



Internet Association of Australia  
**Transferring from WA to  
Commonwealth incorporation**  
Revised Discussion Paper – version 3 May 2021

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# 1. Transferring IAA's incorporation from WA to Commonwealth legislation

## Rationale for change

1. The Internet Association of Australia (IAA) is currently an association incorporated under the Western Australian law, being the Associations Incorporation Act 2015 (WA).
2. As the organisation was originally the Western Australia Internet Association, this was a suitable way to become a legal entity. In 2016, the association changed its name to the Internet Association of Australia, however, it remained incorporated under the WA Act.
3. As IAA has grown substantially and now represents the interests of corporate, professional and affiliate members across Australia, the IAA Board believes it is appropriate to consider a transfer of incorporation to Commonwealth law (Corporations Act 2001 (Cth)) and become a company limited by guarantee.
4. This Discussion Paper outlines the reasons for changing IAA's mode of incorporation, the process and timeline. As a new constitution that complies with the Corporations Act is required, a summary of recommended changes for the new constitution are also included.
5. IAA is keen to engage with members over any proposed changes before a new constitution is drafted and formal applications are made to the regulators to transfer incorporation – hence this discussion paper.
6. Members were invited to submit any comments or questions on the proposed changes outlined in this Discussion Paper by 22 April 2020. Based on the comments and feedback received from the members and discussion with the IAA Board, the discussion paper is revised and the same is put up for perusal of Members.

## Moving towards a vote on change

7. This Discussion Paper is the first stage in the consultation process. It has been developed by Associations Forum, an experienced associations advisory business and network, in conjunction with IAA.
8. If there is sufficient positive feedback from the IAA members to this Discussion Paper, the aim is to have a new constitution and resolutions to transfer incorporation for member approval at a special general meeting (SGM) on 21 July 2021. Leading up to the special general meeting, members will again be consulted on the proposed changes and have the opportunity to comment and provide further feedback.
9. If the new constitution is accepted it will come into effect when the company is registered with ASIC, with a transition to the new structure.
10. The following schedule is proposed to develop a new Constitution:

Deadline for feedback on Discussion Paper V1	22 April 2021
Based on the comments / feedback and discussions with the IAA Working Group on constitution review, the revised Discussion Paper V2 is submitted to Board	4 May 2021
Board to approve Discussion Paper V2	05 May 2021
Revised Discussion Paper V2 available to members	6 May 2021

Constitution Review Workshop	10 May 2021
Draft Constitution available to members	20 May 2021
Deadline for submission of comments on draft	3 June 2021
Amended (if required) Constitution published	7 June 2021
Final draft endorsed by Board	17 June 2021
Notice of Special General Meeting referring to motion to pass a special resolution to adopt new Constitution and transfer incorporation	18 June 2021
Special General Meeting held	28 July 2021

## 2. Reasons for moving to a more appropriate form of incorporation

11. IAA is an incorporated association under the Associations Incorporation Act 2015 (WA). Associations that incorporated under the WA Act can technically only operate in other states and territories by registering with Australian Securities & Investments Commission (ASIC) as a registered Australian body and obtaining an Australian Registered Body Number (ARBN). An alternative is to transfer incorporation to a company limited by guarantee under the Corporations Act 2001 (Cth).
12. For an association with members and activities across Australia, the IAA Board believes it may be more appropriate for IAA to be incorporated under the Corporations Act 2001 (Cth) as a company limited by guarantee.
13. The Board is therefore proposing that members consider whether IAA should transfer its legal structure from being an incorporated association to a company limited by guarantee. A new constitution will need to be written to comply with the requirements of a company limited by guarantee.
14. Changing the association's mode of incorporation from an incorporated association to a company limited by guarantee does not change the association's legal standing or identity. It is still the same entity with the same assets and liabilities and any existing contracts will continue unaffected.
15. Importantly, IAA will continue to be an association with members and with the finances unable to be distributed to members by way of dividend or transfer of funds upon winding up.
16. The advantages for IAA of being a company limited by guarantee include:
  - *Better governance*: Companies limited by guarantee have appropriately rigorous compliance requirements and a perception of a higher level of governance.
  - *Constitutional certainty*: Section 134 of the Corporations Act allows a company's constitution to be more independent of the Corporations Act whereas under section 28 of the WA Associations Incorporation Act a required provision that is not adequately addressed can have the relevant Model Rule applied to an incorporated association if it is not addressed in the constitution. Under section 30 of the WA Act any change to the rules of the incorporated association must be lodged with WA Consumer Protection before the changes take effect. With the Corporations Act, if Members pass a special resolution changing the constitution it applies as determined by the resolution.

- *Legal clarity*: there is a much greater body of law that has clarified the meaning of the Corporations Act including law related to meetings and how the law operates for directors of companies than for incorporated associations.
- *Widely accepted structure*: companies are a widely recognised and understood structure. They meet the expectations of authorities, funders and other interested parties.
- *Clarity of rights and obligations*: There are clear right of members and clear obligation on directors laid down under Corporations Act.

### 3. About the new constitution

17. In order to transfer IAA's incorporation from the Associations Incorporation Act 2015 (WA) to a company limited by guarantee under the Corporations Act 2001 (Cth), a new constitution that complies with the Corporations Act 2001 (Cth) is required.
18. The new constitution, when drafted, will be a fresh document based on a modern template for a company limited by guarantee constitution.
19. Before the drafting of the new constitution commences, the key changes proposed to the current constitution are being presented to members in this Discussion Paper for feedback and comments.
20. The corresponding references to the current WA constitution (Rules) is also provided along with the elements for easy understanding.

### 4. Name

21. Upon transferring incorporation to a company limited by guarantee, the suffix to the organisation's name will change from 'Inc' to 'Ltd'. The new name will therefore be **Internet Association of Australia Ltd**.

### 5. Objects

*(Ref: Rule 1 of current constitution)*

- 5.1. The objects of an association describe the reason that it exists and also influence its taxation status.
- 5.2. Based on this principle, the proposed objects are below.

*The Objects of the Company are to lead the internet industry and support its Members by:*

- a) providing peering exchange services and related infrastructure, networks and services for Members;*
- b) advocating on matters of relevance to Members and the industry;*
- c) facilitating education and informed discussion about the internet;*
- d) establishing links with similar organisations;*
- e) doing anything ancillary or incidental to the attainment of the Objects.*

### 6. Standard not-for-profit clauses and liability of members

*(Ref: Rule 3 & 64 of current constitution)*

- 6.1. As is currently the case, the organisation must not distribute any income or assets to members. If the organisation is wound up, any surplus assets

must not be distributed to members and must be distributed to another not-for-profit organisation.

- 6.2. The liability of members is limited to the guarantee amount (hence the term company limited by guarantee). The guarantee is the amount that members agree to pay towards certain debts if the association winds up. The guarantee amount will be \$1 for each member.
- 6.3. This paper notes that the liability of members is not addressed in the current constitution, however under the Associations Incorporation Act 2015 (WA), members are generally not liable for the debts or liabilities of the association.

## 7. Membership

(Ref: Rules 4-19 of current constitution)

### Membership classes

(Rules 4 & 8)

- 7.1. Existing categories of membership will continue with a change in terminology:
- a. Ordinary Members (which includes Professional Members, Corporate Members and Honorary Life Members) to be renamed as Voting Members
  - b. Associate Members to be renamed as Non-Voting Members.
- 7.2. The Board will have the power to create categories of membership within each class of membership without the categories having to be specified in the constitution. This provides flexibility allowing the composition of membership to change as circumstances change.
- 7.3. Table: proposed membership classes and criteria

Class	Criteria	Rights
1. Voting Member	<p>Any company, body corporate, sole trader or partnership which:</p> <ul style="list-style-type: none"> <li>• is a buyer and user of peering services</li> <li>• supports the Objects</li> <li>• satisfies any further criteria that may be prescribed in the by-laws</li> </ul> <p>is eligible to apply to become a Corporate Member.</p>	<ol style="list-style-type: none"> <li>1. Attend and speak at general meetings</li> <li>2. Vote at a general meeting and in director elections</li> <li>3. Be elected as a director</li> </ol>
2. Voting Member	<p>An individual who:</p> <ul style="list-style-type: none"> <li>• is working in a professional role in the internet industry for a majority of their average working week</li> <li>• has expressed interest in the internet Industry</li> </ul>	<ol style="list-style-type: none"> <li>1. Attend and speak at general meetings</li> <li>2. Vote at a general meeting and in director elections</li> <li>3. Be elected as a director</li> </ol>

	<ul style="list-style-type: none"> <li>• is aged 15 years or older</li> <li>• supports the Objects</li> <li>• satisfies any further criteria that may be prescribed in the by-laws</li> </ul> <p>is eligible to apply to become a Professional Member</p>	
3. Voting Member	<p>Honorary life members recognised by the Board.</p> <p>The Board will be authorised to admit a maximum of 2 new honorary members per year.</p>	<ol style="list-style-type: none"> <li>1. Attend and speak at general meetings</li> <li>2. Vote at a general meeting and in director elections</li> <li>3. Be elected as a director</li> </ol>
4. Non-voting member	<p>Government agencies, not-for-profit entities or other like minded organisations as approved by the Board.</p>	<ol style="list-style-type: none"> <li>1. Attend general meetings but not entitled to speak unless at the invitation of the Chair</li> <li>2. No voting rights</li> <li>3. Not eligible to be elected as a director</li> </ol>

### **Standard matters regarding membership**

*(Ref: Rules 5 -19 of current constitution)*

#### 7.4. Regarding other standard membership matters:

- A register of members must be kept in accordance with the Corporations Act.
- The Board will continue to have authority and discretion to determine membership applications.
- The Board will set the membership fees similar to rule 12 in current constitution, however without the fees needing to be confirmed at an AGM. The Board has responsibility for governance, budget preparation and ensuring financial viability of the organisation. Directors have a legal duty to ensure that the organisation's financial affairs are managed responsibly and to act in the best interests of the organisation.
- The constitution will include a list of events that cause a member to cease to be a member without disciplinary procedures being initiated, similar to current Rule 9.
- Regarding disciplinary process (Ref: Rules 14-16 of current constitution), the constitution will outline when and how a member may be expelled similar to provisions in the current constitution.
- Dispute resolution processes (Rule 17-19) are not obligatory in companies limited by guarantee.

### **8. Board of Directors**

*(Ref: Rules 20-42 of current constitution)*

## **Board composition and terms**

*(Ref: Rule 21 of current constitution)*

- 8.1. The current board composition is five Corporate Members Directors elected by a ballot of Corporate Members and three Professional Member Directors elected by ballot of Professional Members, elected for 3 years (Ref: rule 28 of current constitution)
- 8.2. The new board will have up to 8 directors with up to 6 Elected Directors and up to 2 Appointed Directors:
  - a. Staggered rotational terms for Elected Directors will continue, with two Elected Directors elected every year for three-year term (Ref: rule 27(2))
  - b. Term limits for Elected Directors will be introduced. Elected Directors can hold office for 3 consecutive terms of 3 years or 9 consecutive years.
  - c. Elected Directors reaching their nine year term limit are able to seek re-election to the Board provided two years have passed since they were last on the Board.
- 8.3. The new Board composition will have no distinction between Corporate and Professional members regarding ability to seek Board election.
- 8.4. Any representative(s) of a Corporate member, any Professional member and honorary life member will be eligible to seek Board election
- 8.5. There will be an option of 2 Appointed Directors who may be appointed by the Board.
  - a. The Appointed Directors may be, but does not have to be, a Member of IAA and may be appointed for the purposes of adding to the ability of the Board to perform its governance role.
  - b. Term of Appointed Directors to be for a period of time up to the next AGM and may be reappointed by the Board.
  - c. Term Limits for Appointed Directors will be five years, with no subsequent reappointment thereafter as Appointed Director.

## **Office Bearers**

*(Ref: Rules 22-23 of current constitution)*

- 8.6. The current constitution has two office bearer positions: Chair and Secretary.
- 8.7. The Chair role will continue and the role of Deputy Chair will be introduced.
- 8.8. Both Chair and Deputy Chair will be elected annually by the Board at the first Board meeting following the AGM.
- 8.9. A term limit of five consecutive years as Chair and Deputy Chair will be introduced.

## **Company Secretary**

- 8.10. Regarding the role of Company Secretary, companies limited by guarantee must have a Company Secretary. The Company Secretary is the liaison person with the regulators and the role is primarily an administrative and compliance role.

8.11. It is more appropriate for the Company Secretary role to be fulfilled by someone on an ongoing basis, such as a senior member of staff, rather than a volunteer newly elected every couple of years.

8.12. Therefore, the role of Secretary will no longer be an elected position.

8.13. The Company Secretary will be appointed by the Board at the terms and conditions determined by the Board and may be but does not have to be a Director.

### **Eligibility criteria for elected Directors**

*(Ref: Rule 21(4) of current constitution)*

8.14. The eligibility criteria under current rule 21(4) will be enhanced as it only addresses criteria for directors elected by the Corporate Members and not for Directors elected by the Professional Members.

8.15. The proposed criteria for elected Directors will be: An individual who

- a. has reached 18 years of age;
- b. must be:
  - i. a Professional Member or Honorary Life Member; or
  - ii. a director, or employee of a Corporate Member, or a representative of a Corporate Member, nominated in writing to the Secretary by the Corporate Member;
- c. is not in the direct employment of, or directly contracted to, IAA.

### **Elections**

*(Ref: Rules 25-27 of current constitution)*

8.16. Elections will continue to be conducted prior the AGM with the results announced at the AGM and provide clarity that elected Directors will take office from the conclusion of that AGM.

8.17. A proposed change is to provide for an online ballot to be conducted. The current constitution under rule 27(6) requires postal voting only.

### **Casual vacancies and removing Directors**

8.18. When a director ceases to be director – the constitution will list situations when a director immediately vacates their office similar to rule 30 of the current constitution. *(Ref: rule 30)*

8.19. Casual vacancies – the constitution will outline what will happen in the event of a casual vacancy similar to rule 31 of the current constitution.

8.20. If any casual vacancy occurs in the position of a Director, the remaining directors may appoint an eligible individual to fill the vacancy for the remainder of the term. This will ensure the election cycles remain staggered.

8.21. Members will continue to have the right to remove a director or directors by following the procedure under the Corporations Act *(ref: rule 29(3))*.

### **General powers of the Board**

8.22. The Board may exercise all the powers of the company except any powers that the Corporations Act or the Constitution requires the company to exercise in general meeting (Ref: Rule 20 of current constitution).

- 8.23. The business of the company is usually managed by the CEO with direction and oversight by the Board.
- 8.24. The Board will have the power to make and amend by-laws that support the constitution. (Ref: Rule 57 of current constitution)
- 8.25. The Board may delegate any of its powers to a committee/committees or employee/s (Ref: Rule 41-42 of current constitution). The existing details are not required in the constitution as the board is authorised to delegate its powers on such terms and conditions as it may deem fit through committee charters and delegation framework.

### **Board meetings and procedures**

*(Ref: Rules 34-40 of current constitution)*

- 8.26. The Board may meet together to despatch the business as it may deem fit rather than mentioning the minimum number of 3 Board meetings in each year.
- 8.27. The quorum of a Board meeting will continue to be a majority of directors in office at the time. If a quorum is not present for a meeting, the meeting gets cancelled rather than being adjourned.
- 8.28. As per current provision, if the votes are divided equally on a question, the Chair will not have a casting vote and the motion shall be unsuccessful.
- 8.29. Provision will be made to have a board resolution approved by the board without holding a meeting. Such resolution is considered to be approved when it has been signed and approved by the majority of directors.
- 8.30. As is currently the case, Directors may receive payments for reimbursement for out-of-pocket expenses or for work they do for IAA other than as a director. (Ref: Rule 33 of current constitution).

## **9. General Meetings**

*(Ref: Rules 43-53 of current constitution)*

- 9.1. The Corporations Act requires an annual general meeting to be held at least once in each calendar year and within 5 months after the end of the financial year, compared to within 6 months under the WA Act.
- 9.2. The usual notice period for a general meeting is 21 days including when a special resolution is proposed.
- 9.3. Presently, the quorum for a general meeting is 3 corporate members and 3 professional members.
- 9.4. The quorum for General Meetings will be twice the number of members as the number of Directors on the Board in office at the time, whether present in person or present by proxy or technology in accordance with the Corporations Act.
- 9.5. In accordance with the Corporations Act, 5% of the Members may requisition the calling of a general meeting.
- 9.6. Provision will be made to enable direct voting at General Meetings. Direct voting enables members to exercise their voting rights without having to either attend the meeting in person or appoint a proxy. Direct voting will sit alongside the proxy system. It may be an additional option

for members if the Board determines to use direct voting for a general meeting.

- 9.7. All the provisions of general meetings relating to notice, business, adjournment, voting, polls, minutes, etc will be aligned in accordance with the Corporations Act.

## 10. Other matters

- 10.1. As is currently the case, the constitution may only be amended by the members passing a special resolution. (Ref: Rule 65 of current constitution)
- 10.2. Members will have the right to access the minutes of a general meeting and the register of members. Access to other documents will be as determined by the Board. (Ref: Rule 62 of current constitution)
- 10.3. There will be transitional provisions outlining the process by which the current Board will transition to Board of 6 Elected Directors and 2 Appointed Directors.
- 10.4. If approved by members at the 2021 special general meeting, the new constitution will be effective from when the company limited by guarantee is registered by ASIC. There may be a transition period following the special general meeting before any of the proposed changes come into effect.

## 11. Closing comments

Thank you for reading this Discussion Paper. The Internet Association of Australia Board is proud of the services and progress of IAA since its inception and excited about its future.

Associations Forum recommends that IAA members consider moving from being a membership association under the Associations Incorporation Act of WA to become a company limited by guarantee under the Commonwealth Corporations Act, believing this to be a sensible evolution for the association.

The IAA board respectfully asks members to consider this change and provide feedback. If there is sufficient support among IAA members, a new constitution suitable for the Corporations Act will be drafted and member views sought prior to advancing formalities towards holding a special general meeting.

Your interest and support is appreciated.

**Please send any comments or questions to IAA at [ceo@internet.asn.au](mailto:ceo@internet.asn.au).**

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*Associations Forum has been advising and providing education and training events for associations since 2004. The advice given in this paper is based upon practical experience and observations from working with hundreds of associations on governance and constitutions. Associations Forum is not a law firm.*