

Submission Statutory Review of the *Associations Incorporation Act* 2015

To

DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY
CONSUMER PROTECTION DIVISION

consultations@dmirs.wa.gov.au

Law Society Contact

MARY WOODFORD
GENERAL MANAGER ADVOCACY AND PROFESSIONAL DEVELOPMENT
mwoodford@lawsocietywa.asn.au

Date

THURSDAY, 31 MARCH 2022

The Law Society of Western Australia

Level 4, 160 St Georges Terrace, Perth WA 6000 | **Postal:** PO Box Z5345, Perth WA 6831
Phone: (08) 9324 8600 | **Fax:** (08) 9324 8699 | **Email:** info@lawsocietywa.asn.au | **Website:** lawsocietywa.asn.au

PD ACTIVE

Table of Contents

1	Introduction	2
2	Key Issues	3
2.1	Reservation of names	3
2.2	Electronic voting	3
2.3	Complying with other laws	3
2.4	Accessing the register of members	4
2.5	Reporting tiers	5
2.6	Appointment and removal of auditors	6
2.7	Dispute resolution	6
2.8	Cancellation	7
3	Minor and Technical Amendments	7

1 Introduction

- 1.1 The Law Society of Western Australia (the Law Society) is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society is a not-for-profit association dedicated to the representation of its members and the enhancement of the legal profession through being a respected leader and advocate on law reform, access to justice and the rule of law.
- 1.2 The Department of Mines, Industry Regulation and Safety's Consumer Protection Division (Consumer Protection) is responsible for the Act and is committed to ongoing review of the legislation to make sure that it is effective and fit for purpose. Section 184 of the Act requires a review of its operation and effectiveness five years after commencement.
- 1.3 The Review of the Review of the Associations Incorporation Act 2015 (the Review) will consider how effective the Act has been in meeting its objectives since its commencement in July 2016, and whether the content or administration of the Act can be improved.
- 1.4 The Review looks at the experience of Consumer Protection in administering the Act and providing advice and assistance to associations and their members over the past five years. It also considers recent developments in other states and territories.
- 1.5 As part of the Review, Consumer Protection is using a discussion paper to explain how the issues that have been identified affect associations and their members, and to seek comments about whether it would be helpful if changes were made. A report of the Review will be prepared and tabled in Parliament.
- 1.6 The Review process will be in three stages:
 - Stage 1 – release of the discussion paper and an online survey highlighting key issues and asking for feedback.
 - Stage 2 – review of Consumer Protection data and experience and the content of submissions.
 - Stage 3 – preparation and release of a report that might include recommendations for reform.
- 1.7 This submission has been prepared in response to the DMI's request for comment from organisations regulated by the Act noting that there is no specified format for submissions. Evidence in support of views is provided where it is available however there are limitations in providing reliable evidence or examples in the short timeframe that has been provided for comment. It also noted that many organisations regulated by the Act do not have the resources available to collate the requisite evidence that is being sought.
- 1.8 This submission sets out comments for the questions referred to in each key issue and adopt the numbering of those questions for ease of reference. The Society's comment is mainly related to what is best practice in corporate governance and issues that have been brought to the attention of the Law Society by members.

2 Key Issues

2.1 Reservation of names

Question 1: Should the Act be amended to let an association reserve a name?

The ability to reserve a name by or on behalf of an organisation for a period of 3 or 4 months as well as the ability to renew the reservation for a further similar period is supported. This will increase certainty, facilitate and simplify planning for those seeking to incorporate a new entity and for existing entities that may wish to change their names.

Question 2: Has the inability to reserve a name been a problem for your association?

The Society does not have direct experience of any problem however members representing clients regulated by the Act have commented the ability to reserve a name may also have the benefit of reducing opportunistic dealings on names by third parties.

2.2 Electronic voting

Question 3: Should the Act permit electronic attendance and voting at meetings as the default position, with members able to make provision in their rules if they do not want to permit electronic attendance?

The Society supports the Act permitting electronic attendance and voting at meetings as the default position and supports the amendment being consistent with requirements under the *Corporations Act 2001 (Cth)*. The use of electronic attendance will facilitate increased participation in a range of associations that are based in the regions and the metropolitan area, reduce costs in attending meetings and in some instances provide a greater pool of skills (particularly finance and risk) for appointment to the management committees.

The Society is aware that the Rural Regional and Remote Women's Network of Western Australia is an example of an incorporated association that has been effectively using electronic voting and attendance for meetings.

2.3 Complying with other laws

Question 4: Has your association found it difficult to comply with any of the requirements of the Act because of other legal obligations? If so, please provide information about the circumstances.

The Society has not had difficulty complying with the requirements of the Act. We comment the provisions of the Act are largely structurally and governance related rather than operationally focused. The examples given of “other laws” in the question refer to regulatory obligations which are in practice more relevant to the operations of associations. Improving educational information for associations to ensure they have a good understanding of the compliance obligations of the Act and how they fit with the association’s additional operational compliance obligations would be beneficial to the sector.

2.4 Accessing the register of members

Question 5: Are you aware of any incidents where the safety of a member or members of an association has been impacted by the provision of the members’ register of an association to a member? If so, please provide information about the circumstances.

The Society has not been adversely “impacted” by the provision of the member register to a member and is not aware of any incidents where the safety of a member or members of an association has been impacted by the provision of the members’ register. However, this may be an issue for associations in other sectors noting that section 56 of the Act provides that the register is for the purpose connected with the affairs of the association (for example elections) and therefore for a “proper purpose” and a declaration to this effect may be sought from a member seeking a copy of the register. Further it would be helpful to associations that the Consumer Protection Division provide some guidelines on example on what constitutes a proper purpose and an improper purpose, so that management committees can have a guide for dealing with these types of requests.

Question 6: Do you believe that an association should be provided with a time limit for complying with the requirement of section 54 of the Act to provide access to the register? If so, what is a reasonable time to allow?

The Society supports the inclusion of the requirement to provide the register within a reasonable time however to prescribe a time is not supported as there are many associations regulated that vary in size and the capacity to meet a defined period. Retaining the criteria of “reasonable” accommodates the size and resources that a range of associations may have in complying with a request under section 56 of the Act.

Question 7: Do you believe that the Act should specify a fee for provision of a copy of the register to a member? If so, what do you believe is a reasonable fee?

The Society supports the introduction of a minimum fee. The larger the organisation the likelihood is that it is well resourced to provide a copy of the register as opposed to small, voluntary, and charitable organisations. Similarly, the larger the organisation a “fee for service” model of charging would result in a higher cost for providing a copy of the register.

2.5 Reporting tiers

Question 8: Has your association had any difficulty complying with the current financial reporting thresholds?

The Society does not have any difficulty with complying the current financial reporting thresholds.

Question 9: Do the current financial reporting thresholds in the Act provide enough accountability to members without placing an unreasonable burden on associations?

It is noted that any increase in the threshold amount will result in an alignment with the requirements under the ACNC levels and this is appropriate.

Question 10: If not, do you believe that the current thresholds are too high or too low?

See response to Question 9 above.

Question 11: Do you believe that all associations should have the same reporting thresholds, or could thresholds for associations that are charities be different?

The Society is aware that several associations (being charities) are also regulated by the ACNC and to the extent it reasonable to do so the compliance and reporting requirements of the ACNC should be deemed to fulfil the requirements under the Act rather than have different reporting regimes thereby reducing duplication and additional administrative costs in this area. Associations that are not charities vary in size and resources and that would make compliance with the “same reporting thresholds” difficult. The Society considers more evidence-based data and information should be collated about “what the problem is or what the problem may be” before a public policy position is confirmed on this issue. It is also noted that the vast majority of associations that come within Tier 1 reporting threshold are unlikely to have the resources to respond to this Discussion Paper.

Question 12: Do you believe that it is important for reporting thresholds for associations to be the same as those applying to charities registered with the ACNC?

The Society understands that it is difficult for some charities to comply with the reporting thresholds under the ACNC let alone applying these thresholds to incorporated associations across the not-for-profit sector given the varying sizes, nature of business and whether they are resourced on a voluntary basis. Similarly, the Society refers to its response to questions 9 and 1 above.

2.6 Appointment and removal of auditors

Question 13: Should the requirement for an association to report removal of an auditor to Consumer Protection be removed?

The Society submits that the reporting of the removal of an auditor to Consumer Protection it relates to a matter other than cost, it should be retained as it provides transparency and accountability for this important function relating to compliance.

Question 14: If the requirement to report the removal of an auditor is kept in the Act, should an association also report the appointment of an auditor to Consumer Protection?

The Society does not consider that this is as important as the notification of the removal of auditor and the reasons.

Question 15: Should an association be permitted to appoint an auditor for a fixed term?

The appointment of auditors should be aligned to the same requirements in the ACNC Act and be for a fixed period at which time it is reviewed. Any change in auditor should be referred to the Members at the annual general meeting for approval if it is related to reasons other than cost.

2.7 Dispute resolution

Question 16: Are you aware of any occasions where your association has used the dispute resolution process in its rules to resolve an internal dispute? Was the process successful?

The Society has not used the dispute resolution process in its rules to resolve an internal dispute.

Question 17: Have you been involved in an application to SAT as an applicant or respondent? Was the dispute successfully resolved?

Based on the information contained in the Discussion Paper the Society supports the proposal that where an application to State Administrative Tribunal is by a former member of the association and the application relates to the cancellation of the member's membership

then an application can be made within 6 months of that cancellation given it was not intended that a former member would be prevented from applying in those circumstances.

2.8 Cancellation

Question 18: Do you believe that it is appropriate for the Commissioner to have the power to cancel the incorporation of an association where cancellation is in the public interest or when it is no longer operating?

The cancellation of an incorporated association is appropriate if it is in the public interest, or it is no longer operating. Currently where the incorporation of an association has been cancelled, any property of the association vests in the State and the Commissioner can distribute the property in accordance with the Act. The Society supports the distribution of property being in accordance with the rules of the association and otherwise in accordance with the Act.

Question 19: Do you believe that the Commissioner should publish notice of the intention to cancel the incorporation of an association in the Government Gazette?

The Society supports alternative forms of notification of the intention to cancel the incorporation of an association.

Question 20: What form of notification do you believe is most useful?

The Society support notification being in the form of a notice on the Consumer Protection website and to the immediate past office holders of the management committee.

3 Minor and Technical Amendments

The Law Society has reviewed the minor and technical amendments set out in the Appendix 1 of the Discussion Paper and has no specific feedback as they are unlikely to have any substantive impact on an incorporated association.



Rebecca Lee
President