



Department of **Energy, Mines,
Industry Regulation and Safety**
Consumer Protection

EXPLANATORY MEMORANDUM

**Associations and Co-operatives
Legislation Amendment Bill 2024**

ASSOCIATIONS AND CO-OPERATIVES LEGISLATION AMENDMENT BILL 2024

Overview of Bill

The Associations and Co-operatives Legislation Amendment Bill 2024 (Bill) amends the *Associations Incorporation Act 2015* (WA) (Associations Act) and the *Co-operatives Act 2009* (WA) (Co-operatives Act).

The purpose of the Bill is to modernise and improve the operation and effectiveness of the legislation and streamline and simplify the legislative obligations.

Key amendments included in the Bill will:

- allow an association to reserve a name;
- allow associations to implement rules that are in addition to, but not inconsistent with, the requirements of the Associations Act;
- allow an association or co-operative to hold, and vote at, meetings held by electronic means;
- restrict access to personal information contained in an association's member register under certain circumstances (e.g. where disclosure of information has safety implications);
- allow associations to appoint an auditor for a fixed period (as opposed to the open-ended arrangements that may arise under the current provisions);
- provide the Commissioner for Consumer Protection (Commissioner) with the power to wind up an association (including discharging its debts and liabilities via payments from liquidators);
- allow for application of small business restructuring processes to associations as an alternative to winding up and administration provisions in the event of insolvency;
- provide additional powers for the Commissioner to cancel an association's incorporation (e.g. where it is in the public interest to do so);
- improve access to the State Administrative Tribunal for former members who wish to appeal their expulsion from an association; and
- include provisions in the Co-operatives Act to explicitly permit electronic signing of documents and clarify aspects of voting by proxy at general meetings.

A clause-by-clause commentary on the Bill follows:

Part 1 Preliminary

Clause 1 Short Title

This clause provides the short title of the Bill.

Clause 2 Commencement

This clause provides that:

- sections 1 and 2 of the Bill will commence on the day of Royal Assent (assent day);
- sections 5, 12, 13, 14 and 26 on a day fixed by proclamation; and
- the rest of the Act on the day after the assent day.

Amendments to the Associations Incorporation Regulations 2016 (WA) or establishment of administrative processes will be required to enable some amendments to operate effectively. The flexibility to fix commencement dates by proclamation is therefore required.

Part 2 *Associations Incorporated Act 2015* amended

Clause 3 Act amended

Part 2 amends the Associations Act

Clause 4 Section 18 amended – Certain property vests in incorporated association

This clause amends section 18 of the Associations Act to delete references to ‘duplicate instruments of title’.

This reflects changes made by the *Transfer of Land Amendment Act 2022* which abolished the issuing of duplicate titles when the land titles system transitioned from paper-based certificates of title to a digital/electronic regulated regime.

Clause 5 Part 2 Division 4 inserted – Reservation of names

New Division 4 makes provision for an incorporated association or prospective incorporated association to reserve a name.

New section 20A – Application for reservation of a name

New section 20A provides that an incorporated association or an applicant for the incorporation of an association can apply to the Commissioner to reserve a name.

New section 20B – Decision on application

New section 20B provides that the Commissioner may reserve or refuse an application to reserve a name. Refusal may be based on restrictions on names imposed via section 12 or, otherwise, the Commissioner determines that the application has been made for an improper purpose.

New section 20C – Duration of reservation of a name

New section 20C provides that a name reservation expires 3 months following reservation or otherwise upon an application for incorporation or name change being determined.

Clause 6 Section 23A inserted – Rules imposing new requirements not inconsistent with Act

New section 23A provides clarification that an association's rules which impose requirements that are in addition to those imposed by the Associations Act are valid.

The Associations Act is intended to provide minimum governance standards for associations. This amendment makes it clear that associations are not prevented from imposing additional requirements.

Clause 7 Section 24 amended – Restriction on distribution of surplus property

Section 24 outlines restrictions on the distribution of surplus property on the cancellation of the incorporation of or the winding up of the association.

This clause expands the type of entities and non-profit organisations that may receive surplus property to include associations incorporated under legislation in another State or Territory; Aboriginal and Torres Strait Islander corporations; religious organisations incorporated by or under a written law; and entities endorsed as deductible gift recipients.

Clause 8 Section 50 amended – Annual general meeting

Section 50 relates to annual general meetings (AGM) held for the purposes of the Associations Act. Subsection (1) requires an incorporated association to hold an AGM in each calendar year and imposes a penalty for non-compliance.

New section 50(4) provides that if the Commissioner allows a period longer than a calendar year for the holding an AGM, subsection (1) does not apply.

Clause 9 Section 51 amended – Requirements for special resolution

Section 51 outlines the requirements for a special resolution.

This amendment deletes subsection (5). The effect of this amendment is, if notice of a special resolution is not given in accordance with subsections (3) and (4), the special resolution as passed is not automatically invalidated.

This is intended to address circumstances where a minor failure to meet notice requirements resulted in an ineffective resolution. Members will still have the option of challenging a resolution in the State Administrative Tribunal (SAT) if the requirements are not complied with.

Clause 10 Section 52A inserted – Holding meetings remotely in whole or in part

New section 52A relates to holding meetings remotely and provides that, unless the rules of the incorporated association state otherwise, members do not have to attend a meeting in person. Instead, electronic attendance (for example, online or by telephone) is permitted.

This is the default position and may be modified by the rules of the incorporated association.

Subsection (2) makes it clear that a person who attends a meeting remotely is taken to have attended and been present at the meeting and, if relevant, to have voted.

Clause 11 Section 53 amended – Register to be maintained

Section 53 of the Associations Act lists information that must be included on the register of members. This clause amends section 53 to provide that an incorporated association is not prevented from including other information on the register of members, if it is in accordance with the rules of the association.

Clause 12 Section 54 amended – Inspection of register by member

Section 54 of the Associations Act provides for inspection of the register of members. There is currently no timeframe for providing access for members to inspect the register.

This clause replaces subsection (1) to provide that, subject to restrictions under the new section 56A, an incorporated association must make the register available for inspection by the member no later than 30 days after making a request or a shorter period if stated in the rules of the association.

Subsection (2) is amended to make the right of members to make a copy or take an extract from the register subject to the restrictions of new section 56A.

Clause 13 Section 56 amended – Member may request copy of register

This clause amends section 56 of the Associations Act by making a request for a copy of the register of members subject to the restrictions of new section 56A.

This is in addition to the existing discretionary requirement to provide a statutory declaration that the proposed use of the register relates to the affairs of the association.

Clause 14 Sections 56A and 56B inserted

This clause inserts new sections 56A and 56B.

New section 56A – Restriction on access to personal information

New section 56A allows a member of an association to apply to the secretary of the association to restrict access to personal information recorded in the register of members.

If the secretary is satisfied that prescribed circumstances exist for doing so, they must agree to the request.

Refusal of a request must be notified within 30 days of the decision.

Access will be restricted to the secretary and the Commissioner.

This amendment is intended to allow for personal information to be restricted for reasons of safety or security. The specific circumstances that will justify restriction of access will be prescribed in the regulations.

New section 56B – Secretary must pass on information if contact details restricted

One of the purposes of providing access to the member register is to allow members to contact other members for purposes relevant to the operation of the association.

New section 56B requires that, where access to a member's contact details are restricted, the secretary must pass on information relating to the affairs of the association from other members within 14 days of a request.

Clause 15 Section 87 amended – Appointment of reviewer or auditor

This clause amends section 87 of the Associations Act which provides for the appointment of a reviewer or auditor.

New subsection (2A) provides that a reviewer or auditor may be appointed at a general meeting for a fixed term stated in the association's rules.

New subsection (2B) requires that the fixed term stated under subsection (2A) must be at least 2 years but not longer than 5 years.

The clause also amends section 87(3) to provide that, in addition to the events described in (a) to (e), a reviewer or auditor of an incorporated association holds the position until (f) the fixed term of appointment is completed.

Clause 16 Part 9 heading replaced - Administration, winding up and restructuring

This clause deletes the heading of Part 9 of the Associations Act and inserts the new heading “Part 9 – Administration, winding up and restructuring”.

Clause 17 Part 9 Division 1 heading replaced - Voluntary administration, winding up and restructuring

This clause changes the heading of Part 9 Division 1 of the Associations Act from ‘Voluntary administration and winding up’ to ‘Voluntary administration, winding up and restructuring’.

Clause 18 Section 121 amended – Voluntary winding up under Corporations Act

Section 121 of the Associations Act applies in circumstances where an incorporation is voluntarily wound up.

This clause amends section 121 to provide the Commissioner with powers consistent with those that apply on the cancellation of the incorporation of an association.

New subsection (4) provides that if money is paid to the Commissioner by a liquidator under section 544 of the *Corporations Act 2001* (Cth) (Corporations Act), the Commissioner is empowered to pay the debts and liabilities of an incorporated association and wind up its affairs. Section 544 of the Corporations Act outlines the obligations of a liquidator in relation to unclaimed or undistributed funds.

New subsection (5) provides that the Commissioner may take all action that is necessary or expedient to wind up an association; appoint persons to investigate affairs; give directions; and do or omit to do any act or thing or take any step that is prescribed.

New subsection (6) provides that costs incurred by the Commissioner, or another person appointed to investigate for the purposes of section 121, can be recouped out of the money paid to the Commissioner by the liquidator.

Clause 19 Section 121A inserted – Restructuring under Corporations Act

This clause makes provision for the restructuring of incorporated associations under Part 5.3B of the Corporations Act.

New section 121A is made for the purposes of the *Corporations (Ancillary Provisions) Act 2001* and applies Part 5.3B of the Corporations Act to incorporated associations that are being

restructured. The application of Part 5.3B of the Corporations Act is subject to modifications of that part set out in Schedule 3 of the Associations Act or prescribed by regulation.

Part 5.3B of the Corporations Act provides a restructuring process for eligible companies that allows the companies:

- to retain control of the business, property and affairs while developing a plan to restructure with the assistance of a small business restructuring practitioner; and
- to enter into a restructuring plan with creditors.

This amendment allows for the restructuring process to apply to incorporated associations as an alternative to administration or winding up.

Clause 20 Section 122 amended – Further application of Corporations Act

Section 122 of the Associations Act relates to the further application of the Corporations Act. This clause amends section 122 to include a reference to new section 121A as being subject to the modifications under section 122.

Clause 21 Section 127 amended – Duties of management committee members with respect to incurring of debt

Section 127 of the Associations Act outlines the duties of management committee members with respect to the incurring of a debt.

Subsection (1) provides that a member of the management committee commits an offence if an association trades while insolvent or incurs a debt which makes the association insolvent.

Subsection (5) provides that it is a defence if the accused proves that they took all reasonable steps to prevent the incorporated association incurring the debt.

This clause amends subsection (6)(a) to include a reference to appointment of a ‘restructuring practitioner’ as a matter that can be considered in determining whether the person took all reasonable steps to prevent the association incurring the debt.

New subsection (7) applies the definition of ‘restructuring practitioner’ under section 9 of the Corporations Act.

This amendment reflects the application of Part 5.3B of the Corporations Act as provided for in new section 121A.

Clause 22 Section 136A inserted – Commissioner may revoke approval of distribution plan

New section 136A empowers the Commissioner to revoke approval for a distribution plan if the approval was based on incorrect information.

Clause 23 Section 138A inserted – Amendment of approved distribution plan

New section 138A provides that the Commissioner may approve an amendment to the distribution plan if:

- it is not possible for an incorporated association to comply with the existing distribution plan; or
- there are problems interpreting, implementing, or completing the distribution plan.

Clause 24 Section 144 replaced – Grounds on which Commissioner may act

Section 144 of the Associations Act specifies the grounds on which the Commissioner may cancel the incorporation of an association.

Section 144 is deleted and replaced with a provision that restates the existing grounds, subject to the following changes:

- cancellation by virtue of an incorporated association not operating is no longer subject to a twelve-month waiting period – paragraph (c); and
- a public interest ground has been included – paragraph (g).

Clause 25 Section 167 amended – Commissioner may refuse lodgment of document

Section 167(2) of the Associations Act is amended to provide for consistent use of terminology between sections 165 and 167.

Clause 26 Section 169 amended – Reviewable decisions of Commissioner

Section 169 of the Associations Act outlines reviewable decisions of the Commissioner.

Item 4A has been added to the table to provide that refusal under section 20B(1) – the Commissioner may determine an application for reserving a name or by refusing an application to reserve a name – is a reviewable decision.

Clause 27 Section 182 amended – Jurisdiction of SAT in respect of disputes

Section 182 of the Associations Act outlines the jurisdiction of the SAT in respect of disputes.

This clause amends section 182 to permit a ‘former member’ expelled by the association, who is involved in a dispute with the association, to make an application to SAT for a determination. An application by a former member must be made within six months of the person being expelled from the incorporated association.

Minor drafting amendments are made so that a member (singular), former member (singular) or former members can make an application to SAT rather than just current members.

Clause 28 Part 16A inserted – Transitional provision for Associations and Co-operatives Legislation Amendment Act 2024

Inserts Part 16A to provide for transitional arrangements.

New section 211A – Application of s.54A to existing requests

New section 211A provides for transitional arrangements where a member has made a request under section 54(1) of the Associations Act to inspect the register of members. If a request was made under the former section 54(1), once the amendments commence, the incorporated association will have 30 days to make the register available for inspection.

Clause 29 Schedule 1 amended – Matters to be provided for in rules of an incorporated association

Schedule 1 of the Associations Act outlines matters that, subject to a Commissioner's exemption, must be provided for in rules of an incorporated association.

This clause inserts new item 6A to require an association to make provision in its rules allocating responsibility to specific officers or member for complying with reporting obligations.

Clause 30 Schedule 2 amended – Vesting of property and liabilities on amalgamation

An amendment is made to clause 4 – Notation of registers to delete the reference to 'duplicate instruments of title'.

This reflects changes made by the *Transfer of Land Amendment Act 2022* which abolished the issuing of duplicate titles when the land titles system transitioned from paper-based certificates of title to a digital/electronic regulated regime.

Clause 31 Schedule 3 amended – Modifications to text of Corporations Act

Schedule 3 of the Associations Act sets out modifications to the text of the Corporations Act.

Amendments are made to references after the heading to include new section 121A.

At the end of Schedule 3, item 15 is inserted to provide that a reference in section 544(1), (1A) and (2)(c) of the Corporations Act to Part 9.7 are to be read as references to section 121(4) to (6) of the Associations Act. This allows the Commissioner to deal with surplus funds of an association on winding up.

Part 3 Co-operatives Act 2009 amended

Clause 32 Act amended

Part 3 amends the Co-operatives Act.

Clause 33 Section 168 amended – Voting by proxy

Section 168 of the Co-operatives Act deals with voting by proxy. This clause amends section 168 to include proxy voting provisions consistent with those in the Corporations Act.

Subsection (3) is deleted and replaced.

New subsection (3) provides that if a person appoints the chairperson as their proxy and states the way in which they wish to vote on a resolution, then the chairperson is obliged to vote on a poll and in the way stated.

New subsection (3A) provides if a person other than the chairperson holds the proxy they are not obliged to vote, but if they do so, they must vote in the way stated.

Subsection (5) is deleted because section 194 clarifies the rules in relation to voting for more than one proxy.

Clause 34 Section 194 amended – Decision at meetings

Section 194 of the Co-operatives Act makes provision for decisions made at meetings.

This clause amends subsection (2) to make it clear that a person, whether or not a proxy, may exercise only one vote, on a question determined by a show of hands.

Clause 35 Section 194A inserted – Holding meetings remotely in whole or part

Clause 35 inserts new section 194A.

New subsection (1) provides that, unless the rules of a co-operative state otherwise, annual general meetings or special general meetings may be held entirely or in part by electronic communications (for example, online or by telephone).

A person who is entitled to attend meetings of a co-operative and be heard may participate in the meeting in whole or in part via methods of electronic communications.

New subsection (2) makes it clear that a person who attends a meeting via electronic communications, is taken to have been present at that meeting and, if they voted, they are taken to have voted in person.

Clause 36 Section 250 amended – Application of Corporations Act to issues of debentures

This clause amends subsection (3A) to update references to the Corporations Act provisions that apply as civil penalty provisions under the Co-operatives Act to reflect amendments to the Corporations Act.

Clause 37 Section 484A inserted – Technology neutral signing

This clause inserts new section 484A of the Co-operatives Act, which relates to technology neutral signing.

Subsection (1) provides that this section applies to a document required or permitted to be signed under the Act.

Subsection (2) provides that a person may sign a document either by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means.

The clause also includes provisions relating to the satisfactory methods of signing documents in subsections (3) and (4).

Subsections (5) to (7) are consistent with section 110A(3) to (5) of the Corporations Act and relate to:

- in signing a document, a person indicates their intention only and is not required to indicate an intention in relation to other matters listed in subsection (5);
- a person not being required to sign the same form of the document, same page of the document or use the same method of signing as another person signing the same document. For example:
 - documents can be executed separately and the collated counterpart signing pages may be treated as evidence of effective execution of a single document; and
 - one person may sign via physical (wet) signature, and another may sign via electronic signature, with both being considered effective execution;
- a person’s signing of a document in more than one capacity.

Subsection (9) does not limit the application of the *Electronic Transactions Act 2011*.

Clause 38 Various references to “chairman” amended

This clause deletes references to ‘chairman’ throughout the Co-operatives Act and replaces it with the gender-neutral term ‘chairperson’.