much, Myles. That was excellent. Luke, you were talking about a broader engagement. One of the challenges that I always face when I talk to people in my community to make them aware is—I say to them, 'This is what we need,' and they tell me, more importantly, what we need and then when the ministers come up I say, 'We're all ready to go,' and then you get them in the room and some of them do not turn up and they get quite dysfunctional—the process of a broader engagement. What does that look like to you? I am just interested.

Mr Murphy: What we would have anticipated is that the draft discussion paper would have been put out for public comment and there would have—

Mr HEALY: Sorry, but that was the one that was produced and then you did not—

Prof. McGregor-Lowndes: People like QCOSS would have gone to their members and thrown it out there. QCOSS would send a discussion paper to their members; they will not send a draft bill to their members. If that did go to their members it would not get read but a discussion paper would. I do not know why it did not happen. It is just unfortunate.

Mr HEALY: I do not know, either.

Mr Murphy: There are often stakeholder reference group meetings around that discussion paper then as well to tease out what the issues are and to consider the possible alternative resolutions for it as well, and we think that may have assisted in addressing some of the fundamental concerns that we have.

Mr HEALY: Just out of interest, what sort of time frame would you be expecting? I could take a guess, but it is better coming from you.

Prof. McGregor-Lowndes: Four weeks is the minimum. It is over Christmas so nobody is here, but you would want a minimum of the usual four weeks, if not more. I am sure QCOSS and the other sector peaks—RSLs—would put it out to their members. If you engage with the sector stakeholders it would get out there for sure and the submissions are already here, so they have something to go on.

Mr HEALY: Thank you. Your submission was detailed in what it covered. Whilst it is supportive, I think you have highlighted some good potential here, so thank you for that.

Mr SAUNDERS: I always look forward to reading submissions from the QLS. Your submission notes the introduction of inspector powers reflecting powers under the Fair Trading Inspectors Act which are generally supported. However, you raise some concerns with the powers of entry—not only have you raised this but I also have some concerns—without a warrant when the place is open for carrying on a business, and that is on page 3. The Department of Justice and Attorney-General notes that these powers are consistent with those in similar legislation in other jurisdictions. Can you tell us why the QLS does not agree that these powers should apply to inspectors and the Associations Incorporation Act?

Mr Murphy: The objection we take to it is one that the society has in response to the legislation it is derived from and made at that time and has consistently made in a number of submissions. The society's position is that the freedom of entry that is extended in these circumstances represents a breach of what we consider to be a fundamental cornerstone legal principle. If in fact there is a concern and it is a reasonably held concern, then that should be something, in the society's view, that is capable of being put before a suitable authority to enable the warrant to be issued for it. We just think the exercise of the power in the manner in which it is proposed outweighs the mischief that is trying to be addressed.

CHAIR: There being no further questions, I thank you for your time and your input into the hearings. It is very much appreciated.

Mr Murphy: Thanks very much, Chair.

CHAIR: This concludes the public hearing. Thank you very much to all witnesses and stakeholders who have participated today. 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 this public hearing closed.

The committee adjourned at 11.06 am.