

COPY**youth affairs network qld**

ABN 28 205 281 339

28 March 2011,

Mr Damian Sammon
Director, Fair Trading Policy Branch
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001

Dear Mr Sammon,

**RE: Submission regarding possible changes to the *Associations Incorporation Act 1981*
and the *Associations Incorporation Regulation 1999***

For several years INCorrections has been campaigning to remove the restrictions placed on people who have been sentenced to 30 months or more in prison from participating in management committees. The review of the *Associations Incorporation Act 1981* and the *Associations Incorporation Regulation 1999* provides a welcome opportunity to end this source of discrimination. As an INCorrections member and supporter, the Youth Affairs Network of Queensland (YANQ), supports the call for this much-needed reform.

YANQ is the peak community youth affairs organisation in Queensland, representing individuals and organisations from Queensland's youth sector, advocating on their behalf to government and the community. The organisation encourages the development of policies and programs that respond to the rights and needs of young people. YANQ's involvement in the INCorrections campaign speaks of its commitment to policies aimed at reducing discrimination in the community, particularly in relation to young people. It supports the campaign's promotion of effective and autonomous governance structures for community organisations.

In providing this letter of support I urge to you to consider and duly support the recommendations outline in the attached submission. Specifically, I recommend the primary adoption of Option 4, and in lieu of this Option 2, as set out in the Department of Employment, Economic Development and Innovation's *Consultation Paper*.

YANQ has no hesitation in supporting the call for this much needed change in our community.

Yours sincerely,

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Submission regarding possible changes to the *Associations Incorporation Act 1981* and the *Associations Incorporation Regulation 1999*

This submission is confined to addressing the reform of provisions regarding the eligibility for election to management committees (section 2.6 of the Consultation Paper)

Introduction

We welcome this opportunity to engage in the debate about much needed legislative reform in incorporated association management committee eligibility. We believe that positive reforms, such as the removal of discriminatory and arbitrary barriers to participation in society can be the basis for successful rehabilitation of people who have been in prison. Suggested reforms also give association members greater freedom and responsibility in the management of their organisation.

We primarily support Option 4 as it removes all periods of disqualification but retains the discretion of management committees to set their own guidelines as appropriate.

However, Option 2 is supported over the status quo.

Question 26: Do you believe changes are needed about eligibility for election to the management committee?

We believe that changes are strongly needed in relation to eligibility for election to association management committees.

Section 61A *Associations Incorporation Act 1981* currently works in tandem with s 3 *Criminal Law (Rehabilitation of Offenders) Act 1986* to discriminate against, and thereby disadvantage, people who have been sentenced to more than 30 months imprisonment by making them permanently ineligible for a management committee position.

Impact of the current Act upon persons serving on Management Committees

1. **“Rehabilitation period” is arbitrary.** The Act, in limiting the meaning of “rehabilitation period”, effectively denies “rehabilitation” for any person who has been convicted of an offence consisting of more than 30 months’ imprisonment, irrespective of:
 - the nature and circumstances of the offence;
 - the length of imprisonment over 30 months; or
 - the length of time since the offence occurred;
 - whether the offence has any relevance to the activities of the position sought by the person with prior conviction.
 - Actual rehabilitation undertaken by the person

2. **Limiting the rehabilitation period is contrary to rehabilitation.** In limiting “rehabilitation” to convictions that attract a prison sentence of 30 months or

less, the Act defeats a fundamental purpose of the *Corrective Services Act 2006* (CS Act) :

Section 3(1) CS Act : “The purpose of corrective services is community safety and crime prevention through the humane containment, supervision **and rehabilitation of offenders.**”

3. **Benefit to Management Committee denied.** Many people who have been in prison have valuable experience and expertise to contribute to the management of an association.
4. **Reintegration to the community denied.** Many parts of corrective services’ formal procedures, and Ministerial Guidelines issued to parole boards in determining parole, presume that a person should be given reasonable opportunity to reintegrate into the community and to resume all aspects of civil life in the community. The combined effect of the Act and the AI Act is to arbitrarily deny everyone sentenced to more than 30 months’ imprisonment, an opportunity of ever resuming full participation in the life of the community. The sole basis of this exclusion from the community is their criminal record and the length of their term of imprisonment.
5. **Civil Death.** The Act condemns a person who is not eligible to a “rehabilitation period” to “civil death” in all areas in which the lack of a rehabilitation period causes exclusion.
6. **Queensland denies protection against discrimination.** Unlike the *Australian Human Rights Commission Act 1986* (Cth) (regulation 4), the *Anti-Discrimination Act 1991 (Qld)* does not make it unlawful to discriminate against a person on the basis of their criminal record. Queensland’s anti-discrimination laws effectively condone discrimination on the basis of a person’s criminal record.
7. **Fitness to fully participate in the community denied.** The implied effect of the Act and the AI Act in combination, is a presumption that a person who is not eligible for a “rehabilitation period” is not fit for or able to fully participate in the life of the community.
8. **Responsible role in the community denied.** The Act and the AI Act deny those who are not eligible for a “rehabilitation period”, the opportunity to assume duties and responsibilities consistent with being a member of the community, and in doing so, unreasonably exclude them from the responsibilities assumed by other members of the community.

Disproportionate and unjust impact on certain members of the community

People incarcerated for Juvenile offences

Maltreated children and adolescents are vulnerable to making choices about their lives that bring them into conflict with the juvenile justice system. For

example a choice of leaving a violent or abusive home may render a child or adolescent homeless and without some of the basic necessities of life. Survival choices may bring them in conflict with the law.

Such young people are criminalized because of circumstances that may be beyond their control, or because there are insufficient or inaccessible resources to protect them from having to make choices likely to result in breaches of the criminal law.

The current provisions deny certain 'ex-juvenile offenders' the opportunities that are open to others, to contribute and participate in the community.

'Ex-juvenile offenders' are discriminated against under current legislation, in such a way that their disadvantage as juveniles may again be manifested in their adult life through an arbitrary restriction on their ability to participate fully in society.

Aboriginal and Torres Strait Islander People

The current provisions have a disproportionate effect upon Aboriginal and Torres Strait Islander people given their over-representation in the criminal justice system. The current provisions arguably continue Aboriginal disadvantage.

Women

Women are generally under-represented in managerial positions and positions of authority and responsibility. The exclusion of women who have been incarcerated from management committees has the potential flow-on effect of reducing their prospects of obtaining experience in management in the workplace.

Question 27: Is Option 2 the way to achieve the changes?

As noted in the consultation paper, by removing the 'rehabilitation period' restriction and embracing the 5 year period of exclusion Option 2 gives "*associations greater freedom as to who they may elect to*" their management committees. The paper also notes that "the present restrictions for associations may be too severe, and out of step with other jurisdictions". For these reasons, Option 2 is an improvement upon s 61A *Associations Incorporated Act*.

However such arguments logically support the removal of all restrictions based upon criminal records. If the removal of the 'rehabilitation period' restriction is applauded as the removal of an unnecessary restriction upon association members' freedom then it follows that the removal of all such restrictions enhances membership rights and responsibilities. And Queensland is indeed "out of step with other jurisdictions" such as Victoria and NSW, where the comparable statutes do not discriminate on the basis of conviction.

The complete removal of restrictions is necessary to ensure that management committees have the discretion to elect committee members from within prison and post release. For example, committee members in some instances may choose to consider the retention of committee members through periods of incarceration for offences that are unrelated to their expertise.

Option 2 still restricts people's opportunities to re-engage in society by assuming of responsibilities and contributing to the community. It will deprive management committees of expertise that would be otherwise beneficial.

If Option 2 is considered, a definition of custody should be included that reflects actual incarceration, in order to ensure that persons with long parole periods can eventually be considered for membership on a management committee.

Question 28: Are there other ways that the proposed changes can be achieved?

Yes, Option 4.

Any restriction based upon conviction is discriminatory, it restricts membership rights and responsibilities, limits people formerly incarcerated from possible contribution to society and deprives management committees of expertise.

It is suggested in the consultation paper that restrictions are necessary to ensure that persons elected to management committees are honest, reliable and trustworthy.

Any preclusion period based upon criminal record cannot "ensure that persons elected to management committees are honest, reliable and trustworthy." There is no empirical evidence that establishes that such measures will reduce impropriety, criminal or otherwise, by committee members. Preclusion periods only serve to focus attention upon one particular group, and they distract from the consideration of more effective means of achieving honest, reliable and trustworthy management.

It is suggested in the consultation paper that restrictions are necessary to maintain the community's perception of an association's probity and accountability.

However 'public opinion' is a social construct often shaped by media sources and politically driven 'law and order' campaigns, and thus is a flawed basis for reasoning. Furthermore, it is a very general statement that is undermined by a lack of supporting data.

Other measures can be encouraged that foster probity and accountability in associations. These fall under organisational governance and may include the implementation of committee rules regarding the behaviour of committee members. Criminal and other law also serve to encourage the probity of those in positions of responsibility.

Further, association members play a vital role in regulating the functions of their association. Arbitrary restrictions such as that suggested in Option 2 reduces the responsibility of members to ensure appropriate governance.

In some instances, management committee members may choose to retain a member during their incarceration or to grant that person a particular period of leave. In other instances, management committees may choose to recruit members from an incarcerated population to gain specific expertise.

Option 4 allows for the specific consideration of such issues by a management committee. In such instances, prisoners would be unable to profit from their participation (s28 CSA).

Question 29: Given the wide variance in the types and sizes of associations, is the preferred option appropriate for all associations?

Regardless of which particular option is in question, the size of the association should not preclude legislative amendments being made.

In relation to Option 4, the arguments above are valid for an association of any size. The discriminatory elements, the restriction of association members' rights and responsibilities and the retardation rehabilitation are not affected by the size of the association.

Strong size-specific arguments in favour of Option 4 can be made by both small and large associations. In a small association, the eligibility restrictions are felt more acutely because an already small membership pool from which to draw management committee members is potentially further reduced. In small associations, members are likely to have closer ties to one another and therefore be better qualified to determine management committee eligibility for their association than an arbitrary piece of legislation. By virtue of their size, members in smaller associations also have a greater chance of being needed to play a role on the management committee. Any restriction on management committee eligibility unnecessarily burdens small associations.

Large associations often have their own, sometimes quite formal, association rules and either have or are in the position to create management committee rules. It is in an association's best interest that it chooses suitable people for its management committee. A large association is likely to have the resources required for any background checks it would like to conduct.

Given the recognised differences in association sizes and types, it is logical that each association is best placed to determine its individual and relevant management committee eligibility criteria. Associations are in a position to restrict management committee eligibility in accordance with their association beliefs and policies. It is unnecessary to legislate these restrictions for associations.

Question 30: Are there any other issues about eligibility for election to the management committee which need to be addressed?

Our submission, in summary, is the following:

- Changes are needed about eligibility for election to the management committee because the current provisions are:
 - Arbitrary

- Discriminatory; and they
- Disproportionately impact already marginalised groups, namely people incarcerated as children, juvenile offenders, Aboriginal and Torres Strait Islander people and women.
- The preferred option is Option 4, that is, all periods of disqualification for persons convicted of offences should be removed.
- Option 2 is not the preferred option because the negative aspects of the current provisions remain (granted, at a reduced level).
- The arguments presented in the consultation paper in favour of Option 2 logically make Option 4 the best option, because it achieves the aims to a greater extent. These aims being:
 - Increased association freedom; and
 - A move away from restrictions that are 'severe' and 'out of touch with other jurisdictions'.
- The arguments against Option 4 are weakened by a lack of empirical evidence and by placing undue weight on 'community perception' without meaningfully quantifying this perception.
- Option 4 is also a suitable choice considering the range of association types and sizes.
- In essence, associations have the means of self-regulating eligibility to their own management committees. It is in an association's self-interest to utilise to the full extent possible, the expertise of their membership base and minimise risk to the association by excluding unsuitable people from the management committee.

Associations are not advantaged by the status quo.

Option 4 gives all association members equal opportunities to become management committee members and empowers the association to oversee eligibility criteria.

Our primary position is in support of Option 4. However, Option 2 is supported over the status quo.