

ASSOCIATIONS INCORPORATION BILL 2014

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Minister for Commerce)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce) [5.08 pm]: I move —

That the bill be now read a second time.

The purpose of the Associations Incorporation Bill 2014 is to repeal and replace the Associations Incorporation Act 1987. The government's purpose in introducing the bill is to provide a framework of regulation for not-for-profit organisations, such as sport and recreation clubs, societies and community groups in Western Australia but to leave the internal management of associations largely to members. The bill allows an association to incorporate as a separate legal body and limits the liability of its members for lawful activities.

For well over 100 years Western Australians have belonged to incorporated associations such as clubs and societies, which have made an enormous difference to the quality of community life in our state. Most of the over 17 000 incorporated associations in Western Australia are locally based community, cultural and sporting organisations, others are professional and industry bodies, and some are large not-for-profit entities such as the Royal Automobile Club of WA Inc. Associations are also active throughout sectors where state government delivers or funds services, including education, seniors' interests, arts and culture, farming and regional development.

The government is aware of the important role played by incorporated associations and of ensuring that the laws covering their operation meet current community needs and expectations. For this reason, a review of the Associations Incorporation Act 1987 was undertaken following a long period of consultation with associations, other key stakeholders and the general community. There is broad agreement that the 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. 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 by 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 as directed by the commissioner. Tier 3 associations must have their reports audited. Although a review must be prepared in accordance with the 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 take into account stakeholders' concerns 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 on an exceptions basis. 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 higher requirements when the members consider them to be appropriate for their association.

The second key feature of the bill is that it 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, and limits 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.

There is currently no statement of the basic duties of committee members in the act, even though it is well established that such duties exist at common law. This means that the obligations of committee members and other officers are left unclear under the contact. The bill provides a more modern statement of the duties that are owed by committee members and officers by codifying the duties that already exist at law—for example, the duties of care and diligence to act in good faith in the best interests of the association for a proper purpose and the duties on a committee member not to misuse their position or information. The provisions will apply to committee members and to those persons who influence the management committee but who do not hold a formal committee position. For example, senior employees or past committee members who are still actively involved in the association and influencing the decisions of the committee.

The bill will also assist in minimising the risk to associations of appointing inappropriate persons to the management committee by providing for the following persons to be disqualified from being committee members: an undischarged bankrupt or a person whose affairs are under insolvency laws; a person convicted of an offence involving fraud or dishonesty punishable on conviction by three months or more imprisonment; and a person convicted of an offence in connection with the promotion, formation or management of a body corporate, including the duties provisions under the act. In the case of bankruptcy or insolvency, the person will be disqualified until their bankruptcy becomes discharged or their affairs are no longer under insolvency laws—usually around three years. When the disqualification is as a result of conviction, the person will be disqualified for a period of five years from conviction, except where the conviction results in imprisonment, in which case the period of five years will run from the time of the person's release from custody. The bill also provides for a disqualified person to apply to the commissioner for approval to accept an appointment or act as a member of a management committee of an incorporated association. Importantly, the prohibition will apply to a very specific and limited set of individuals to ensure that the overall pool of suitable persons who can act as committee members is not unduly limited.

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 incorporated associations and their members can be heard by the State Administrative Tribunal. This option provides relief in situations when, up to 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. This will ensure that the not-for-profit characteristic of incorporated associations is maintained, while recognising that the growth, especially over recent years, in trading activity in the not-for-profit sector is largely as a result of growing pressure on not-for-profits to be financially self-sustainable, combined with the growing reliance on the not-for-profit sector 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 adapt them to best suit its situation provided that its rules comply with the new law. The model rules will simplify the process for incorporation, as associations will be able to elect to adopt them with only minimal additional information required at the time they incorporate. Associations will also be able to adopt them at any later point in time; however, it will not be compulsory for associations to adopt the model rules.

The draft model rules were released for discussion as part of public consultation on the green bill during late 2007 and early 2008. They were refined as a result of that feedback, and a further draft was released publicly at the time the Associations Incorporation Bill was tabled in Parliament in September last year. This has allowed associations plenty of time to review them and provide their views. The draft model rules are currently being finalised and should be completed shortly.

The bill will also include powers for the commissioner to investigate potential breaches of the legislation. Currently, there is not a clear range of investigation and enforcement powers in the act. The bill will incorporate the investigation and enforcement provisions of the Fair Trading Act 2010, to enable the Commissioner for Consumer Protection to investigate potential breaches of the legislation. However, this will not change the government's focus on promoting compliance through education.

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 when an association is not functioning effectively. 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 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 a response to instances of management committee dysfunction that are not sufficiently serious to justify the appointment of a statutory manager. This includes 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. As such, the use of a temporary statutory manager is linked to evidence of serious dysfunction in the operations of an association. Intervention in this context is used as a last-resort alternative to having the incorporated association wound up. As an option of last resort, it will be used only in a minority of cases in which it is believed 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. The 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. The bill will greatly improve regulation of and internal management within the associations sector, and will ensure that associations continue to remain an effective and important part of our community life.

Pursuant to standing order 126(1), I advise that the bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental agreement to which the government of this state is a party. The bill, by reason of its subject matter, does not introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2744.]

Debate adjourned, pursuant to standing orders.