



Government of Western Australia  
Department of Commerce  
Consumer Protection

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# **ASSOCIATIONS TRANSITION PACK 1**

This information pack provides an overview of the changes that will be introduced under the *Associations Incorporation Act 2015*, answers some frequently asked questions and explains what associations will be required to do when the time comes to transition over to the new law.

## Introduction

This information pack provides an overview of the changes that will be introduced under the new law, answers some frequently asked questions and explains what associations will be required to do when the time comes to transition to the new law.

## Important

- All associations that were incorporated under the *Associations Incorporation Act 1987* will continue to be incorporated under the new law.
- The people who were appointed as the association's committee under the 1987 Act will remain on the committee for the association when the new law commences (until they resign or a new committee is elected/appointed).
- There is no requirement to reapply for membership of your association. Any person who was a member under the 1987 Act will still be a member.

## In this pack:

- Changes to make when the new law commences
- What's your association's financial reporting tier?
- Transitional requirements to update the rules
- Key changes to the way the association will run
- Frequently asked questions and education news

# CHANGES TO MAKE AS SOON AS THE NEW LAW COMMENCES

There are some actions that committees will need to take as soon as the new law commences on 1 July 2016. This section of the transition pack includes information about these matters.

For more information about other key changes under the new law see page seven.

## **1. Notifying the Department of the association's address**

All incorporated associations will be required to provide the Department of Commerce with details of their current address by **29 September 2016**. Associations will be able to submit this information online and the Department will provide more information about application processes in a future transition pack. If you are confident that you have already provided your current address through AssociationsOnline, you will not need to resubmit it.

## **2. Check the eligibility requirements for members to be on the committee**

The Act has new requirements to ensure only suitable people are responsible for running an incorporated association. Undischarged bankrupts and those with certain criminal convictions will be disqualified for a period of time from acting as members of the management committee unless they have been approved by the Commissioner for Consumer Protection.

It will be important to ensure that all members of the committee are eligible under the new law to hold their positions. Going forward associations may want to make simple changes to their processes to ensure that all potential committee members are aware of these requirements; for example adding a tick box to the association's nomination form requiring all candidates to confirm that they are not an undischarged bankrupt and do not have one of the specified criminal convictions.

## **3. Give all new members a copy of the rules when they join the association**

It will be a requirement for each new member of the association to be given a copy of the rules when they join. Members may also ask the association to provide them with a copy of the rules (free of charge) at any time during their membership. Please note that it will be acceptable for associations to email copies of the rules to the members or direct members to obtain a copy from their website.

## **4. Prepare accounts that comply with the requirements of the association's financial reporting tier**

The Act includes new requirements for financial reporting by associations. The financial reporting responsibilities of associations to their members and the information to be included in the annual accounts will depend on which of three tiers the association falls into. It will be important for all incorporated associations to identify which reporting tier they will fall into and consider whether it will be necessary to make any changes to the way they record and report on their financial affairs.

More information about the tiered financial reporting requirements can be found on pages three to five of this pack.

**5. Start considering what changes to your rules will be required**

The requirements of the new law will mean that all associations will need to amend their rules. Associations will have three (3) years from the start of the new law to update their rules to comply with the requirements of the new law.

See page six for more information about this transition process.

**6. Familiarise yourself with the other changes coming**

There are other changes to governance practices included in the Act that associations will need to address, such as new requirements around making the register of members available for inspection and managing committee member interests in decisions, however some of these matters can be addressed as and when the need arises.

All committee members will have an obligation to make themselves aware of the general requirements under the new law and there is more information about these matters on page seven.

# FINANCIAL REPORTING TO MEMBERS

## What's your financial tier?

The requirements for financial reporting to members applicable to your association under the new law will depend on which reporting tier your association falls into. Each tier is calculated based on the annual revenue of the association.

You can do a simple self-assessment to work out which tier your association belongs to and what information will need to be included in the financial report.

### 1. What is your revenue?

The applicable tier depends on the association's annual revenue. This means the total amount of money received or earned by an association in a financial year.

Total annual revenue \$: .....

Our association is:

- Tier 1** = less than \$250,000
- Tier 2** = \$250,000 to \$1 million
- Tier 3** = over \$1 million

## 2. Which accounting method do you use? (For tier 1 only)

We record our incoming monies in the accounts when they are received and the expenses when they are paid.	<b>Cash method</b>
We record our income when it is earned (even if it hasn't actually been received yet) and expenses when they are incurred.	<b>Accrual method</b>

## 3. What are your reporting requirements?

### Tier 1 requirements

The financial statement must give a true and fair view of the association's financial position and performance.

#### CASH method

The association must include:

- a statement of receipts and payments for the financial year;
- a reconciled statement of the association's bank account balances as at the end of the financial year; and
- a statement of assets and liabilities of the association as at the end of the financial year.

#### ACCRUAL method

The association must include:

- a statement of income and expenditure for the financial year; and
- a balance sheet as at the end of the financial year

There is no requirement under the new law for tier 1 associations to undertake a review or audit of their accounts. This being said, if the association's own rules state that a review/audit is required or the members request that one be completed the committee should ensure that the appropriate arrangements are made. In some cases, the Commissioner may direct a tier 1 association to undertake a review or audit.

### Tier 2 requirements

The financial report must give a true and fair view of the association's financial position and performance and comply with Australian Accounting Standards.

The association must include:

- the financial statements for the year, as required by Australian Accounting Standards;
- notes to the financial statements that are required by the Australian Accounting Standards; and
- a management committee declaration stating whether the association is able to pay its debts as and when they become due and payable and whether the prepared financial statements and notes comply with the requirements of the Associations Incorporation Act.

The association must have the financial statements independently **reviewed** and submit a copy of the reviewer's report to the members at the Annual General Meeting. (However, if the rules or the members, by special resolution, request an audit or the Commissioner directs an audit then an independent auditor's report should be provided to members at the Annual General Meeting).

### Tier 3 requirements

The financial report must give a true and fair view of the association's financial position and performance and comply with Australian Accounting Standards.

The Association must include:

- the financial statements for the year, as required by Australian Accounting Standards;
- notes to the financial statements that are required by the Australian Accounting Standards; and
- a management committee declaration stating whether the association is able to pay its debts when they become due and whether the prepared financial statements and notes comply with the requirements of the *Associations Incorporation Act*.

The association must have the financial statements independently **audited** and submit a copy of the auditor's report to the members at the Annual General Meeting.

## When do the new financial reporting requirements commence?

The new financial reporting requirements will apply from the first financial year of an association that commences on or after 1 July 2016. For example an association with a financial year that runs from:

- 1 July to 30 June, must comply with the requirements from 1 July 2016.
- 1 January to 31 December, must comply with the requirements from 1 January 2017.

# RULE CHANGES

It will be necessary for each association to update its rules to include all of the matters set out in Schedule 1 of the new law and ensure that their rules comply with the requirements of the new law.

**These changes to the rules will need to be completed between 1 July 2016 and 1 July 2019.**

- Associations will have the ability to develop their own rules should they wish to do so or they may adopt the Model Rules prescribed in the Regulations.

By adopting the Model Rules an association can ensure that their rules will comply with the requirements of the Act and they will only be required to provide information about the association's name, objects, quorums and financial year. Any changes that are made to the Model Rules will automatically apply to those associations that adopt them.

A copy of the proposed model rules can be [viewed online](#).

- During this three-year transition period the committee of the Association will have the power to make any necessary alterations to the rules so that they comply with the new law without requiring the members to pass the changes by special resolution at a general meeting.
- The alterations to the rules will still need to be lodged with the Commissioner for Consumer Protection within 28 days of the changes being passed by the committee in order for the changes to take effect.
- If the alterations are approved by the Commissioner, the association must then include notice of the alterations with the notice sent to members for the next annual general meeting.

**Please note that once the rules have been updated to comply with the new law, any subsequent changes will need to be passed by a special resolution of the members at a general meeting as is usual practice.**

The Department of Commerce is working to update AssociationsOnline so that associations will be able to submit all of this transitional information online. More information about the application processes will be included in future transition packs.

## Activities of incorporated associations

Associations are still required to be “not-for-profit”, but it will be acceptable for an association to engage in trading activities provided that all of the profits from these activities are used to promote the objects and purposes of the association and individual members do not profit or receive distributions from the activities.

## Grievances and disputes

- All associations will be required to include provisions for an internal dispute resolution process in their rules.
- If a dispute between members that relates to the rules of the association cannot be resolved through this process it will be possible to make an application for the matter to be heard by the State Administrative Tribunal (SAT). It is open to the SAT to refer the dispute, or any aspect of it, for mediation or make orders for the resolution of the dispute.

- In limited circumstances the Commissioner for Consumer Protection will be able to apply to the SAT for the appointment of a statutory manager to administer the affairs of the association.

## CHANGES IMPACTING ON MANAGEMENT COMMITTEES

The following is a summary of the key changes under the new law. More detailed information can be found on the [Department's website](#).

### **Management committee**

#### **Duties**

The duties of management committee members will reinforce the existing common law duties.

These include:

- a duty of care and diligence;
- a duty to act in good faith in the best interests of the association and for a proper purpose; and
- a duty not to misuse one's position and a duty not to misuse information obtained through the position to gain an advantage for self or someone else or to cause detriment to the association.

The above duties will also apply to other officers of an association, which include persons who:

- participate in making decisions that affect a whole or substantial part of the association's operations;
- have the capacity to significantly affect the association's financial standing; or
- with whose instructions the management committee is accustomed to act.

For example, depending on the circumstances, former committee members or significant employees may be officers of an association and therefore subject to the duties.

A committee member also has a duty to prevent the association trading when insolvent.

#### **Disclosing interests**

The existing conflict of interest provisions, which apply to committee members, will be extended to include financial and non-financial interests, by requiring "material personal interests" to be disclosed.

In addition to the current requirement that the interest be recorded in the minutes of the committee meeting, it must also be disclosed at the association's next general meeting.

## **Meetings**

- All incorporated associations will have six (6) months following the end of their financial year in which to hold their Annual General Meeting.
- The Commissioner for Consumer Protection will have powers to direct that a special general meeting be held by an association where there is a dispute or issue affecting the association's affairs and a meeting may assist in resolving the matter.

## **Record Keeping**

### **Register of members**

- The information required to be kept in the register of members will change to give members the option to nominate a postal address, residential address, email address or other form of contact information.
- A member will be able to request that the association provide them with a copy of the register and the association may charge a fee for providing the information.
- Under the new law the rules of the association may require a member who wishes to obtain a copy of the register of members to provide a statutory declaration setting out the purpose for which the application is made.

### **Record of office holders**

The requirements around what must be included in the record of office holders will change to allow the business address or email address of a committee member to be used in place of their personal address.

### **Use of information made available for inspection**

The new law will make it an offence for a member to disclose or use the information obtained from the register of members or record of office holders for a purpose that is not directly connected with the affairs of the association.

### **Handing over association records**

Outgoing committee members will be obliged to return all association documents and records in their possession to the committee as soon as practicable after their appointment ceases.

### **Change of address**

Associations will be required to notify the Commissioner for Consumer Protection of any change of address within 28 days of the change occurring.

# FREQUENTLY ASKED QUESTIONS

## Where can I find a copy of the new law?

You can [view and download a copy of the \*Associations Incorporation Act 2015\*](#) on the State Law Publisher website.

## Should we update our rules for the new law requirements now?

No. The new law has different requirements that do not apply yet (for example the extended timeframe for holding the Annual General Meeting). Until 1 July 2016, associations need to continue to comply with the current 1987 Act.

## Can I view the new law Model Rules?

A copy of the final draft of the [Model Rules is available on the Department's website](#).

## We have updated our rules, do I still need to lodge them?

Yes. As the requirements of the current 1987 Act continue to apply until the new law commences, you will need to submit any alterations to the Commissioner for Consumer Protection in order for the changes to take effect. You can do this by using the [AssociationsOnline](#) portal and after logging in choosing "Form 5 – Notice of Special Resolution".

# EDUCATION NEWS

## Will the Department be holding information sessions about the new law?

While we would like to visit all of our incorporated associations, the Department does not have the capacity to travel to all of the regional areas of Western Australia at the moment.

We are proposing to hold some information sessions in the Perth metropolitan area commencing around April 2016 and the details of these sessions will be published on our website closer to that time.

## What other resources will be available?

To support all associations, we are developing new information sheets and resources which will be available on our website [www.commerce.wa.gov.au/associations](http://www.commerce.wa.gov.au/associations) and an updated version of the [INC Guide](#) will also be released when the new law commences.

# ASSOCIATIONSONLINE

Save time, paper and money using our online portal AssociationsOnline for all your association's forms and applications. In preparation for these changing laws, if you haven't already done so, the Department of Commerce would like to invite your association to [enrol for AssociationsOnline](#). Not only will your association enjoy the benefits of online lodgement it, can also be confident that it will receive all the necessary information in the lead up to the introduction of the new law.