

# Proposed Amendments to the Associations Incorporations Act 2015

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## Background

On 19 September 2024, the Parliament of Western Australia introduced the *Associations and Co-operatives Legislation Amendment Bill 2024* (Bill). The Bill makes amendments to the *Associations Incorporation Act 2015* (WA) (Associations Act), which regulates the operation and governance of incorporated associations in Western Australia.

Broadly, the Bill seeks to modernise and improve the operation and effectiveness of the legislation by implementing recommendations from a statutory review of the Associations Act published in March 2023.

As further set out below, the amendments to the Associations Act include expressly permitting incorporated associations to hold virtual or hybrid meetings, extending restructuring regimes under the *Corporations Act 2001* (Cth) to incorporated associations and including further protections relating to the personal information of members of incorporated associations. The Bill continues the trend of enhancements to the governance regime of incorporated associations in Western Australia.

## Proposed Changes

Proposed Amendment to the Associations Act	Current Position under the Associations Act
<b>Reservation of Names</b>	A (prospective) incorporated association can apply to the Commissioner for Consumer Protection (Commissioner) to reserve a name for a period of three months. <sup>1</sup>
<b>Restriction on Distribution of Surplus Property</b>	The type of entities that may receive surplus property on the cancellation or winding up of an

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	<p>incorporated association will be expanded to include:</p> <ul style="list-style-type: none"> <li>• Associations incorporated under legislation in another State or Territory;</li> <li>• Aboriginal and Torres Strait Islander corporations;</li> <li>• Religious organisations incorporated by or under a written law; and</li> <li>• Entities endorsed as deductible gift recipients.<sup>2</sup></li> </ul>
<b>Requirements for Special Resolution</b>	<p>If notice of a special resolution is not given in accordance with the existing subsections, the special resolution as passed is not automatically invalidated.</p> <p>If the requirements for giving such notice (whether in the Associations Act or the rules of an incorporated association) are not complied with, members may still challenge the resolution in the State Administrative Tribunal (SAT).<sup>3</sup></p>
<b>Holding Meetings Remotely or in Part</b>	<p>Unless the rules state otherwise, members do not have to attend a meeting in person.<sup>6</sup></p> <p>Practically, this allows an incorporated association to hold general meetings virtually, or as a hybrid meeting, using meeting technology.</p>
<b>Inspection of Register by Member</b>	<p>An 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).<sup>7</sup></p>
<b>Restriction on Access to Personal Information</b>	<p>Members may apply to the secretary of an incorporated association to restrict access to personal information recorded in the register of members.<sup>8</sup></p> <p>If the secretary is satisfied that the prescribed circumstances exist, they must agree to the request.</p> <p>If the secretary refuses the request, they must notify the member of such refusal within 30 days of the decision.</p> <p>This amendment is intended to improve safety or security of concerned members.</p> <p>Interestingly, no equivalent amendment is</p>

Proposed Amendment to the Associations Act	Current Position under the Associations Act
	proposed to the Associations Act in respect of the register of officeholders.
<b>Appointment of a Reviewer or Auditor</b>	<p>A reviewer or auditor may be appointed at a general meeting for a fixed term stated in the incorporated association's rules.<sup>11</sup></p> <p>This must be at least two years but not longer than five years.<sup>12</sup></p>
<b>Restructuring Under Corporations Act</b>	<p>Eligible associations may be subject to the restructuring provisions of Part 5.3B of the Corporations Act as an alternative to administration or winding up.<sup>14</sup></p> <p>This enables an incorporated association to retain control of the business affairs and property while developing a restructuring plan and enter into a restructuring plan with creditors.<sup>15</sup></p>
<b>Duties of Management Committee Members With Respect to Incurring of Debt</b>	Clarified that the appointment of a restructuring practitioner is a matter that can be considered in determining whether a member of the management committee took all reasonable steps to an incorporated association incurring a debt which caused it to become insolvent.
<b>Commissioner May Revoke Approval of Distribution Plan</b>	The Commissioner may revoke approval of a distribution plan (a statement setting out information about surplus property to be distributed) if the approval was based on incorrect information. <sup>16</sup>
<b>Amendment of Approved Distribution Plan</b>	<p>The Commissioner may approve an amendment to the distribution plan if:</p> <ul style="list-style-type: none"> <li>• It is not possible for an association to comply with the existing plan; or</li> <li>• There are problems interpreting, implementing or completing the plan.<sup>17</sup></li> </ul>
<b>Grounds on Which Commissioner May Act</b>	<p>The Commissioner may cancel the incorporation of an incorporated association if it is not in operation.<sup>18</sup></p> <p>No guidance has been provided as to what will constitute an incorporated association not being 'in operation'.</p> <p>The Commissioner may also cancel its incorporation if it is in the public interest.<sup>19</sup></p>
<b>Jurisdiction of SAT in Respect of Disputes</b>	A former member expelled by an incorporated association may make an application to SAT to

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	challenge that expulsion within six months of their expulsion. <sup>21</sup>
<b>Matters to be Provided for in Rules of an Incorporated Association</b>	An association must make rules allocating responsibility to specific officers or member for complying with reporting obligations under the Act or regulations. <sup>22</sup>

The Bill had its first and second reading on 19 September 2024. At this stage, there is no date on which the Bill is expected to come into effect. We will continue to monitor the progress of the Bill.

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## Footnotes

<sup>1</sup> Bill, s 20A.

<sup>2</sup> The Bill, s 24.

<sup>3</sup> The Bill deletes ss 51(5).

<sup>4</sup> Act, ss 51(3)-(4).

<sup>5</sup> Act, ss 51(5).

<sup>6</sup> Bill, s 52A.

<sup>7</sup> Bill, ss 54(1).

<sup>8</sup> Bill, s 56A.

<sup>9</sup> Act, ss 56(1).

<sup>10</sup> Act, ss 56(2).

<sup>11</sup> Bill, ss 87(2A).

<sup>12</sup> Bill, ss 87(2B).

<sup>13</sup> Act, ss 87(3).

<sup>14</sup> Bill, s 121A.

<sup>15</sup> Bill, s 121A.

<sup>16</sup> Bill, ss 136A.

<sup>17</sup> Bill, s 138A.

<sup>18</sup> Bill, ss 144(c).

<sup>19</sup> Bill, ss 144(g).

<sup>20</sup> Act, ss 144(c).

<sup>21</sup> Bill, s 182.

<sup>22</sup> Bill, Schedule 1.

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