

Dr Elizabeth Lanyon
Director
Consumer Affairs Victoria
Department of Justice
121 Exhibition Street
Melbourne VIC 3000

BY EMAIL

Your ref: CD/11/51364

16 March 2011

Dear Dr Lanyon,

Associations Incorporation Act 1981: Statutory management

We refer to your letter received on 14 February 2011 requesting information in relation to the statutory management provisions of the *Associations Incorporation Act 1981* (Vic) (**AI Act**). Thank you for the opportunity to provide input on the operation of the current provisions and potential future reforms at this stage.

PilchConnect – a specialist legal service for community organisations

PilchConnect is a specialist legal service for Victorian community organisations, established by the Public Interest Law Clearing House (Vic) Inc (**PILCH**). PilchConnect's legal services for not-for-profit groups (**NFPs**) include free and low cost legal information (via our webportal www.pilchconnect.org.au), training, legal advice via telephone and referral of eligible NFPs for pro bono assistance. PilchConnect also engages in law reform and advocacy work on systemic issues of relevance to the NFP sector.

While other PILCH schemes (such as the Homeless Persons' Legal Clinic) assist individuals, PilchConnect focuses on the provision of services to community *groups*. For this reason we do not generally assist individual members who are in conflict with those governing their NFP organisation (ie. we do not advise in internal disputes). To some extent this focus limits our ability to respond to matters raised in your letter.

Inquiries received by PilchConnect in relation to statutory management

Unfortunately PilchConnect does not have systems in place which would enable us to accurately and efficiently capture the statistical information regarding inquiries/applications and outcomes sought by your letter. However, we can confirm that we receive inquiries on a regular basis from individuals who are concerned about the governance of their incorporated associations, and in circumstances where it would seem that statutory management could provide a useful mechanism to manage a 'deadlock' type situation (ie. where a committee of management is manifestly dysfunctional, a statutory manager could be usefully appointed to dissolve the current committee and manage the association on an interim basis so that a general meeting can be arranged and a new committee elected).

Our views on potential reforms to the statutory management provisions

Currently the statutory management provisions of the AI Act are rarely exercised by the Registrar; as a result many organisations that might benefit from the appointment of a statutory manager are unable to avail themselves of it. For this reason we support in principle a proposal to allow members of incorporated associations to make independent applications to the Magistrates' Court for the appointment of a statutory manager. We suggest that members should correspondingly be allowed to seek revocation of the appointment of a statutory manager.

In our view, allowing members to make independent applications for statutory management, without the need for an investigation by CAV, would afford incorporated associations greater agency and capacity to take action to fix their own problems, rather than relying on the Registrar to take action of their behalf. This is especially important where, historically at least, the Registrar has been reluctant to initiate applications for statutory management.

That said, any new statutory management provisions would need to be carefully drafted to avoid potentially negative consequences – in particular, it would be important to ensure that measures are in place to deter vexatious individuals from applying for statutory management in circumstances which are trivial, would involve undue expense or would be an inappropriate use of the Court's resources. In our view the legislation should set out some threshold requirements for making an application for statutory management, which could include, for example, that:

- ▶ a minimum number (or percentage) of members of the association support the application for the appointment of a statutory manager
- ▶ the circumstances giving rise to the application are of a serious nature in light of the organisation's size, operations and purposes (for example, where there is evidence of serious financial impropriety, misuse of key assets of the organisation, or intractable dysfunction within the governing body), and
- ▶ all internal dispute resolution procedures available to the organisation have been exhausted.

We also recommend that the Magistrates' Court be consulted in relation to the proposed reforms (particularly in relation to the development of any new threshold requirements) given the potential impact of reform in this area to the Court's operations and workload.

In the context of the current review of the statutory management provisions of the AI Act, it may also be timely to consider minor amendments to section 31E (ie. the effects of appointment of a statutory manager). Currently, s 31E provides that members of the committee of management of the incorporated association cease to hold office on appointment of a statutory manager. It does not, however, address the effects of statutory management on the role of public officer (ie. the 'secretary' once the *Associations Incorporation Amendment Act 2010* (Vic) commence) – who may, or may not, also be a member of the committee of management. We recommend the introduction of an additional provision to clarify that the public officer also ceases to hold office on appointment of a statutory manager.

Our views on potential reforms to the appointment of statutory managers

We note that the current AI Act does not specify any necessary skills or qualifications for a person appointed as statutory manager. In the absence of express guidance in the legislation, it is possible that a view may be

taken that a statutory manager should have high-level financial management qualifications, perhaps similar to those required of an administrator under Div 14 of Part 5.3A of the *Corporations Act 2001* (Cth). However, in our view, a person with different skills and expertise may be appropriate – indeed, potentially more effective – as a statutory manager in the incorporated association context. For example, a person with skills in dispute resolution and conflict management and/or expertise in NFP governance (but not necessarily with high-level corporate accounting qualifications) may be well placed to understand and manage the needs of a community-based, grassroots organisation. In our view, opening up the range of people who could act as statutory managers could lead to a more tailored approach to statutory management and also reduce the costs involved, thereby increasing the availability of the mechanism to associations that might benefit from it.

I hope this above information is helpful – please feel free to contact me by phone on 03 8636 4423 or email Juanita.Pope@pilch.org.au should you wish to discuss further.

Yours sincerely



Juanita Pope

Senior Lawyer

PilchConnect: legal assistance for community organisations

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