

The Western Australian State Government has just released its draft *Associations Incorporation Bill 2014 (Bill)* to repeal and replace the existing *Associations Incorporation Act 1987 (Act)*.

A working knowledge of the key changes is vital if you are part of a committee or Board associated with an Incorporated Association (**Association**), or if you are involved in the administration of financial accounting of any such organisation.

Members who become involved in the some aspects of the management of an Association may also be affected.

### **Actions Required**

If the Bill is passed, Associations will need to immediately:

- consider whether the Association has remained 'eligible';
- consider the new duties imposed on committee members and officers and ensure that all relevant persons are informed and aware;
- complete an audit of all people who may be considered 'officers' under the new definition, and ensure they are aware of their obligations;
- preparing dispute resolution procedures for inclusion in governance documents;
- consider what 'tier' of Association it will now be defined as, and how its financial reporting obligations may change as a result.

Associations have three years to audit their constitutions and ensure they are compliant with the new legislation. Penalties will apply for non-compliance, so it is important that such audits occur. Management committees are able to pass any changes to ensure regulatory compliance via resolution within this period, rather than seeking a special resolution.

### **Key Reforms Explained**

#### **Eligibility**

The Bill extends the list of activities and functions that a group may perform to be eligible to be an Association.

However, Associations now have a positive obligation to ensure ongoing eligibility which means, at all times, at least one of the criteria must be satisfied for an Association to remain valid.

Consequently, it will be important to assess whether an Association will remain eligible under the Bill.

#### **Changes to Constitutions/Rule Books**

Legal status will be given to the constitutions of all Associations. As a result, there are now stricter obligations on Associations to make sure that rules (or constitutional policies) are maintained and made available to members when they join the Association, and for subsequent inspection. Failure to do so attracts fines.

The Bill sets out the mandatory provisions of constitutions. It will be important for Associations to ensure that existing governance documents comply. Again, penalties apply for non-compliance in certain circumstances.

#### **Model Rules**

The long anticipated model rules will be released after the Bill is passed by Parliament. Associations will be able to adopt these rules as their own by special resolution. The model rules can be adopted in full or in part. There is no obligation to adopt the model rules, however doing so will ensure that Associations are compliant with legislation

#### **New Duties for Committee Members**

Committee members and office bearers will now have the same duties and obligations that board directors have under the Corporations Act 2001 (Cth). The duties are far stricter than under the previous legislation, and breaches attract heavy fines of up to AU\$10,000.

This significantly increases the responsibilities (and associated risks) of officers of Associations, particularly for organisations that have underdeveloped governance policies.

#### **Broadening the Definition of 'Officer'**

An officer of an IA will no longer be a 'member of the committee', and will now include:

- any person who makes or participates in the making of decisions that affect the whole, or a substantial part, of the operations of the association;
- any person who has the capacity to significantly affect the financial standing of the association; and
- any person who influences the management committee in that it follows his/her instruction or wishes.

Duties of officers will extend to such persons, and it is important to consider the liability such persons will attract as a result. Any officer needs to be aware of their duties under the Act and any association governance document.

## Financial Reporting

The financial reporting and auditing obligations of Associations will now be determined on the revenue that an Association has in a financial year.

The tiers are defined as follows:

- Tier 1: revenue less than AU\$250,000;
- Tier 2: revenue between AU\$250,000 and AU\$1 million; and
- Tier 3: revenue exceeding AU\$1 million.

The intent is to minimise reporting burdens on smaller businesses, and requiring greater accountability from Associations with significant resources. It is important for auditors and Association committees to be aware of how this may affect reporting obligations.

## Dispute Resolution

Associations will be required to prepare internal dispute resolution procedures (if they do not already exist) which will be incorporated into its constitution. The Bill does not currently provide much guidance on what procedures would be appropriate, but it is expected that the model rules will provide greater detail.

## Next Steps

Whilst Associations should be aware of the approaching changes, until the Bill is passed, the actual effect of these changes and the steps required to be taken by associations is still to be confirmed.

After State Parliament resumes on 17 February 2015, the Bill is expected to progress in the early part of next year.

We recommend that Associations make themselves aware of the upcoming changes and to act within the three-year transitional period to ensure compliance with the requirements set out in the Bill.

Please contact us if you require further information regarding the Bill or its potential effect on your Association.

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