

**ASSOCIATIONS INCORPORATION BILL 2014**

*Introduction and First Reading*

Bill introduced, on motion by **Mr P.T. Miles (Parliamentary Secretary)**, and read a first time.

Explanatory memorandum presented by the parliamentary secretary.

*Second Reading*

**MR P.T. MILES** (Wanneroo — Parliamentary Secretary) [10.08 am]: I move —

That the bill be now read a second time.

The Associations Incorporation Bill 2014 repeals and replaces the Associations Incorporation Act 1987. The current act allows an association, such as a society, club, institution or other body, to incorporate and form a separate legal entity, and limits the liability of its members for the purpose of lawful activities. It is a popular and effective mechanism through which not-for-profit organisations, such as sport and recreation clubs, societies and community groups, in Western Australia can have the benefit of being a legal person to pursue their objects, while leaving their internal management largely to the members. The proposed act will provide a contemporary framework for their incorporation and regulation.

Western Australians have had the benefit of being able to belong to incorporated associations for well over 100 years. Incorporated associations continue to be of considerable importance. Most of the more than 17 000 incorporated associations in Western Australia are locally based community, cultural and sporting organisations. They can range from local community social or sporting clubs, to professional and industry bodies, to large, not-for-profit entities such as the Royal Automobile Club of WA Inc. Incorporated associations are frequently and increasingly the vehicles through which the state government and local governments deliver or fund services, in fields of activity that can include education, seniors' interests, arts and culture, farming and regional development.

The government is aware of the important role played by incorporated associations and of the necessity to ensure that the laws covering their operation meet current community needs and expectations. For this reason, a review of the Associations Incorporation Act has been undertaken following a long period of consultation with associations, other key interest groups, and the general community. There is broad agreement that the present act has a number of deficiencies that need to be addressed to overcome legal uncertainties and administrative inefficiencies. The bill will repeal and replace the current act to streamline the regulation of associations in order to promote efficiency and greater accountability, while minimising administration and compliance costs for associations. It will also realign Western Australia's incorporated associations legislation with contemporary legislation in other Australian jurisdictions.

I will now summarise the key features of the bill to the extent that they are a significant departure from the current legislative requirements. Firstly, the bill introduces a system of financial reporting and accountability designed to minimise the reporting burden on smaller associations, while recognising that larger associations should be accountable for the significant resources under their control. It introduces a three-tiered system of financial reporting determined by the revenue of an incorporated association, to reflect the varying levels of risk commensurate with associations of different sizes. The tiers were informed by feedback from accounting experts with specialist knowledge of not-for-profit groups, as well as CPA Australia. The thresholds, which can be adjusted in the future through regulation, will be set as follows: tier 1, less than \$250 000 in revenue per annum; tier 2, between \$250 000 and \$1 million in revenue per annum; and tier 3, over \$1 million in revenue per annum. Over 90 per cent of Western Australia's associations earn revenue of less than \$250 000 a year. The bill will categorise these associations as tier 1 associations and they will be able to choose to prepare basic financial statements using either the cash or accrual methods of accounting. There will be no requirement for an independent review or audit of the accounts unless a review or audit is required by an association's rules, the members pass a special resolution requiring a review, or one is directed by the Commissioner for Consumer Protection. Tier 2 and tier 3 associations must prepare financial reports that give a true and fair view of the financial position and performance of the association in accordance with Australian accounting standards. Tier 2 associations must have their reports reviewed, rather than audited, unless an audit is required by a special resolution of an association's members, or if an audit is directed by the commissioner. Tier 3 associations must have their reports audited. Although a review must be prepared in accordance with the relevant accounting standards, it does not require all the evidence that is required for an audit, and therefore the nature of the work is different and less expensive. A review must be undertaken by a member of a professional accounting body, and an audit must be undertaken by a member of a professional accounting body holding a public practising certificate. These requirements recognise the concerns expressed by stakeholders that there is a shortage of registered company auditors in Western Australia, particularly in rural areas.

The bill encourages self-reporting, as associations will continue to report to members rather than lodge financial statements with the commissioner. However, the commissioner can intervene in exceptional circumstances. The government recognises that many tier 1 and tier 2 associations will already have higher levels of financial accountability than those proposed in the bill. The bill sets out the minimum financial reporting standards with which associations must comply. It does not prevent associations from adopting more stringent requirements if the members consider them to be appropriate for their association.

The bill also recognises the strong public interest in the protection of personal privacy. It provides a flexible approach to what contact information a member must provide to their association, as well as limits on what can be done with that information. Members may provide a post office box or email address for contact instead of a residential address, and a person must not use or disclose information in the register of members except for a purpose that is directly connected with the affairs of the association or that is related to the administration of the act.

The present act does not articulate the basic duties of officers of an association, although such duties are well established at common law. This means that the obligations of committee members and other officers may not be clear to them. The bill provides a modern statement of the duties and responsibilities owed by committee members and officers by codifying those that already exist at law, such as the duty to exercise reasonable care and diligence, the duty to act in good faith and in the best interests of the association, and for a proper purpose, and the duty on a committee member to not misuse his or her position or any information they have gained as an officer. The provisions will apply to committee members and to certain persons who do not hold a formal committee position, such as senior employees or past committee members who are still actively involved in the association and influencing the decisions of the committee.

The majority of incorporated associations are small and rely on the tireless efforts of voluntary committee members. In an effort to avoid costly disputes, the bill requires each association to have an internal dispute resolution process in its rules or constitution, and provides that any unresolved disputes between members of an incorporated association, and between incorporated associations and their members, can be heard by the State Administrative Tribunal. This option provides relief in situations in which, until now, the only recourse was to the Supreme Court.

The bill also removes the outdated restriction on an association trading, provided that all profits from such activities are used to further the association's objects or purposes and that individual members do not profit from such activities. It is important to ensure that the not-for-profit nature of incorporated associations is maintained. However, it is also important to recognise that some trading activity among not-for-profit organisations is important for their financial self-sustainability, especially if they are used for the delivery of government-funded community services. Importantly, the bill will provide a lengthy transition period of three years to allow associations to update their rules or constitution so as to comply with the new legislation. An association will be able to either adopt the model rules that are being developed to guide the sector or, provided that its rules comply with the new law, adapt the model rules to best suit its situation.

The draft model rules were released for discussion as part of public consultation on the green bill during late 2007 and early 2008. These rules will be finalised over the coming few months and associations will be provided with an opportunity to provide feedback on them.

Similar to recent changes in the legislation regulating retirement villages, the bill introduces a process for the commissioner to apply to the State Administrative Tribunal for the appointment of a statutory manager to administer the affairs of an association. The appointment of a statutory manager will be an option of "last resort" when the incorporated association is not functioning effectively in accordance with its functions or purposes, or the act, and when the appointment of a statutory manager is likely to improve the functioning of, and is in the best interests of, the association.

The bill also provides means to address instances of management committee dysfunction that are not sufficiently serious to justify the appointment of a statutory manager. These include making dispute-resolution procedures mandatory in the rules of an association; empowering the commissioner to direct that a general meeting of members be held; and providing the ability for association members, or the association itself, to apply to the State Administrative Tribunal if a dispute cannot be resolved. Consequently, it is only cases of serious dysfunction in the operations of an association that will require the appointment of a temporary statutory manager. It will be a "last resort" alternative to having the incorporated association wound up in that small number of cases in which there is the potential to improve the functioning of an otherwise dysfunctional association.

Finally, the bill will introduce a simplified and streamlined process for associations to resolve their affairs and cancel their incorporation. The bill will enable associations to choose the process that best suits their particular circumstances, being either a formal winding up using a liquidator under the commonwealth Corporations Act,

or a simple cancellation of incorporation. Further, there will be the capacity for the appointment of a voluntary administrator as an alternative to an immediate winding up. Voluntary administration provides an alternative to winding up for associations that are otherwise economically sound—to resolve temporary insolvency or financial difficulties. The government’s key goal in advancing these reforms is to achieve a balance between the need for reasonable regulation and the desire for incorporated associations to be able to function autonomously and effectively.

This government has made it a priority for the detail of the proposed changes in the bill to be openly discussed and considered by the people that it will affect most, and I am pleased to report that there has been broad support for the key provisions of the bill. The reforms in this bill are long overdue. It will greatly improve regulation of, and internal management within, incorporated associations and ensure that associations continue to remain an effective and important part of our community life. I commend the bill to the house and table the explanatory memorandum.

Debate adjourned, on motion by **Mr D.A. Templeman**.