

WACOSS Submission to the *Associations Incorporation Bill 2006*



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

**Submission by the Western Australian Council of
Social Service to the Department of Consumer
and Employment Protection on the *Associations
Incorporation Bill 2006***

April 2007

Contact for further information
Lyn Levy
Director - Business Services
WA Council of Social Service
2 Delhi Street, West Perth WA 6000
Telephone 08 9420 7222
Email lyn@wacoss.org.au

WACOSS

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians.

WACOSS is part of a national network consisting of ACOSS and the State and Territory Councils of Social Service, who assist low income and disadvantaged people, Australia wide.

WACOSS supports more than 290 member agencies and individuals in the provision of social and community services to disadvantaged people and low-income earners across Western Australia. In this capacity WACOSS works with and represents a range of agencies including:

- Emergency relief agencies;
- Financial counsellors;
- Neighbourhood centres;
- Community legal centres;
- Large church-based welfare organisations;
- Disability service organisations; and
- Housing and crisis accommodations services.

Introduction

WACOSS commends the State Government for reviewing the *Associations Incorporation Act 1987* (the Act), and for seeking feedback from associations and the broader community about the proposed changes.

Non Government Community Sector Organisations (CSOs) in Western Australia undertake an increasingly diverse mix of activities with a widening scope of roles and operations within an environment of rapidly changing public expectations.

There are over 600 CSOs delivering human services in communities across Western Australia. Human service activities typically include those activities which assist or support members of the community in personal functioning as individuals or as members of the wider community. They may include financial assistance to people in crisis, housing assistance of a short term or transitional nature, employment, counselling or support services to people on living low incomes and/or experiencing disadvantage in the community.

The Non Government Community Service Sector turns over more than half a billion dollars each year making CSOs vital contributors to the economies within cities and regions. The sector comprises nearly two-thirds of the total number of agencies delivering human services across WA.

WACOSS has been working with not for profit associations for many years to strengthen their capacity to fulfil legal, ethical and financial responsibilities. This is achieved through providing training, support and advice to not for profit groups to meet their legislative and corporate governance requirements. Not-for-profit organisations have particularly complex accountabilities to funding providers, such as government agencies; regulatory bodies; clients; members; partner organisations and the local community.

WACOSS is supportive of legislative measures to improve the way organisations operate. However we strongly believe that this needs to be accompanied by ongoing training and information to support the ongoing turnover of people that volunteer to sit on the Boards and Committees of these associations, particularly small interest, and community groups.

WACOSS appreciates that the State Government's purpose in changing the Associations Act is to clarify and streamline the regulation of associations, however; the impact on the diversity and autonomy of associations, particularly the viability of small volunteer organisations is equally important. As the Executive Summary of the *Green Bill Consultation Guide* states, there is a need to balance: "...regulation of associations in order to promote efficiency and greater accountability, while minimising administration and compliance costs for associations."

The views provided below are based on WACOSS's experience of working with not for profit organisations as well as from feedback provided at an information seminar hosted by WACOSS on the 8th March 2007. Appendix two provides an overview of the event's proceedings and includes the event registration list.

WACOSS Response to 'Your Views Sought'

YOUR VIEWS SOUGHT #1

Do you think it is appropriate for the Commissioner for Consumer Protection to have the power to decline the incorporation of an association on the basis of:

- a) its scale;
- b) the nature of its activities;
- c) the value of its property; and/or
- d) the nature of its dealings with the public?

WACOSS response

WACOSS agrees with the proposals outlined above.

The Commissioner should have the power to decline the incorporation of an association on the basis of its scale, the nature of its activities, the value of its property and/or the nature of its dealings with the public.

Under the present system a member of the public can only register their objection to an application of incorporation on the basis of the limited information required to be disclosed in an advertisement of intention to incorporate: name and intended purpose.

Such minimal information makes it difficult for members of the public to object in a meaningful way to an application for incorporation. Therefore the requirement for advertising should be removed as it places an unnecessary financial burden on groups.

The proposed alternative will enable informed public objections to applications to incorporate; i.e. the Commissioner will have the discretionary authority to instruct an association to provide additional and/or public information about its scale, the nature of its activities, the value of its property and/or the nature of its dealings with the public. This will provide a more comprehensive basis for members of the public to mount any arguments against incorporation.

The proposed provision (Clause 22) allowing an applicant to seek a review of the Commissioner's decision by the State Administrative Tribunal after receiving notice of the decision is strongly supported.

YOUR VIEWS SOUGHT #2

In your view, should the Act be amended to:

- a) remove the requirement for an association to advertise an intention to apply for incorporation; and
- b) give the Commissioner the discretionary authority to request further information to support an application to incorporate or require advertising if it is considered appropriate?

WACOSS response

WACOSS agrees with the proposals outlined above.

The requirement for advertising should be removed as it places an unnecessary financial burden on groups for no real purpose.

The Commissioner should be able to request additional information if considered appropriate.

YOUR VIEWS SOUGHT #3

In your view, should the Act be amended to:

- a) require that an association have at least six standard members to be eligible for incorporation;
- b) require the application for incorporation to include the full names, addresses and signatures of at least six standard members of the association to evidence their membership; and
- c) require that at least all standard members of an association have full and equal voting rights?

WACOSS response

- a) The number of members should be an uneven number, and be set at a minimum of 7 standard members.
- b) It should be stipulated that the address members have to include in the association's application for incorporation can be residential or mailing.
- c) Agree.

YOUR VIEWS SOUGHT #4

In your view, should the Act be amended to:

- a) establish a model set of prescribed core rules;
- b) have those model rules apply automatically to each newly incorporated association, unless expressly varied by the passing of a special resolution by members;
- c) provide special authority for management committees to make it easier for incorporated associations to update their Rules of Association; and
- d) include a provision making the terms and conditions of any payment to office bearers transparent?

WACOSS response

WACOSS agrees with the proposals outlined above regarding a model set of prescribed core rules.

In particular, the proposal for special authority to be given for existing associations to update their Rules of Association rather than having to call special meetings is supported. WACOSS also strongly supports the inclusion of a provision making the terms and conditions of any payment to office bearers transparent.

YOUR VIEWS SOUGHT #5

In your view:

- a) will clarifying the voting requirements and quorum and procedure at general meetings assist be of use to incorporated associations?
- b) would specifying the minimum number of members of an incorporated association required to direct the management committee to call a 'special' meeting to discuss association affairs be useful?
- c) what percentage of members do you think is appropriate to call such a meeting?

WACOSS response

WACOSS agrees with the proposals outlined above to clarify the voting, quorum and procedural requirements of general meetings and in relation to the calling of special meetings and the passing of special resolutions. It is important that associations receive guidance and support in governance issues and specifications such as these will be useful. In particular, a definition of "special resolution" will be helpful to many members of associations.

WACOSS suggests that plain and clear English be used in forthcoming publications designed to assist associations meet their new obligations. This is particularly the case for proposals that specify procedures such as those outlined above. For example, although a special resolution is passed by three fourths of the members of the association who cast a vote at the meeting through attendance or proxy. The wording of Clause 85 is still confusing over whether it is three fourths of the entire membership or three fourths of the members voting at the meeting.

(c) WACOSS suggests that an appropriate percentage of members needed to call a special meeting should be no less than 20% of the total number of members with full and equal voting rights.

YOUR VIEWS SOUGHT #6

In your view, will making the rules of an association a contract between members and enforceable by the members of an association be useful?

WACOSS response

The use of the words “contract” and “legally enforceable” in the Green Bill Consultation Guide are unfortunate as it implies that members can sue each other for what they consider to be breaches of the rules. Part 5 Clause 56 of the Green Bill refers to the rules of an association to be an agreement between its members binding them to observe all the provisions of the rules. WACOSS is in agreement with this clause

While it is understood that the word “contract” is not used in the proposed Act, it has been used in the consultation guide and explanatory memorandum and could give rise to false expectations. It may be better to use terms such as “agreement” or “moral obligation” or “bound”. The rules can still be enforced through disciplinary action, a dispute resolution processes or referring the matter to the Commissioner.

YOUR VIEWS SOUGHT #7

In your view, should the Act be amended to:

- a) require that a dispute resolution process be prescribed in the rules of each association;
- b) provide for a standard provision, included in the model rules prescribed in regulation, to apply to an association where a dispute resolution procedure is not included in its rules;
- c) provide for the resolution of unresolved disputes between members of an association to be determined by the State Administrative Tribunal; and
- d) include a role for accredited mediators, at the mover’s expense, in resolving a matter before it can be heard by the State Administrative Tribunal (SAT).

WACOSS response

- (a) Agree
- (b) Agree

- (c) Agree
- (d) While there is an in principle agreement to the use of mediators, there is concern that the cost of a mediator may act as a barrier to the dispute being resolved. The use of a mediator before taking a matter to the State Administrative Tribunal should be strongly encouraged but not compulsory.

Comment – WACOSS feels that it is important for all associations to have a dispute resolution process included in its rules. This assists both the members and the association to have a clearly defined path to resolve any disputes. The resolution of unresolved disputes should be by the State Administrative Tribunal

YOUR VIEWS SOUGHT #8

In your view, should the Act be amended to require:

- a) all incorporated associations to have an adult member as their public officer at all times?
- b) the Commissioner for Consumer Protection to be provided with both the contact address details of the association and the current public officer's name at the time of making an application for incorporation and, thereafter, through an annual return?
- c) the annual return to include financial and other information that the Commissioner requires for the sound administration of the Act?
- d) a fine of up to \$1,000 if the public officer does not lodge an association's documents with the Commissioner in a timely way?

WACOSS response

Any committee member, a member of the association or an employee should be permitted to be a public officer. The public officer may also hold any other office of the association. For example, the secretary and public officer could be the same person as it is usually the secretary who handles all correspondence. In large associations it may be more appropriate for an employee to take on the role of public officer.

The requirement contained in Clauses 14 and 80 for the public officer to provide their residential and postal address to the Commissioner seems to be unnecessary. The intending association is required to provide its contact addresses at the time of incorporation and the public officer is required to provide annual returns to the Commissioner including the current contact addresses for the association. These addresses should be sufficient for the Commissioner's purpose of serving documents on the association. Clauses 81 and 82 place considerable responsibility on one person, particularly Clause 82 where the person may have severed all ties with the association.

The majority of committee members are unpaid and volunteer their assistance to the not for profit association. This work is usually done on top of other responsibilities, both paid and unpaid. The requirements for the public officer could be too onerous for one person and may need to be shared between other committee members.

It is also not appropriate for the public officer to be personally liable for failure to notify the Commissioner of contact details for the association or provide the annual returns.

This liability should be for the entire management committee, not just an individual. The public officer can only provide information to the Commissioner if it has been provided by the Committee. The burden should be on the Committee to provide the information.

The personal liability could act as a deterrent to people volunteering for the role of public officer.

YOUR VIEWS SOUGHT #9

In your view, should the Act be amended to:

- a) provide that an association's register of members must contain prescribed particulars (initially name and residential or postal address);
- b) permit an association to include in its rules a requirement that a member seeking access to the register must produce a statutory declaration to the effect that the access is for association business only;
- c) apply a penalty of a fine of up to \$10,000 for the improper use of the information in the members or office bearer's register?

WACOSS response

WACOSS agrees that associations should maintain a register of members containing their names and contact addresses. The addresses provided should be either residential, postal, email addresses or care of another address.

It is not specified in the Green Bill whether all types of members should be given access to the membership register. It may be appropriate that only members with full and equal voting rights have access while non-voting members do not.

WACOSS agrees with the proposal that a member seeking access to the register be required to produce a statutory declaration to the effect that the access is for association business only.

WACOSS agrees that penalties should be imposed for improper use of member information. However, consideration should be given to the nature and purpose of the misuse of information and the action or level of penalty that should be imposed. For example using the information for marketing purposes or for sale to a marketing company is vastly different to a person who obtained the information originally for legitimate association business and then used the information at a later date to contact another member for a personal reason.

WACOSS is also concerned about making the register of members available where the members are persons under the age of 18 years or vulnerable people. Access to the membership register of an association whose members have mental health issues does not comply with the National Health Standards on Privacy and Confidentiality. Some form of protection is needed to respect the rights of vulnerable people including children.

Is it possible to allow the contact details for members of an association whose members are vulnerable or children to be those of a parent, guardian or a nominated person? Some sporting groups involving children (surf lifesaving, swimming) also require at least

one parent to join. The parents' details would be the details included in the register and with whom contact would be made.

YOUR VIEWS SOUGHT #10

In your view, should the Act be amended to allow two or more incorporated associations to amalgamate if:

- a) the amalgamated association would be eligible to be incorporated under the Act;
- b) there is no prohibition for amalgamation in the rules of the associations concerned;
- c) members of each association concerned have passed a special resolution supporting the amalgamation at a general meeting;
- d) the Commissioner has approved the amalgamation; and
- e) provision is made for any debts and liabilities of each association concerned to be carried over to the newly formed incorporated association?

WACOSS response

WACOSS agrees with these provisions. Associations should be able to amalgamate if the members support the amalgamation and have passed a special resolution agreeing to any amalgamation and the association's rules do not prohibit the association from amalgamating. The new association should be eligible for incorporation. There should be provision for any debts and liabilities of each association to be carried over to the new association.

YOUR VIEWS SOUGHT #11

In your view, should the Act be amended to:

- a) provide for the establishment of a three-tiered system of financial accountability whereby all associations would be responsible for having their financial records annually audited according to different levels of scrutiny;
- b) require all associations to present a statement from an appropriate auditor (depending on the relevant tier)
- c) require the management committee to present a solvency statement to their members at the Annual General Meeting;
- d) require all incorporated associations to submit an annual return to the Commissioner;
- e) require only the Tier 3 associations to submit an auditor's report and financial statements to the Commissioner at the end of each financial year;
- f) require all associations to keep financial records for a minimum of seven years; and
- g) provide the Commissioner with the authority to direct a full financial audit of any association in certain circumstances?

WACOSS response

WACOSS believes the use of the term “audit” throughout the Green Bill and Consultation Guide has caused confusion and concern amongst small associations. Although first tier organisations are not required to have their accounts audited by a qualified auditor the language implies otherwise. Clause 107 refers to the person carrying out the “audit” for a tier 1 association as the “auditor”, however the definition of “auditor” provided at Clause 117 is a suitably qualified person (a member of CPA Australia, or the National Institute of Accountants or a registered company auditor).

If the intention is that a Tier 1 organisation is required to only have their financial records independently reviewed by someone other than an employee or person who has prepared the financial statements then this should be separately and simply explained in the Act. WACOSS strongly suggests that the term “audit” not be used in relation to the management of financial records of tier 1 organisations in any future publications.

- (a) & (b) A fourth tier should be introduced where the lowest tier applies to very small associations (for example, small playgroups) where the need to have financial statements independently reviewed is unnecessary. A possible limit for these groups could be \$5,000.

Associations that have considerable assets but little income may need to be reassessed as to their reporting requirements as the cost of paying an auditor may consume a large amount of the association’s available cash. There should be an avenue for such associations to apply to the Commission to be included in a tier more relevant to their cash income

- c) The provision of a solvency statement to members at an AGM seems to be an unnecessary burden. For those associations that are required to have their accounts audited, the presentation of the audited accounts at the AGM should be sufficient. It may be more relevant for associations that are in the lowest tier and who are not required to have their accounts audited to provide a solvency statement to their members at the AGM in the absence of any statement from a suitably qualified person
- d) Agree that all associations should provide an annual return.
- e) Agree that only associations in the highest tier should be required to submit an auditor’s report and financial statements with their annual return.
- f) All records should be kept for a minimum of 7 years.
- g) Agree as long as there is substance to the allegations of financial mismanagement.

YOUR VIEWS SOUGHT #12A

In your view, should the Commissioner for Consumer Protection have the authority to direct an association to call a general meeting to discuss a dispute or matter that he thinks may be resolved in this way, and to attend the meeting?

WACOSS response

The Commissioner should be able to direct an association to call a general meeting only after the association has tried to resolve the dispute through the dispute resolution processes contained in its rules and the dispute is such that the association is no longer able to conduct its affairs.

The Commissioner or representative should be able to attend the meeting and participate in discussions but not be allowed to vote on any matters.

YOUR VIEWS SOUGHT #12B

In your view, should the Act be amended to provide the Commissioner with the discretionary authority to appoint a statutory manager to an incorporated association:

- a) if the association has failed to rectify a breach of the Act or Regulations within 60 days of receiving written notice from the Commissioner;
- b) where the appointment of a supervisor is required in the interest of members, the association's creditor or is otherwise required in the public interest; and/or
- c) when the members have, by special resolution, requested such an appointment; and
- d) with the Commissioner the appointment of a supervisor is required in the interests of members, the association's creditors or is otherwise required in the public interest; and
- e) with the Commissioner having the power to recoup reasonable costs from the association?

WACOSS response

The time in which the Commissioner can act to appoint a statutory manager should the association fail to rectify a breach should be 120 days rather than 60 days. Some associations, particularly smaller ones may need the extra time to communicate with members and take action. The object should be to assist associations to self manage and resolve matters before the Commissioner becomes involved.

Who determines what "reasonable costs" are? Should the Commissioner decide to appoint a statutory manager then the costs should be borne by him/her as many associations would not have the funds available to pay the expenses of a statutory manager and such action would only result in an unreasonable burden on the finances of the association.

YOUR VIEWS SOUGHT #13

In your view, should the Act be amended to provide the Commissioner with the discretionary authority to require an association's incorporation to be transferred to other legislation if the Commissioner is of the view that it is appropriate to do so having regard to:

- a) the scale and nature of the association's activities;
- b) the value and nature of the property of the association; and

- c) the extent or nature of dealings of the association with the public; or
- d) any other reason deemed sufficient by the Commissioner?

Should the Act allow incorporated associations to voluntarily transfer their incorporation and /or their undertakings to another regulatory jurisdiction?

Should the decision of the Commissioner to transfer an association's incorporation be reviewable by the State Administrative Tribunal.

WACOSS response

The Commissioner should be able to direct an association to transfer to more appropriate legislation as long as reasons for the direction are given and the association can seek a review of the Commissioner's decision with the State Administrative Tribunal.

Associations should be able to apply to voluntarily transfer their incorporation to another jurisdiction. However, they should have the right to seek a review of a decision by the Commission refusing the transfer by the State Administrative Tribunal.

The Commission should be obliged to give his written reasons for any decision made in relation to an association.

YOUR VIEWS SOUGHT #14

In your view, should the Act be amended to give the Commissioner the power to:

- a) require a person to provide requested information or answer any question relating to an investigation;
- b) enter association premises with a search warrant to obtain or copy relevant information;
- c) investigate contraventions or breaches of the Act; and
- d) request the Police or other relevant law enforcement agencies to investigate and report on an alleged offence against the Act?

WACOSS response

The person should have the right to have a solicitor present during any questioning by the Commissioner or authorised representative as well as the right to obtain legal advice in relation to any matter being investigated by the Commissioner under these powers.

YOUR VIEWS SOUGHT #15

In your view, should the Act be amended to provide for the court winding up of an association to proceed in accordance with the relevant provisions of the *Corporations Act 2001*?

WACOSS response

Agree. The winding up process of an association, either voluntarily or if the association is insolvent, needs to be clarified and simplified. This amendment simplifies the process

by providing for the winding up of an association to be made under the relevant provisions of the *Corporations Act 2001*.

WACOSS supports the suggestion in the Consultation Guide that a practical guide on winding up be developed to assist associations in making the process easier to understand and follow.

YOUR VIEWS SOUGHT #16

In your view should the Act be amended to:

- a) simplify the procedures for voluntary winding up of an association;
- b) require a person or a group of people to take on the duties of a liquidator and carry out these duties in a reasonable time;
- c) provide that the members of an association are, by special resolution, to determine a surplus property distribution plan on the voluntary winding up of the association, with the distribution plan to be approved by the Commissioner;
- d) introduce a provision to allow local government authorities to receive the surplus property of an incorporated association;
- e) require the return to funding bodies of any unexpended public monies that may have been allocated to the association to assist in its establishment or the running of its activities;
- f) provide that any distribution of surplus property in a way other than that provided for by the Act be an offence; and
- g) empower the Commissioner for Consumer Protection to determine the way in which surplus property are to be distributed in certain circumstances?

WACOSS response

WACOSS agrees that provisions concerning the voluntary winding up processes and distribution of surplus property need to be simplified.

WACOSS does not agree that a special provision for surplus funds to be distributed to local government needs to be included.

The association can choose to distribute surplus funds in two ways - by special resolution or in its rules. If the association chooses, local government can be one of the organisations that can receive surplus funds through either method. If local government has provided funding and surplus funds exist then they are covered by the provision requiring the return of unexpended public monies to the funding body. Local government does not require a special provision to receive the surplus funds of an association.

Many funding bodies already require surplus funds to be returned if unused.

Associations should be free to choose to distribute any surplus funds to other associations of similar aims and objectives.

The Commissioner should only become involved in determining the way in which surplus property is to be distributed in limited circumstances and only where the

association is unable to complete the winding up duties or distributes the surplus property contrary to the provisions of the Act or the resolution/rules of the association.

YOUR VIEWS SOUGHT #17

In your view, should the Act be amended to:

- a) permit a solvent association with no surplus property to distribute to apply for voluntary cancellation of incorporation?
- b) allow incorporated associations with less surplus property than the prescribed amount to apply for a voluntary cancellation of incorporation?

If so, how much should the amount prescribed in the regulations?

WACOSS response

Agree that a solvent association without any surplus property to distribute be able to apply for the voluntary cancellation of their incorporation.

Agree that an association with surplus property less than the amount prescribed in the regulations be able to apply for voluntary cancellation of their incorporation. It is suggested that the amount prescribed in the regulations could be \$1,000 or less. This simplifies the process for an association and avoids the appointment of a liquidator.

YOUR VIEWS SOUGHT #18

In your view, should the Act be amended to provide the Commissioner with the discretionary authority to cancel the incorporation of an association if:

- a) it was not eligible for incorporation at the time it was incorporated;
- b) has suspended its operations or been dormant for a whole year;
- c) has no property and the members have resolved to discontinue the activities of the association; or
- d) has resolved to wind up, but no one is prepared to act as liquidator; or
- e) it fails or refuses to remedy a contravention of the Act or Regulations within 60 days of being given notice in writing by the Commissioner to do so?

WACOSS response

- a) The Commissioner should be able to use his/her discretionary authority to cancel the incorporation of an association under clause 167(1)(a).
- b) The time limit under clause 167(1)(b) should be increased to 2 years as some associations may lose members for various reasons in one year but may be revitalised the following year. Associations in country areas that have highly mobile communities are an example.
- c) As mentioned in "Your Views Sought 3" the number of standard members should be uneven and suggest the number should be 7 in clause 167(1)(c).
- d) Agree with clauses 167(1)(d)(e)(f).

- e) The time limit in clause 167(1)(g) should be increased to 120 days as some associations may have administrative difficulties in complying within a 60 day period due to the complexities of the organisation.

However, WACOSS does not agree with the ground in clause 167(2). The Commission should not have the discretionary power to cancel incorporation of an association because of the failure to act of the public officer. He/she is one member of an association and if the Commissioner has difficulty with a public officer then he/she should consult with the management committee to resolve the issue first. The Commissioner can then use the discretionary power in s167(e) if there are issues with the management committee failing to remedy any contravention.

The association should have the right to seek the State Administrative Tribunal review any decision of the Commission under this Part.

YOUR VIEWS SOUGHT #19

In your view, should the Act be amended to ensure the doctrine of constructive notice does not apply in relation to the public documents of incorporated associations?

WACOSS response

The doctrine of constructive notice should not apply in relation to the public documents of an association lodged with the Commissioner.

YOUR VIEWS SOUGHT #20

In your view, should the Act be amended to allow proceedings for an alleged offence against the Act to commence within three years after the offence was committed?

WACOSS response

In many instances alleged offences are not discovered for some period after they have occurred and in many cases not until after there has been a change in office bearers of an association or when the accounts are audited/checked each year. By extending the time period in which proceedings can be commenced will enable many of these offences to be prosecuted.

YOUR VIEWS SOUGHT #21

In your view, is the application of the *Corporations Act 2001* as an excluded matter adequate for the purposes of allowing an incorporated association to register as a body under Part 5B and retain its legal identity?

WACOSS response

This provision will enable an incorporated association to become a registered body under the *Corporations Act 2001* and retain its legal identity.

YOUR VIEWS SOUGHT #22

In your view:

- a) is it appropriate to increase the penalties association with a breach of the responsibilities of management committees or non-compliance with the Act?
- b) would the introduction of higher penalties and infringement notices help to ensure compliance with the Act?

WACOSS response

The introduction of higher penalties may not help to ensure compliance with the Act. The use of infringement notices is more likely to assist if used as a learning tool to increase members' awareness of obligations under the Act.

While the current penalties appear to be low, to most people who volunteer the amounts may represent a significant portion of, or more than, their income. Therefore, in most cases the current penalties already act as a deterrent. The proposed penalties are significantly higher and the risk of incurring one may prevent people from volunteering and becoming involved with associations. In some cases, the proposed penalty may exceed the associations' income thus resulting in the association ceasing to exist.

While there appears to be a need to increase penalties, the proposed substantial increases do not appear to be justified particularly when considering the nature, size and membership of the majority of associations. A smaller, more reasonable increase in penalties together with the use of infringement notices would be more appropriate.

Additional Comments

There appears to be a significant level of responsibility and subsequent penalties for non-compliance placed on the public officer throughout the Green Bill. This is an unnecessary burden for one person who is usually acting in a voluntary capacity and more than likely has other obligations, both paid and unpaid. The responsibility should be shared between the office bearers of the association. The likely result of imposing by legislation this level of responsibility on one person is that there will be very few who will volunteer to take on the role.

It is suggested that the model rules be written in plain English and be clear to assist members understand their roles and obligations.

Educational programmes should be conducted once the new Act is operational to make members and particularly committee members aware of their obligations under the Act. Many people take on roles within associations without actually realising there is a governing Act and subsequent obligations.

Once the Bill has passed parliament WACOSS strongly recommends that consideration be given to the establishment of a one off small grant scheme to assist small to medium size organisations to bring their current Rules of Association into line with the provisions of the new Act.

**WACOSS Submission
DoCEP
Associations Incorporation Green Bill
April 2007**

To help ensure compliance with the new Act, WACOSS recommends that DoCEP take a proactive role by providing accessible information and documentation which will assist organisations to meet their new obligations. A self-assessment questionnaire to help associations ascertain which tier applies to their organisation would be helpful. Similarly, an 'annual return' form which could be mailed to organisations with a reminder of when the form is due would assist associations to meet the new reporting requirements.

Appendix 1 – Submission Cover Sheet

Please include this sheet with your submission. Most questions are optional. Your contact details and agreement to publish the submission on the dedicated webpage is appreciated. Additional information will be used to identify common concerns to associations (if any).

Your family name: BAKER

Given name(s): LISA

Name of Organisation (if any): Western Australian Council of Social Service

Your contact address: City West Lotteries House

2 Delhi Street West Perth. Postcode: 6005

Contact phone number: 9420 7222

I/my association **agree(s)**/~~do not agree~~ to this submission being made public.

Note: Your right to privacy and confidentiality will be respected by Consumer Protection and the requirements of the Freedom of Information Act 1992 will apply.



Are you making this submission on your own behalf or has an association authorised you to make this submission? Please tick box.

On own behalf

On association's behalf

Name of Association (if any) in relation to which you are making this submission:

Western Australian Council of Social Service Inc.

If on an association's behalf, please complete the following details:

I certify that I am authorised by the association to make this submission:


Signature

Executive Director
Position in association

There are 300 members in this incorporated association.
(Please estimate the number of members)

Most members are **individuals** / ~~representatives of other groups?~~
(Please choose one)

community organisations.

Please tick the box that you believe **best describes** the activities of your association.
(Please tick only one box)

- | | |
|---|-------------------------------------|
| Religious | <input type="checkbox"/> |
| Educational / Pre-educational / Day Care / Toy Library / Parents' Association | <input type="checkbox"/> |
| Charitable/benevolent society | <input type="checkbox"/> |
| Literary | <input type="checkbox"/> |
| Scientific | <input type="checkbox"/> |
| Arts / artistic / musical bodies | <input type="checkbox"/> |
| Sporting | <input type="checkbox"/> |
| Recreation / amusement society | <input type="checkbox"/> |
| Social / community / cultural centre | <input checked="" type="checkbox"/> |
| Community Promotion / Tourism | <input type="checkbox"/> |
| Political | <input type="checkbox"/> |
| Historical / heritage | <input type="checkbox"/> |
| Environmental Protection / Preservation | <input type="checkbox"/> |
| Breeding society | <input type="checkbox"/> |
| Agricultural / Horticultural society | <input type="checkbox"/> |
| Trade / Professional / Industry group | <input type="checkbox"/> |
| Alumni Association | <input type="checkbox"/> |
| Health and Hospital | <input type="checkbox"/> |
| Aged Home / Retirement Village / Senior Citizen Association | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

Note: These categories were developed in a 1996 research project and report titled "A Century of Incorporated Associations in Western Australia 1896-1996" by Dr Colin T Huntly PhD, Lecturer, School of Business Law, Curtin University of Technology.



Please tick the box that **best reflects** the annual turnover of your incorporated association:

- | | |
|-----------------------------|-------------------------------------|
| Less than \$10,000 | <input type="checkbox"/> |
| \$10,000 to \$49,000 | <input type="checkbox"/> |
| \$49,000 to \$99,000 | <input type="checkbox"/> |
| \$100,000 to \$1 million | <input checked="" type="checkbox"/> |
| \$1 million to \$10 million | <input type="checkbox"/> |
| More than \$10 million | <input type="checkbox"/> |

Thank you. Your feedback is appreciated.

Appendix 2.

WACOSS Event Summary: Associations Incorporation Act 2006 *Information Seminar*

On Thursday 8th March 2007, the Western Australian Council of Social Service (WACOSS) hosted an information seminar about the *Associations Incorporation Bill 2006*. This paper provides an overview of the seminar, and at the end of the document lists the organisations which registered to attend.

The Seminar

The information seminar was attended by over 50 people from the community service sector. The incorporated associations represented at the seminar reflect the diversity of organisations that will be affected by changes to the Act; ranging from small volunteer groups to medium, professionally managed associations.

The seminar commenced with a presentation from DoCEP delivered by Mr. Gerry Milford which outlined the proposed amendments. Mr. Milford started his presentation by explaining the reasons for the Review: the legislation has not been updated for 20 years; practical and legal difficulties have arisen; a report by the WA Auditor General recommended the Act be updated to bring it in line with legislation introduced interstate and nationally; and that DoCEP have received a number of requests for assistance from incorporated associations in regards to internal governance issues. Mr. Milford then went on to describe the proposed amendments which are categorised under the following headings:

- Incorporation process
- Rules
- Management and reporting
- The Commissioner's powers
- Transfer, amalgamation and winding up

Mr. Milford finished with a summary of the changes and the new rules by which associations will have to operate:

- "Existing associations will need: to assess their rules for compliance with the new Act (will have 18 months to do this); appoint a Public Officer; have some form of audit of accounts (depending on size); and provide annual return to Commissioner (should not require new content to be prepared)."
- "New associations will benefit from: no advertising; model rules; and no need to stipulate a purpose"
- "Going forward, all associations/members will benefit from: more information from Commissioner; access to model rules; more effective dispute resolution"

processes; greater clarity over special resolutions and access to records; better financial accountability; clarified powers of Commissioner to assist with major problems; capacity to amalgamate with other associations and transfer to other jurisdictions; simpler termination processes and broader powers to distribute surplus property”

In the second part of the seminar WACOSS, along with Mr. Milford and his colleague, DoCEP Policy Officer, Ms Stephany Durack, facilitated a discussion which clarified specific amendments and provided a forum for attendees to raise concerns about the workability or impact of the changes.

WACOSS used the *Summary of Key Reforms to Consider* list from the Green Bill *Consultation Guide* document to steer this discussion. Attendees were also able to record their concerns in a feedback form which WACOSS is using to help shape its submission to the Review on behalf of the sector.

A number of concerns about the proposed changes were raised during the seminar. The principal concerns are listed below:

1. Audit of Financial Statements

Proposed change: The Act currently requires that an association keep accounting records and provide a statement of the association’s financial position to members on an annual basis. It is proposed that amendments be made to the Act to require committees of management to present a solvency statement along with financial statements at annual general meetings. A three tiered approach to audit requirements for incorporated associations is proposed in the Green Bill. The Consultation Guide sets out the proposed caps and audit requirements for each tier, based on assets and/or turnover. Essentially:

Small incorporated associations (less than \$100 000) can appoint a suitable person (i.e. neither someone involved in preparing the books, nor a family member of that person) to audit the books;

Medium sized associations (\$100 000 – \$1 million) are required to have a qualified accountant to audit the books.

Large incorporated associations (More than \$1 million) will require a registered company auditor to audit their books, and will also be required to provide audited financial statements to the Commissioner for Consumer Protection with their annual return.

Concern: The seminar explored the notion that perhaps a fourth tier should be included so as to accommodate the needs of very small organisations. Attendees raised the issue that many small volunteer associations had an annual turnover of less than \$10 000 and that it was unnecessary to burden such groups with extra accountability requirements.

The DoCEP representatives present at the seminar stressed that they hoped to receive submissions addressing this section of the Green Bill (Management and Reporting), particularly suggestions about the most appropriate level of caps to be used in the tiered system.

1. Public Officer

Proposed change: Currently the Act makes no provision requiring an association to notify the Commissioner of its registered address or the addresses of any of its officers. It is proposed that the Act be amended to require every association to have an adult member as their public officer and to notify the Commissioner for Consumer Protection, at the time of incorporation, of the name and address of the public officer. It is also proposed that the public officer be required to lodge an annual return with up to date contact details as well as (depending on the size of the organisation – refer to number 1 above) information about the association's financial situation. If a public officer does not lodge association documents in a timely way, he or she may be individually subject to a penalty of a fine of up to \$1 000.

Concern: The principal purpose of incorporation is to minimise the liability of members. Making the public officer responsible as an *individual* for lodgment of association documents (as opposed to the management committee for example) seems to go against the spirit of incorporation and members may be reluctant to nominate as their association's public officer knowing he/she could be fined.

2. Membership Registry

Proposed change The Act currently requires an association to maintain a register of members. It is proposed that associations be permitted to include in their rules a provision requiring members who wish to access the register to lodge a statutory declaration with the Management Committee stating that the intended use of the register is only for association business. Misuse of the information in the member's register would attract a penalty of a fine of up to \$10 000.

Concern: Seminar attendees raised legitimate privacy concerns regarding the requirements to provide information to members. For example, mental health organisations, self-help groups and agencies that work with juveniles raised serious concerns about making their registry accessible to their membership. Given these concerns, the proposed changes will assist with misuse of information and will be more in line with current privacy provisions.

3. Education and Compliance

Seminar attendees noted that there is already a significant lack of awareness amongst associations about the *Associations Incorporation Act 1987*. There is concern therefore about the capacity of some associations to adhere to any new changes. The Green Bill proposes penalties for offences against the Act which makes it even more important that associations are able to access simple information about their obligations.

Attendees suggested that once new legislation is introduced, DoCEP conduct numerous metropolitan and regional information sessions to educate associations about their new responsibilities. It was further suggested that DoCEP organise an annual mail out of forms to assist associations meet any new reporting requirements.

Seminar Registrations List *

Advocare Inc.
Burmees Association of the Blue Inc
City of Melville
Compassionate Friends
Department of Community Development
Developmental Disability Council of Western Australia
Edmund Right Centre for Social Justice
Equal Health Australian Health Professionals Overseas Aid Fund Inc
Ethnic Communities Council of WA
Family Planning Western Australia
Financial Counsellors Resource Project
Giz Watson MLC's Office
Haemophilia Association
HeartKids WA Inc
Independent Living Centre of WA Inc
Ishar Multicultural Centre for Women's Health
Knights of the Southern Cross
Koolkuna
Legal Aid
Loftus Community Centre
Management and Training Consultancy
Men's Advisory Network
Mercy Community Services
Mercy Hospital
National Council of Women of WA Inc
Neurological Society
People Who Care
SIDS and Kids
The Coeliac Society of Western Australia Inc
The Samaritans
Volunteering Western Australia
WA Association of Polish Women
WA No Interest Loans Scheme
Western Australian Network of Alcohol and other Drug Agencies
Western Institute of Self Help

** Please note this is only a list of organisations who registered their attendance before the seminar; many other organisations were represented at the seminar by unregistered attendees.*
