New laws to affect Incorporated Associations

By Trudi Firth

Introduction

As local governments deal with incorporated associations, such as sport and recreation clubs, societies and community groups, on a frequent basis it is important for local governments to keep abreast of changes to the laws governing incorporated associations in Western Australia.

The Associations Incorporations Act 2015 (New Act) has been passed by Western Australia parliament. However, the main provisions of the New Act have not yet come into operation and are expected to be proclaimed to commence on 1 July 2016. The New Act when fully proclaimed will repeal and replace the Associations Incorporations Act 1987 (Previous Act) and make substantial changes to the laws govern associations in Western Australia.

The key reforms in the New Act are summarised below.

Financial Reporting

The New Act introduces a three tiered system of financial reporting and accountability requirements based upon the association's revenue:

- Tier 1 Associations (revenue less that $250,000) will be able 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, unless required by the association's rules, or the members pass a special resolution requiring one or one is directed by the Commissioner. Most associations will fit into this category with 90% of Western Australia associations earning revenue of less than $250,000 per year;
- Tier 2 Associations (revenue of $250,000 to $1,000,000) must prepare financial reports, in accordance with Australian Accounting Standards, that give a true and fair view of the financial position of the association. The financial reports must be reviewed by a member of a professional accounting body; and
- Tier 3 Associations of revenue over $1,000,000 must also prepare financial reports, in accordance with Australian Accounting Standards, that give a true and fair view of the financial position of the association. The financial reports

must be reviewed by a professional accounting body holding a public practicing certificate.

Management of Associations

The New Act will codify obligations of committee members, which exist under common law. The duties are similar to the duties that directors owe to corporations under the Corporations Act and include:

- the duty to exercise care, skill and diligence in the performance of their duties. For a committee member, discharging this duty may include being prepared for meetings, understanding in broad terms the association's financial position; following up on action items; and keeping up to date with the association's activities;

1. the duty of good faith and proper purpose requiring an officer to exercise his or her powers and discharge his or her duties in good faith in the interests of the association and for a proper purpose. Discharging this duty will require the committee member to use his or her powers only for the benefit of the association and not to secure a private advantage;
2. the duty not to misuse their position or information. Discharging this duty will require the committee member not to improperly use information or use his or her position for personal profit or the profit of a third party.

The duties will also be owed by persons who influence the management of the association but who do not hold a committee position. This would include senior employees or past committee members who are actively involved in the association and influence the decisions of the committee.

The New Act also introduces fines of up to $10,000 for committee members who breach their duties. The New Act also introduces a defence to a breach of duty under the Act, where a committee member can show that he or she has reasonably relied on information or professional/expert advice and the reliance was made in good faith and after making an independent assessment of the information given the member's knowledge of the association and its structure and complexity.

The New Act also provides that the following persons will be disqualified from being a committee member of an association:

- a person convicted on an offence in connection with the promotion, formation or management of a body corporate;
- a person convicted on an offence involving fraud or dishonesty punishable on conviction by 3 months or more imprisonment; and
- an undischarged bankrupt whose affairs are under insolvency laws.

Privacy

The Previous Act does not place any restrictions on a member's right to inspect and/or copy the register of members. Access to the membership will continue to be limited to association members, however, the New Act will now provide a flexible approach as to what contact information a member must provide to his or her association, and limits what can be done with the information. Members may now 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 except for a purpose that is directly connected with the affairs or the association or a purpose that is related to the administration of the Act.

Dispute Resolution

The Previous Act does not prescribe a court for the hearing of disputes, and by default most disputes are currently heard by the Supreme Court. The New Act provides that each association must include an internal dispute resolution process in its rules; and provides that any unresolved dispute can be heard by the State Administration Tribunal (SAT).

The New Act also introduces a process for the Commissioner to apply to the SAT for the appointment of a statutory manager to administer the affairs of an association, when an association is not functioning effectively.

Association Trading now permitted

The New Act also removes the restriction of 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.

Conclusion

The significant amendments introduced by the New Act are likely to result in improved governance and management of incorporated associations in Western Australia. It is expected local governments will find this a welcome development, given the frequent interface of local government with community incorporated associations. The proposed changes will require associations to update their rules or constitution so as to comply with the new legislation, however the New Act does provide a lengthy transition period of up to three years to allow this to occur.

For further information in regard to the above, contact Trudi Firth on 9424 6205 or tfirth@mcleods.com.au.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.