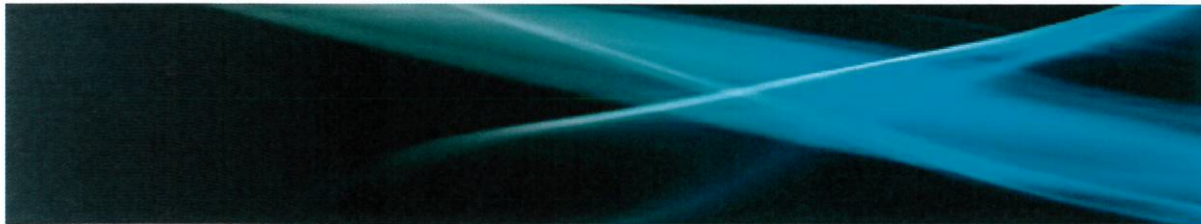


PANETTA MCGRATH

L A W Y E R S



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Hello

Welcome to this month's edition of the Panetta McGrath Aged Care Newsletter in which we discuss the recently passed *Associations Incorporations Act 2015 (WA)* which creates a new scheme of regulation for incorporated associations.

Introduction of the Associations Incorporations Act (WA) 2015

The *Association Incorporations Act 2015 (WA)* (**Act**) was passed and given Royal Assent on 2 November 2015 as Act Number 30 of 2015. Sections 1 and 2 came into operation on Royal Assent, however different sections of the Act will come into operation on a date to be proclaimed.

The Act repeals and replaces the *Associations Incorporation Act 1987 (WA)* and creates a new scheme of regulation for incorporated associations. The Act aligns WA's legislation governing incorporated associations with other Australia States and Territories.

The key features of the Act are outlined below.

Financial reporting

The Act introduces a three-tiered system for annual financial reporting, aimed at making reporting requirements proportionate to association size.

- Tier 1 associations (revenue <\$250,000) must prepare true and fair financial reports but may choose to submit them without independent review or audit;
- Tier 2 associations (revenue \$250,000-\$1,000,000) must prepare true and fair financial reports and must have them reviewed by an independent professional accounting body;

- Tier 3 associations (revenue >\$1,000,000) must prepare true and fair financial reports and must have them audited by an independent professional accounting body.

These three tiers align with the ACNC annual reporting thresholds.

Governance

The Act codifies the duties owed by officers of incorporated associations and brings the obligations for officers of incorporated associations in line with the obligations of company directors under the *Corporations Act 2001 (Cth)*.

The term “officer” is defined broadly to cover committee members as well as those persons who influence or have the capacity to influence the management of the committee or financial standing of the association but are not themselves formal committee members (e.g. senior employees or ex-committee members who are still actively involved in decision-making).

Officers have duties to:

- act with care and diligence;
- act in good faith in the best interests of the incorporated association and for a proper purpose; and
- not improperly use their position to gain an advantage for themselves or another person or cause detriment to the association.

The Act also sets out eligibility requirements for committee members, disqualifying persons who are bankrupt, whose affairs are under insolvency laws, or who have been convicted of serious offences relating to management of an entity or fraud.

Privacy

The Act recognises the importance of protecting the privacy of members by introducing limitations on the information to be stored in, and the ability to copy, the membership register of an association.

Members can now be listed by name and email address without the need for a residential or postal address.

A person must not use or disclose information in the register except for a purpose that is directly connected with the association’s affairs or is related to the administration of the Act.

As a safeguard, the rules of an association may require a member wishing to make a copy of the register to make a statutory declaration setting out the purpose and the relevant connection to the association’s affairs.

Disputes

Formal internal dispute resolution procedures will need to be included in all associations' constitutions. If a dispute cannot be resolved under internal dispute resolution procedures, then the incorporated association or the member may apply to the State Administrative Tribunal to have the dispute determined.

Winding up

The process for ending an association's incorporation has been simplified.

Associations can now choose the approach which is most appropriate given their particular circumstances. Larger associations with significant assets or liabilities may be best served by the formal process of winding up using a liquidator, whereas smaller associations may benefit from a simpler process of cancellation of incorporation. Associations will be required to follow the procedure set out in the *Corporations Act 2001*.

Update Constitution

All associations **must** update their constitution to comply with the requirements of the new Act. This must be done by either adopting the Model Rules (setting out the minimum requirements) or by modifying the current constitution to ensure compliance with the key aspects of the Model Rules.

Although no member approval is required for amendments to constitutions made solely for the purpose of complying with the Act, members must be notified of the changes. Officers of an association may of course prefer to advise members of the changes in a general meeting. Any amendments to constitutions in addition to those made to comply with the Act will still require members' approval.

Associations will have **3 years** from the commencement date yet to be proclaimed to introduce an amended constitution. If by the end of the transition period an association's constitution does not comply with the Act or is silent on a particular issue, the relevant section of the Model Rules will apply.

Click [here](#) for a copy of the Act.

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