

27 March 2013



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Graeme Head
Director-General
Office of Fair Trading
NSW Fair Trading
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Subject: Model Rules under the NSW Associations Incorporation Act 2009: Division 2 s35

*(1) An association's public officer vacates office in the following circumstances
e) If he or she becomes mentally incapacitated*

Model constitution: Under the Associations Incorporation Act 2009

18 Casual vacancies

(1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.

*(2) A casual vacancy in the office of a member of the committee occurs if the member:
(f) becomes a mentally incapacitated person*

Dear Director General,

The Mental Health Coordinating Council (MHCC) is the peak body representing community managed organisations (CMOs) in NSW. Our members provide a range of psychosocial and clinical services, and support programs, as well as advocacy, education, training and information services with a focus on recovery orientated practice. MHCC's membership consists of 183 organisations whose business or activity is wholly or in part related to the promotion and/or delivery of services for the wellbeing and recovery of people affected by mental health conditions. We work in partnership with both State and Commonwealth Governments to promote recovery and social inclusion for people affected by mental illness, participate extensively in policy and sector development and facilitate linkages between government, community and private sectors in order to affect systemic change. MHCC also manage and conduct research projects and develop collaborative projects on behalf of the sector. MHCC is also a registered training organisation (MHCC LD) delivering nationally accredited mental health training and professional development to the workforce.

It has come to our attention that the model rules under the Associations Incorporation Act 2009 with regards to casual vacancy of a board/membership committee is both unclear and discriminatory in terms of someone who is temporarily incapacitated as a consequence of mental illness.

It embedded in national state and Commonwealth policy and practice that all aspects of mental health organisations include consumer participation. As a mental health peak body whose members represent the mental health community managed sector, not only our own board but members' boards or executive committees are constituted with at least one public officer who is a person with lived experience of mental illness.

We emphasise that the loss of capacity or becoming incapacitated as a consequence of mental illness is no different than any other medical condition that a person may recover from. An episode of mental illness is similar in this respect to any medical or physical health condition.

Therefore subject to the particular regulations of an organisation stating that for example a committee/ board member should stand down if they are unable to attend more than 3 meetings, a person should not be required to step down from the committee unless they become permanently incapacitated. On this basis we strongly advocate that the model rule under the Fair Trading Regulation should be amended.

We also note that the model rules under the NSW Associations Incorporation Act 2009: Division 2 s35 refers only to a public officer vacating office and does not refer to committee/ board members as referred to in the Act. We ask that you advise this mismatch between the Act and the Model Rules to the appropriate authority in addition to recommending a review of the language used that in our view requires amendment to Division 2 s35 1) e) of the *NSW Associations Incorporation Act 2009*.

We recommend that the ruling specified in sub-item 18. 2) f. should rather read that:

(2) A casual vacancy in the office of a member of the committee occurs if the member:

f) becomes permanently incapacitated

We are happy to discuss the matter further with you and please contact Corinne Henderson, Senior Policy Officer at: corinne@mhcc.org.au or telephone: 02 9555 8388 # 101

We thank you for your interest and look forward to hearing from you in the near future.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jenna Bateman', with a large, stylized flourish at the end.

Jenna Bateman
Chief Executive Officer