



Department of **Consumer
and Employment Protection**
Government of Western Australia

Consumer Protection

Associations Incorporation Bill 2006
A Green Bill for public comment

YOUR VIEWS IN SUMMARY

November 2007

***An overview of written submissions to the
Associations Incorporation Act Review***

Associated Documents

Associations incorporation Bill 2006 – A Green Bill
Explanatory Memorandum – Associations Incorporation Bill 2006
Consultation Guide: Your view sought on the *Associations Incorporation Bill 2006*

These documents are available for viewing on the website
www.docep.wa.gov.au/agb.

Printed copies are no longer available from DOCEP.

A374309

Disclaimer:

This document gives an overview of the public comments in response to the Associations Incorporation Bill 2006 and the Consultation Guide released in November 2006 for public comment.

This document has been prepared to give you a sense of the diversity of responses, areas for common consent, and some contentious issues. You can see where your views fit in relation to others with an interest in incorporated associations.

It will also show some of the challenges involved in developing legislation that meets community expectations.

Those written submissions to the Associations Incorporation Act Review that included permission to publish have been placed online at www.docep.wa.gov.au/agb but not all submissions included this approval.

CONTENTS

FOREWORD	1
PROMISE	1
THE POLICY AND LEGISLATION PROCESS	2
GENERAL SUMMARY	3
OVERVIEW	3
PROFILE OF RESPONDENTS	4
CATEGORIES OF ACTIVITIES.....	4
TYPE OF RESPONDENT.....	4
ANNUAL TURNOVER	5
GEOGRAPHIC LOCATION	5
YOUR VIEWS – A SUMMARY	7
RESPONSES GAINING MOST COMMENT	8
MOST POPULAR ISSUES	8
MORE CONTENTIOUS ISSUES	9
<i>Dispute Resolution</i>	9
<i>Penalties</i>	9
<i>Public Officer</i>	10
<i>Annual Returns</i>	11
<i>Access to Members Register</i>	11
SUMMARY OF SUBMISSIONS	12
1. The Incorporation Process	12
1.1 Eligibility Criteria	12
1.2 Advertising	13
1.3 Number of Members and Voting Rights	13
2. Rules of Association (or Constitution).....	14
2.1 Model Rules.....	14
2.2 Special Resolutions	14
2.4 Rules forming a contract between members	15
2.5 Dispute Resolution	16
3. Management of Associations	17
3.1 Public Officer and Annual Return.....	17
3.2 Register of Members	18
3.3 Amalgamation.....	18
3.4 Audit of Financial Statements.....	19
4. Powers of the Commissioner for Consumer Protection	21
4.1 Direct Association to convene a general meeting.....	21
4.2 Appointment of a Statutory Manager	21
4.3 Transfer of an Incorporated Association	22
4.4 Investigatory Powers.....	25

5.	Winding up and Cancellation	26
5.1	Court Winding up	26
5.2	Voluntary Winding up and Distribution of Surplus Property	27
5.3	Voluntary Cancellation of Incorporation	29
5.4	Cancellation of Incorporation by the Commissioner	30
6.	Miscellaneous Changes	31
6.1	Doctrine of Constructive Notice	31
6.2	Proceedings for an offence	31
6.3	Authority to Register as a Body under Part 5B of the Corporations Act	31
6.4	Penalties and Infringement Notices	32
7	Additional Comments	33
7.1	Unsolicited ideas	33
7.2	Capacity building suggestions	34
	APPENDIX A	36
	Strategies to encourage deliberation	36
	APPENDIX B	38
	Acknowledgments	38

TABLES

<i>Table 1: Respondents by Activities and Annual Turnover</i>	5
<i>Table 2: Responses by Development Commission Region</i>	6
<i>Table 3: Overall Response by annual turnover</i>	7
<i>Table 4: Overall Responses - Activities of Incorporated Association</i>	8
<i>Table 5: Penalty for Public Officer not lodging documents by Activity</i>	10
<i>Table 6: Grounds for exclusion</i>	12
<i>Table 7: Advertising</i>	13
<i>Table 8: Minimum number of members and voting rights</i>	13
<i>Table 9: Model Rules of Association</i>	14
<i>Table 10: Special Resolutions at Meetings</i>	15
<i>Table 11: Rules binding on members</i>	15
<i>Table 12: Dispute Resolution</i>	16
<i>Table 13: Public Officer and Annual Return</i>	17
<i>Table 14: Register of Members</i>	18
<i>Table 15: Amalgamation</i>	19
<i>Table 16: Audit of Financial Statements</i>	20
<i>Table 17: Additional Comments</i>	20
<i>Table 18: Circuit breaking power</i>	21
<i>Table 19: Statutory Manager</i>	22
<i>Table 20: Grounds for Commissioner to direct a transfer</i>	22
<i>Table 21: Top 5 Comments on Commissioner's power to transfer</i>	23
<i>Table 22: Voluntary Transfer</i>	23
<i>Table 23: SAT Review of decision</i>	24
<i>Table 24: Commissioner's Investigatory Powers</i>	25
<i>Table 25: Supreme Court winding up</i>	26
<i>Table 26: Court Winding Up in accordance with Corporations Act 2001</i>	26
<i>Table 27: Voluntary Winding Up and Distribution of Surplus Property</i>	27
<i>Table 28: Top Comments on Surplus Property in a Voluntary Wind up</i>	28
<i>Table 29: Voluntary Cancellation of Incorporation</i>	29
<i>Table 30: Voluntary Cancellation under prescribed amount</i>	29
<i>Table 31: Suggested caps for voluntary cancellation</i>	29
<i>Table 32: Cancellation of Incorporation by Commissioner</i>	30
<i>Table 33: Doctrine of Constructive Notice</i>	31
<i>Table 34: Legal Action Timeframe</i>	31
<i>Table 35: Part 5B of the Corporations Act</i>	32
<i>Table 36: Penalties and Infringement Notices</i>	32
<i>Table 37: Additional Comments</i>	33
<i>Table 38: Additional Comments Tally</i>	33

Foreword

Background

The *Associations Incorporation Act 1987* (“the Act”) provides a framework of regulation for not-for-profit organisations such as sport and recreation clubs, societies and community groups in Western Australia, yet leaves the internal management of associations largely to the members. It allows an association to incorporate as a separate legal body and limits the liability of its members for lawful activities. The first state law of its kind was introduced in 1895.

The Associations Incorporation Bill 2006 (“the Green Bill¹”) was tabled by the Minister for Consumer Protection in the Legislative Assembly on 30 November 2006 for public comment. This document is a summary of the 316 written submissions received on the Green Bill.

Promise

Your views, collected in submissions to the Associations Incorporation Bill 2006, will help balance the new law for incorporated associations. They will assist the Department of Consumer and Employment Protection, Consumer Protection Division (“DOCEP”) to provide advice to the Government designed to:

- confidently balance fair regulation with association autonomy;
- give members the powers they need to run their organisations with integrity;
- give the Commissioner for Consumer Protection the power to administer the Act equitably;
- limit red tape and administrative costs for all, (including Government);
- reflect relevant policy discussion and changes in laws in other States and Territories;
- respect the diversity of incorporated associations; and
- uphold the notion of transparency and natural justice in decision making.

Keep in contact

If and when a new law comes into operation, DOCEP will use its *Associations Newsletter*, and a range of other community awareness strategies to support management committees and members to adapt to the new laws. Keep your eye on the dedicated webpage for the Associations Incorporation Act Review for updates at www.docep.wa.gov.au/agb.

To update your contact details please send your old address and your new address on letterhead or under seal to:

Associations Executive Officer
Commissioner for Consumer Protection
Locked Bag 14 Cloisters Square
PERTH WA 6850

¹ A Green Bill is a working draft of an Act. It is tabled in Parliament only for the purpose of generating community discussion. It is a way to check that proposed amendments to a law meet community expectations. It is usually released when dealing with particularly complex policy matters.

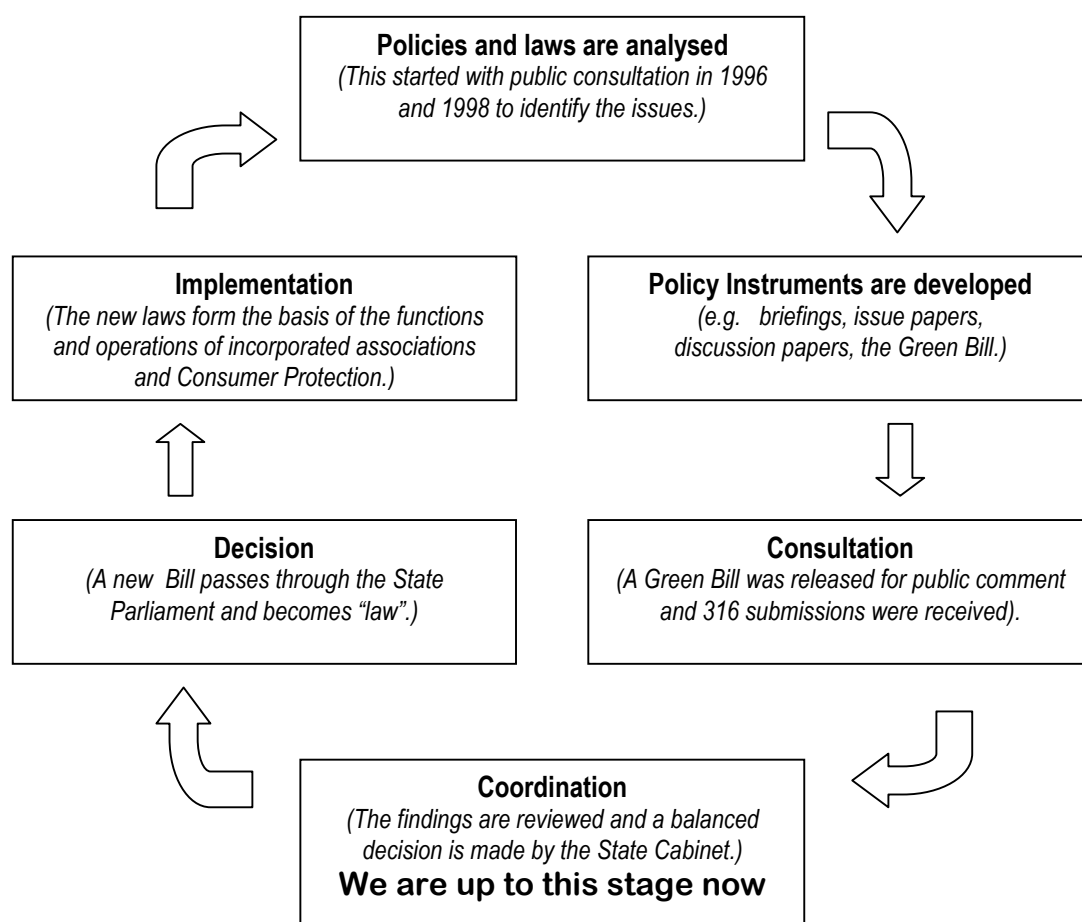
The Policy and Legislation Process

Your comments about the Green Bill will directly influence a new law for incorporated associations. This will be presented by the Minister for Consumer Protection to the State Parliament.

Changing an existing law is, by necessity, a slow and complex process. The diagram below has been developed to give you an overview of the different steps in the policy and legislative review process. It has been tailored to reflect the Review of the *Associations Incorporation Act 1987* but the stages may be familiar to those of you involved in policy formulation.

There will be a transition period for everyone to adjust to the new requirements of the law.

Diagram 1: How your views are heard and how laws get changed



GENERAL SUMMARY

Overview

A total of 316 written submissions on the Associations Incorporation Bill 2006 (“the Green Bill”) were received by DOCEP. The respondents were members, groups, incorporated associations, advisors (e.g. lawyers and accountants) and government bodies.

The diversity of respondents reveals a wealth of knowledge, experience and insight into the current challenges facing incorporated associations. Submissions will significantly assist the formulation of legislation that addresses current problems and is generic enough to respond to future challenges. In itself, this is an enormous challenge. The public consultation process has illuminated the dimensions of the facility made available to individuals and communities through the activities and work of incorporated associations in Western Australia.

The key themes addressed in the Green Bill and Consultation Guide are:

- the incorporation process;
- Rules of Association or Constitution;
- Management of associations;
- Powers of the Commissioner for Consumer Protection;
- Winding up and cancellation; and
- Miscellaneous (technical) changes.

Nearly two in three respondents welcome the direction taken by the proposed amendments, either spontaneously, or by a positive response to most issues. There was a large “no comment” result recorded for every issue raised in the Consultation Guide. People were more likely to record a response if they felt strongly about an issue and had specific views to offer on that topic.

Some of the amendments proposed in the Green Bill adjust existing powers and responsibilities. Responses demonstrate that there are common misconceptions about the responsibilities of incorporated associations, the powers of the members and the role of the Commissioner for Consumer Protection (“the Commissioner”) in the current Act. For instance, misconceptions were expressed about the importance of adhering to the Rules of Association, especially in relation to decision making processes; the liability of committee of management members for unlawful activities; the application of penalties for a breach of the Act to the individual(s) rather than the association; and the existence of the Commissioner’s powers to transfer incorporated associations to another jurisdiction.

Many people seeking information during the public comment period expressed surprise that there was legislation underpinning their Rules of Association. Others did not know that DOCEP offered information or had a role beyond the application for incorporation.

The level of community awareness about current responsibilities is consistent with the nature of the current Act. There is little need for the members or the Commissioner to communicate with each other, from the time that an association is incorporated, to the time that it winds up. If there is a problem drawn to the Commissioner's attention, the choice of intervention is either to breach the organisation, or cancel their incorporation. In practice, these powers are very rarely used unless there is a clear and wilful disregard for the member's interests or the law.

Consequently, there was a strong call from respondents to the Green Bill to enhance information about the requirements of the law and enhance governance, education and training for voluntary management committees to build the capacity of incorporated associations.

Some submissions went as far as to suggest that strategic planning and other governance standards were so critical to the sound operation of incorporated associations, that they should be set out in legislation. However, this would generally breach one of the foundation principles informing the development of the Act, that the management of incorporated associations be the responsibility of members.

Profile of Respondents

Respondents were asked to voluntarily provide some additional information that would assist DOCEP to identify issues of common concern to incorporated associations. This information is summarised here.

Type of Respondent

Most submissions were made on behalf of incorporated associations (236) with 56 submissions from individuals, 15 from government instrumentalities and 2 from other sources.

Categories of Activities

There are more than 19 different categories of activities pursued by incorporated associations reflecting the scope of the contribution made to the social, environmental, economic and political life of our communities. Many are run by volunteers and a remarkable number of respondents referred to the importance of valuing volunteers.

For more information on each category used in the charts below, please see the *Categories of Incorporated Associations 1996* in the Profile in the Consultation Guide or on the Green Bill Webpage. This list was compiled following a manual audit of incorporated associations by Dr Colin Huntly, Curtin University, in 1996 and has not been repeated since.

Dr Colin Huntly's 1996 research provided insight into the different categories of incorporated association and the most popular activities supported by associations.

More submissions were received from the three biggest categories of activity suggesting a general level of continuity since 1996. This can be seen in Table 1 below.

Table 1: Respondents by Activities and Annual Turnover

Activities	Upto \$10,000	\$10,000 to \$49,999	\$50,000 to \$100,000	\$100,001 to \$1 million	\$1 million to \$10 million	Over \$10 million	n/a	Grand Total
Advisors							5	5
Aged/Snr Citizen Assoc	4	3			1	2	2	12
Agricultural	3						1	4
Arts/artistic/musical bodies	4	3	1		1		2	11
Breeding	1		1				4	6
Charitable		1	1	2	4	1	1	10
Community promotion	4	1	1		1		5	12
Educational	4	2	2	5	1		2	16
Environmental Protection	4	2	2	1	2		8	19
Government						2	12	14
Health	5	3			2		3	13
Historical	1	1		1			2	5
Political							2	2
Recreation	6						4	10
Religious	8	2			3	1	17	31
Scientific							1	1
Social	6	3	1	2	1		25	38
Sporting	4	9	2	7			14	36
Trade/Professional/Industry group	2			4	1		9	16
Other	4		2	3		2	2	13
n/a	1					1	40	42
Total	61	30	13	25	17	9	161	316

Annual turnover

Although half of respondents elected not to provide details relating to the annual turnover of their association, 39% of the respondents were involved with or represented associations with an annual turnover of up to \$10,000.

Other respondents were then quite evenly distributed amongst the rest of the activity categories only dropping off in the "Over \$10 million" annual turnover category. This may reflect that the entities with a higher annual turnover choose another form of body corporate under which to operate rather than a low response from very large incorporated associations.

Geographic Location

Of the 316 submissions received, 225 were lodged by organisations with post codes registered within the Perth Metropolitan Region. This included metropolitan based associations, but also peak not-for-profit bodies, statewide industry bodies and funding agencies.

Twenty five submissions came from interstate (4), or did not register a post code that could be attributed to a region (21).

Regional Development Commission areas have been used to identify the source of submissions. A low response should not be interpreted to mean that only one respondent considered the situation facing rural, regional or remote communities, as the number of non-metropolitan associations that contributed to the development of a submission for their sector through their peak body is not known.

Emphasis was placed on distributing information about the Green Bill to people in rural, regional and remote areas of Western Australia. Seventy submissions came from individuals and associations outside of the metropolitan area, even though almost half of all incorporated associations registered with DOCEP appear to be located in non-metropolitan communities.

Table 2: Responses by Development Commission Region

Region	Estimate of all incorporated associations in Region ¹	Number of Submissions ² (by post code)
Peel	564	9
South-West	1,379	18
Great Southern	832	10
Goldfields-Esperance	653	4
Wheatbelt	1,553	20
Mid-west	587	2
Gascoyne	222	1
Pilbara	472	1
Kimberley	287	1
Perth Metropolitan Area	8,572	225
Lodged from another State or Territory		4
Not specified	139	21
Total	15,260	316

Notes:

1. Source: DOCEP Database, 27 September 2006.

2. Source: Submissions received on the Associations Incorporation Bill 2006.

Comment

The consultation phase of the Green Bill is considered successful because it generated responses from diverse communities of interest, from individuals and government agencies, from incorporated associations, large and small, and their advisors. The spectrum of responses and the depth of the commentary provided could not have been achieved without the assistance of the organisations listed in Appendix A or Appendix B, which highlight some of the successful community engagement strategies and our communications partners.

YOUR VIEWS – A SUMMARY

The *Associations Incorporation Bill 2006 Consultation Guide – Your Views Sought* highlighted key policy issues for community discussion following the release of the Green Bill. Each submission has been assessed, part by part, to identify the level of agreement or comment in response to each of the issues. More than 3,000 pages of submissions have been received. This summary is designed to give you some idea about responses to the Green Bill from your sector, or from groups of a similar size to your own.

From an overall perspective, 61% of all respondents actively welcome the suggested amendments in the Green Bill. These groups may also have had comments to make on some elements of the Bill, but the general overhaul of the Act was welcomed.

If an overall assessment is made by turnover, organisations with a annual turnover of over \$10 million were overwhelmingly in favour of the suggested amendments (89%), the other annual turnover categories still supported the amendments wholeheartedly, with levels ranging between 57% to 77% that indicate no real significant differences between them. This can be seen in Table 3 below.

Table 3: Overall Response by annual turnover

Count of spontaneous comment or overall assessment	Upto \$10,000	\$10,000 to \$49,999	\$50,000 to \$100,000	\$100,001 to \$1 million	\$1 million to \$10 million	Over \$10 million	n/a	Grand Total
Welcome	39 64%	17 57%	10 77%	15 60%	10 59%	8 89%	95 59%	194 61%
Not Welcome	21 34%	12 40%	3 23%	10 40%	6 35%		57 35%	109 34%
No Comment	1 2%	1 3%			1 6%	1 11%	9 6%	13 5%
Total	61	30	13	25	17	9	161	316

Of all of the different activities pursued by incorporated associations, “environmental protection²” groups were the only activity area to clearly indicate that the proposed amendments to the law were not welcome. This is illustrated in Table 4 below.

² This category includes political bodies, historical and heritage societies, environmental protection and preservation groups, were more commonly environmental and preservation groups or historic societies. It is Dr Huntly’s “E” category.

Table 4: Overall Responses - Activities of Incorporated Association

Activities	Welcome	Not Welcome	No Comment	Grand Total
Advisors	3	2		5
Aged/Snr Citizen Assoc	8	4		12
Agricultural		4		4
Arts/artistic/musical bodies	8	3		11
Breeding	3	3		6
Charitable	6	4		10
Community promotion	8	3	1	12
Educational	12	4		16
Environmental Protection	7	11	1	19
Government agency	9	2	3	14
Health	9	3	1	13
Historical	3	2		5
Political	2			2
Recreation	6	4		10
Religious	21	10		31
Scientific		1		1
Social	22	15	1	38
Sporting	27	9		36
Trade/Professional/Industry group	10	5	1	16
Other	7	5	1	13
n/a	23	15	4	42
Total	194	109	13	316

“Social groups³” were another activity category that was clearly concerned about some of the proposed changes.

Responses gaining most comment

By far the most responses in submissions were about the key themes - “Management and Accountability” and “Model Rules of Association”. These issues solicited the most discussion with the specific issue of “Auditing of Financial Statements” attracting almost 50 independent, additional comments.

The majority of the comments were about exemptions from auditing and annual return requirements for associations. They came from both small incorporated associations and larger incorporated associations for reasons ranging from the cost of compliance, to a desire to retain their financial status as a private matter (e.g. a fear that revealing their financial status may expose them to vexatious claims).

Most Popular issues

It has been interesting to note that the same topics of “Management and Accountability” and “Model Rules” were also the issues that gained the strongest “agree” responses. “Management and Accountability” accounted for 9 of the top 15 views, while “Model Rules” covered the other 7 of the top 15 views.

³ This category includes community establishment groups, social, community or cultural centres, community promotion and tourism associations and were wide spread in each sub-category. It is Dr Huntly’ “D” category.

The tiered approach to “Accountability” was widely welcomed, but there was general agreement that that financial statements must be presented to members at an Annual General Meeting (“AGM”), but that it may not be necessary to lodge them with the Commissioner, or, therefore to make them public. There was support, however, for the Commissioner to have the power to request this information or to commission an audit if it was thought to be necessary.

Putting a set of core Model Rules in the regulations associated with the Bill was widely supported. The Model Rules would apply if the constitution of an incorporated association was silent on a matter. Some comments indicated that more flexibility would be useful, so that members could choose to amend the Model Rules before they were submitted as part of their application for incorporation, especially decision making processes.

The introduction of mandatory dispute resolution processes in the Rules was also welcomed, especially if these applied before a matter could be heard by the State Administrative Tribunal (SAT).

More Contentious Issues⁴

Dispute Resolution

As the third top recorded “agree” response from all views sought the overwhelming level of support for the introduction of an internal dispute resolution mechanism is clear. Interestingly nearly one third of incorporated associations that responded favourably had an annual turnover of under \$50,000. However it was also worthy to note that these same incorporated associations with under \$50,000 annual turnover were also responsible for almost half of the “disagree” responses.

The views sought in relation to the introduction of the State Administrative Tribunal (“SAT”) hearing unresolved disputed attracted a 35% “agree” response, 16% “disagree” response and the remaining (49%) did not comment.

Responses gained from associations with an annual turnover of under \$50,000 showed that 38% agreed with the proposal while 20% did not.

Associations with an annual turnover over \$50,000 were more likely to welcome the introduction of the SAT to determine unresolved disputes between members, or members and the association, with 47% in support and 13% actively against the idea.

Seeing an accredited mediator prior to a hearing with SAT at the cost of the instigating party was also widely accepted by all responding associations irrespective of their annual turnover.

Penalties

While the issue “Should penalties associated with a breach of the Act by the management committee be increased to assist compliance?” was met with an overall lack of support (29% “disagree”, 27% “agree”, 43% ‘no comment’), this was largely driven by associations with an annual turnover of under \$100,000. Submissions from associations with over \$100,000 in annual turnover unanimously supported the introduction of higher penalties. It is noted that comments in submissions revealed some common misconceptions about penalties under the Act. Responses suggest that some members of management committees believe:

⁴ Please note that ‘no comment’ is interpreted to mean that a respondent did not feel strongly in favour or against an issue. Therefore, a ‘no comment’ is considered to be tacit approval.

- that the “limited liability of members” provided by the Act means that members are individually exempt from the consequences of unlawful actions;
- actions as a member of a management committee of an incorporated association may be subject to the exemptions afforded to volunteers by the ‘*Volunteers (Protection from Liability) Act 2002*’ ; or
- if the law says that the association is responsible for ‘taking reasonable steps to comply with the law, then the association would pay any penalty or be prosecuted for a breach, not the individual on the committee who act unlawfully⁵.

Public Officer

All associations, irrespective of their level of annual turnover supported the concept that a person holding the position of Public Officer should be an adult whose contact address and details should be provided with the Annual Returns. Many respondents did, however, indicate some concern about use of the title “Public Officer”.

Associations with an annual turnover of over \$10 million were the only turnover group to wholeheartedly support a penalty of a fine of \$1,000 for not lodging documents in a timely way. It varied by sector. However, the Health and Aged Care sectors support the introduction of a penalty strongly while the Religious, Social and Sporting groups were typically against it. This result may be expected given the nature of the organisations and their level of non-profit activity or use of volunteers.

Table 5: Penalty for Public Officer not lodging documents by Activity

Activities	Agree	Disagree	No Comment	Grand Total
Advisors	3		2	5
Aged/Snr Citizen Assoc	5	4	3	12
Agricultural		1	3	4
Arts/artistic/musical bodies	4	4	3	11
Breeding		3	3	6
Charitable	4	3	3	10
Community promotion		7	5	12
Educational	2	8	6	16
Environmental protection	2	11	6	19
Government	2	3	9	14
Health	7	4	2	13
Historical		3	2	5
Political	1	1		2
Recreation	1	5	4	10
Religious	2	10	19	31
Scientific			1	1
Social	2	20	16	38
Sporting	8	15	13	36
Trade/Professional/Industry group	5	5	6	16
Other	3	7	3	13
n/a	6	13	23	42
Total	57	127	132	316

⁵ This would transfer the cost of the unlawful activity to every member of the incorporated association and relieves a person found guilty of a breach from the consequences of their actions.

Annual Returns

The development of a three-tiered system with different requirements for regular audits attracted strong support with an “agree” response of over 50%.

When the issue of “present a statement from an appropriate auditor to all AGMs” was raised, although the support was across the board the smaller associations with an annual turnover of under \$50,000 did record higher “disagree” responses indicating that they may be concerned about the costs associated with an audit.

Associations with an annual turnover of over \$1 million registered a strong “disagree” response to the suggestion that “the annual return contain financial information”.

The suggestions that “Only Tier 3 to submit audited financial statements to Commissioner” and “all incorporated associations to keep financial records for seven (7) Years” attracted a lower “disagree” response and many respondents did not offer comment on these matters. Many associations, especially smaller associations, were generally less worried by these proposed changes.

The idea of providing “authority for the Commissioner for Consumer Protection to commission an audit when required” was met with resounding support irrespective of the size of the associations.

Access to Members Register

Irrespective of the size of an association’s annual turnover there was an overwhelming acceptance (42% agreed) that members details, as prescribed, need to be kept in a member’s register and that they be made available to other members. It is the way this information may be used that is an issue for incorporated associations.

Whilst being required to “provide a statutory declaration for a copy of the members register”, was strongly supported there was a shift towards the “disagree” response by smaller organisations that perhaps saw this as “too much red tape”. Leaving an element of discretion with the Management Committee or their delegate was supported.

However, the issue of introducing a “penalty of up to \$10,000 for improper use of member’s register” was firmly supported and may be a reflection of the changes in society and privacy related issues. Respondents also sought clarification of ‘improper use’ of the member’s register in the legislation to guide members.

SUMMARY OF SUBMISSIONS

The Consultation Guide to the Associations Incorporation Bill 2006 (the Green Bill) highlighted a number of issues raised for public comment. These were marked in the Consultation Guide, or on the website for the Green Bill, as “*Your views sought*”.

This section takes each of the specific issues raised in the Consultation Guide and assessed each submission to see if the respondent either “agrees”, “disagrees” or offers “no comment”. You may choose to revisit the Consultation Guide or the information provided on line to refresh your memory on the background to some of the problems addressed.

This simple analysis gives a snapshot of community responses to the key issues raised for public comment on the Green Bill. Additional comments were also made and have been summarised for your information at the end of this section.

1. *The Incorporation Process*

1.1 *Eligibility Criteria*

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?*

Table 6: Grounds for exclusion

Response	Scale	Nature of Activities	Value of property	Nature of dealings with public
Total Agree	98 31%	106 33%	90 29%	108 34%
Total Disagree	34 11%	26 8%	39 12%	23 7%
Total No Comment	184 58%	184 58%	187 59%	185 59%
Grand Total	316	316	316	316

Two thirds of respondents did not choose to comment on this issue. Of those that did, the vast majority were in favour of each grounds for the Commissioner to decline the incorporation of an association, illustrating a strong acceptance of the Commissioner holding these powers.

Those that did object were likely to be large member groups, those that have been incorporated for some time, or those concerned about the value of their property.

1.2 Advertising

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?*

Table 7: Advertising

Response	No advertising on application	Commissioner able to direct an association to advertise and to seek further information
Total Agree	105 33%	125 40%
Total Disagree	27 9%	6 1%
Total No Comment	184 58%	185 59%
Total	316	316

In each respective element 90% and 99% of respondents either made “no comment” or agreed with the amendment, illustrating overwhelming support for the changes.

1.3 Number of Members and Voting Rights

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?*

Table 8: Minimum number of members and voting rights

Response	Minimum of 6 standard members	Application to include evidence	Full and equal voting rights
Total Agree	120 38%	109 34%	119 38%
Total Disagree	10 3%	22 7%	9 3%
Total No Comment	186 59%	185 59%	188 59%
Total	316	316	316

Each element of this question again received over 95% response of either “no comment” or “agree” suggesting acceptance of the suggested changes. There was a preference that the minimum number of members becomes an odd number rather than the proposed 6 members, to help with ‘deciding votes’. There was not a strong agreement about the number of members, with suggestions ranging from 5 to 9 members.

2. Rules of Association (or Constitution)

2.1 Model Rules

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?*

Table 9: Model Rules of Association

Response	Set of core rules for all associations	All new incorporated associations to adopt Model Rules	Special authority to update Rules during transition period.	Make payments to office bearers transparent
Total Agree	142 45%	126 40%	135 43%	131 41%
Total Disagree	13 4%	27 9%	17 5%	16 5%
Total No Comment	161 51%	163 51%	164 52%	169 54%
Total	316	316	316	316

There was a 90% acceptance of the idea of a set of Model Rules for incorporated associations, and for a clause to be included about transparent payments to committee members.

Comments suggest that more flexibility is required so that new incorporated associations can amend the rules of association before they are lodged rather than being required to accept the model rules initially, then amend them after incorporation.

Similar comment was made about preparing the Rules in “plain English” without excessive reference to the Act to increase clarity and simplicity.

2.2 Special Resolutions

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; or*

- c) *what percentage of members do you think is appropriate to call such a meeting?*

Table 10: Special Resolutions at Meetings

Response	Clarify voting requirements and quorum procedures	Specify minimum members required to call "Special Meeting"	Percentage of members able to call a "Special Meeting" – 20%?
Total Agree	131 41%	118 37%	25 10%
Total Disagree	13 4%	23 7%	16 7%
Total No Comment	172 55%	175 56%	199 83%
Total	316	316	240

Support for the suggested amendments was again strong, with only 4% to 7% of responses against the suggestions about clarifying special resolutions.

There was less confidence in the community about the best way forward on the number of members it should take to call a special meeting of an incorporated association when there is an issue that a sub-group of the association would like discussed. The suggestion in the Consultation Guide was 20% which received some support.

There were 56 suggestions in this area ranging from 5% to 80%. This range may reflect the existing arrangements in the constitutions of incorporated associations. However between 20-30% appears to suit most respondents. Some submissions introduced the idea that number and a percentage could be prescribed (e.g. 7 members or 15%, which ever is the higher number).

Submissions hesitated to suggest a 'one size fits all' approach to this issue, largely because a prescribed percentage can be problematic if the number of members is small or has dwindled.

2.4 Rules forming a contract between members

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?

Table 11: Rules binding on members

Responses	Enforcing rules of an association between and by members
Total Agree	92 29%
Total Disagree	68 22%
Total No Comment	156 49%
Total	316

The responses received to this question were far more evenly split between "agree" and "disagree" than most other issues. There seems to be less definitive opinion on this issue.

Comments suggest that the use of the term ‘contract’ meant that some people (mis)interpreted this question to mean that the rules would have the same legal status as a contract between business partners and there was a fear that management committee members would be involved in complex legal battles between members and ‘spend half their time in court’ as one respondent wrote.

On the other hand, submissions that agreed with the idea felt that it was a good idea to make it clear to members that they did need to follow and abide by the rules of the association that they had joined.

2.5 Dispute Resolution

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).*

Table 12: Dispute Resolution

Responses	Dispute Resolution process for each association	Standard Dispute Resolution process in Model Rules	Unresolved disputes to be determined by SAT	Role for accredited mediators
Total Agree	143 45%	145 46%	111 35%	108 34%
Total Disagree	21 7%	19 6%	49 16%	47 15%
Total No Comment	152 48%	152 48%	156 49%	161 51%
Total	316	316	316	316

In general the level of support for the proposed amendments surrounding dispute resolution was high with 85% to 94% of respondents agreeing or offering “no comment”.

The majority of additional comments supplied by respondents were in relation to an association being able “to prescribe its own dispute resolution requirements” and to be able to “appeal to a peak body for adjudication” before a matter could be lodged with SAT. Some suggested regulating or capping costs surrounding dispute resolution or offering free access to SAT to contain the involvement and costs of volunteers in legal cases.

Widening the scope to allow for non-members (e.g. residents (or families) in retirement villages; parents in day care centres, potential business partners, litigants) to have access to the dispute resolution processes also featured. These matters may be worthy of further investigation, but are beyond the scope of the incorporated associations legislation.

A small, but enthusiastic group of respondents were very keen on the use of independent mediators before a matter could be heard by SAT and had comments about how that would work, including defining accredited mediators, defining the mediation process, certificates to prove mediation has occurred before moving to a SAT hearing and provision of access to low cost (i.e. State subsidised) mediation.

3. Management of Associations

3.1 Public Officer and Annual Return

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?

Table 13: Public Officer and Annual Return

Responses	Public Officer mandatory	Commissioner to be provided with contact name and details of Public Officer	Annual return to include financial and other information for Commissioner	Penalty for Public Officer if documents not lodged
Total Agree	122 39%	127 40%	118 37%	57 18%
Total Disagree	76 24%	66 21%	81 26%	127 40%
Total No Comment	118 37%	123 39%	117 37%	132 42%
Total	316	316	316	316

Respondents were divided on this series of proposed amendments.

As can be seen above, the idea of a Public Officer, and an Annual Return generally had a high level of acceptance but the idea of a fine for the Public Officer for not lodging documents in a timely way was not supported.

The additional comments recorded 28 individual suggestions that the President/ Secretary/ Treasurer be deemed to be the Public Officer (especially for Tier 1 groups).

Others (26) suggested that Tier 1 associations be exempt from having a Public Officer at all, and a further 26 comments suggested that the Public Officer be allowed to be an employee or contractor (e.g. CEO or accountant or lawyer).

Other comments suggested prescribing Executive Committee roles in legislation and a preference for the association to be responsible for accountability rather than the individual Public Officer.

These matters are discussed further in the overview above.

3.2 Register of Members

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?

Table 14: Register of Members

Response	Association's register to include details about members	Access to a copy of the register be for association business.	Penalty of a fine of up to \$10,000 for the improper use
Total Agree	130 41%	103 33%	108 34%
Total Disagree	26 8%	47 15%	43 14%
Total No Comment	160 51%	166 52%	165 52%
Total	316	316	316

The general level of support for the suggested amendments was very high with only between 8% to 15% of respondents disagreeing with these proposals. Despite attracting many varied comments surrounding general privacy issues, the most common response in this series was for members to be given the option of whether to make their details public or keep them private in the register.

There was considerable support for high penalties for misuse of an association's membership list.

3.3 Amalgamation

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?*

Table 15: Amalgamation

Responses	Only if new amalgamated association is eligible	Only if amalgamation is provided for in both rules	With members' consent by special resolution	With Commissioner's consent	All debts and liabilities to be carried over
Total Agree	128 41%	127 40%	126 40%	123 39%	120 38%
Total Disagree	6 2%	6 2%	6 2%	9 3%	9 3%
Total No Comment	182 57%	183 58%	184 58%	184 58%	187 59%
Total	316	316	316	316	316

Over 97% support was gained for each of these suggested amendments as illustrated by the “agree” and “no comment” responses.

3.4 Audit of Financial Statements

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?*

Table 16: Audit of Financial Statements

Responses	3 tiers of audit	Mandatory audited statement to be presented at AGM	Solvency statement from management committee at AGM	Annual return to Commissioner	Largest associations to lodge financial statements with Annual Return	Keep financial records for 7 years	Commissioner to require special audit in certain circumstances
Total	159 50%	138 44%	120 38%	130 41%	139 44%	116 37%	129 41%
Total Disagree	37 12%	50 16%	63 20%	59 19%	37 12%	36 11%	23 7%
Total No Comment	120 38%	128 40%	133 42%	127 40%	140 44%	164 52%	164 52%
Total	316	316	316	316	316	316	316

While this set of suggested amendments generated a solid “agree” response of between 37% and 44% there was a very high number of additional comments made illustrating the depth of thought and analysis that respondents had given to these issues.

In total, 49 different topics were raised. The top 10 most popular comments on this section have been recorded below and it can be clearly seen that these each received at least 10 and up to 59 individual responses regarding the same subject with exemptions from the audit requirements being the popular theme. There was strong resistance to public accountability from small incorporated associations. Other submissions were concerned that there were not enough accountants and auditors in public practice to service a high level of audit requirement. Another view was that the risk assessment associated with audit and financial accountability was part of good governance, and this was clearly a matter for members, rather than Government regulation.

The Auditor General also made a submission highlighting the 2004 report on the administration of Associations, which included the need for incorporated associations to be audited (to minimise risk to the public); publicly accountable (as each group received a State mandated limited liability) and in regular contact with the Commissioner (so it is possible to identify active and inactive groups).

Table 17: Additional Comments

General Exemption from audit and accountability for small clubs (under \$50,000 consolidated revenue)	59	0
Exemptions from audit for organisations (under \$200,000 consolidated revenue)	48	0
Remove assets test from Tiers (asset rich & income poor associations)	41	1
Exempt Tier 1 from Annual Returns	33	0
No lodgement fees for Annual Return	25	0
DOCEP to remind people of annual returns & send forms	19	0
Lodged documents to be private (not public)	18	1
Increase cap of Tier 1 (from \$250,000 to up to \$1 million in consolidated revenue)	16	0
General exemption from the Act for incorporated associations without staff	16	0
Annual return to declare audit completed (no financial statements lodged)	10	0

4. Powers of the Commissioner for Consumer Protection

4.1 Direct Association to convene a general meeting

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 she/he thinks may be resolved in this way, and to attend the meeting?

Table 18: Circuit breaking power

Responses	Commissioner's power to direct association to convene a general meeting
Total Agree	115 36%
Total Disagree	29 9%
Total No Comment	172 55%
Total	316

Responses were strongly in favour of this suggested amendment as indicated by only 9% opposing the suggestion. The additional comments suggested imposing penalties for those associations that failed to comply with the Commissioner's decision!

4.2 Appointment of a Statutory Manager

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) *if the Commissioner is satisfied that 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?*

(NOTE: As questions b and d were the same, the responses were amalgamated into the results for b.)

Table 19: Statutory Manager

Response	Failing to rectify a breach within 60 days	Only appointed in the interest of members, creditors and public interest	Appointed at request of members	Commissioner may recoup costs from association
Total Agree	115 36%	114 36%	121 39%	105 33%
Total Disagree	29 9%	30 10%	23 7%	35 11%
Total No Comment	172 54%	172 54%	172 54%	176 56%
Total	316	316	316	316

Providing the Commissioner with the statutory power and authority to appoint a Statutory Manager was widely accepted. There was an additional request that members be notified of the position, how the role would work, their powers and functions, and the suspension of the existing management committee. Some sought more SAT involvement either in the appointment of the statutory manager or to appeal the appointment of a Statutory Manager.

Many respondents concerned about the appointment of a Statutory Manager would like an additional step of the Commissioner for Consumer Protection needing to seek independent authorisation to appoint a Statutory Manager, and that the necessary funds for the Statutory Manager to automatically be made available from Treasury.

4.3 Transfer of an Incorporated 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?*

This authority was introduced in 1987 and is not new. However, clarification about when it may be used, was sought in the Green Bill.

Table 20: Grounds for Commissioner to direct a transfer

Response	Scale and nature of activities	Value and nature of property	Extent and nature of dealings with public	Commissioner's discretion
Total Agree	98 31%	96 30%	99 31%	94 30%
Total Disagree	37 12%	39 13%	36 11%	40 13%
Total No Comment	181 57%	181 57%	181 57%	182 57%
Total	316	316	316	316

This set of changes received a solid 30% “agree” response, with an additional 57% “no comment” illustrating overall general acceptance of changes allowing the Commissioner to have the discretionary authority to require an association’s incorporation to be transferred to legislation that better fits its operations.

Smaller incorporated associations, funders and advisors were more likely to see the benefit of a ceiling set by revenue, so that once an association reached a certain size, they would need to register as a different type of body corporate (e.g. a cooperative, or a company limited by guarantee)⁶. Many offered ideas about how to make the transfer more comfortable for this group of associations.

Arguments against the grounds and use of these powers were often sentimental in nature (e.g. like being Western Australian; like being regulated locally;) or due to a perceived risk of their business being ‘demutualised’ if they, for example, became a company limited by guarantee. Others argued for one or two selected grounds only, but there was little agreement about which grounds.

Table 21: Top 5 Comments on Commissioner’s power to transfer

Additional Comment	Agree	Disagree
Comfort of specific tax exemptions in Act for transferring to a new body corporate	17	1
Provision that will allow current exemptions to continue after transfer	15	1
Transfer of jurisdiction timeframe needs flexibility	14	1
Commissioner's decision to transfer incorporated bodies to be authorised by SAT	8	1
Commissioner's powers to direct transfer only when there is evidence (e.g. statutory declaration) that there is grounds	5	1
Prescribe criteria around trading, size, nature and extent of dealings with public	5	1

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

Table 22: Voluntary Transfer

Response	Quantity
Total Agree	105 33%
Total Disagree	23 7%
Total No Comment	188 60%
Total	316

Further to allowing the Commissioner to decide if an association should transfer their incorporation into another regulatory jurisdiction, there was similar support for allowing the incorporation to voluntarily make this transfer.

⁶ New South Wales has, for many years, administered its Act so that when an incorporated association reached a certain financial standing (i.e. \$500,000) they were required to transfer their incorporation. This is not without contention, but it does focus the purpose of the Act to small, not for profit organisations.

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

Table 23: SAT Review of decision

Response	Quantity
Total Agree	104 33%
Total Disagree	23 7%
Total No Comment	189 60%
Total	316

The results in this section illustrate that the back-up review of the SAT is accepted as an accessible, low cost, independent administrative decision and process, court of review.

4.4 Investigatory Powers

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?

*Note: The Green Bill makes transparent the range of investigative powers that are presently available to the Commissioner in the administration of the Act.

Table 24: Commissioner's Investigatory Powers

Response	Person to provide requested information or answer any question	Enter premises with a search warrant to obtain information	Investigate contraventions or breaches of the Act	Request Police or relevant agencies to investigate and report alleged offences against the Act
Total Agree	101 32%	95 30%	105 33%	105 33%
Total Disagree	36 11%	43 14%	31 10%	29 9%
Total No Comment	179 57%	178 56%	180 57%	182 58%
Total	316	316	316	316

The Commissioner's new powers received strong support, with over 85% of respondents either agreeing or offering no comment in relation to:

- requesting information;
- obtaining information;
- investigating contraventions or breaches of the Act; and
- requesting the intervention and assistance of law enforcement agencies to investigate and report alleged offences against the Act.

The additional comments related to the legal issues surrounding the investigations and ensuring the association had right to advice in any legal process.

A few individuals and small incorporated associations felt that coming to a volunteer's home using a search warrant was a breach of privacy and unfair on family members. However, many respondents expressed the alternate view that any appropriate investigative powers would be supported because they felt that part of their remit was to be informed and to work within the law.

Investigative powers are another example of the gentle approach used in the administration of the Act relating to incorporated associations. They are rarely used, and many of the investigative powers in the Green Bill simply spell out existing powers held by the Commissioner.

5. Winding up and Cancellation

5.1 Court Winding up

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?

Table 25: Supreme Court winding up

Response	Quantity
Total Agree	80 25%
Total Disagree	31 10%
Total No Comment	205 65%
Total	316

A very high “no comment” result of 65% was obtained for this question when compared to the other responses gained during the consultation process (averaging around the mid 50% range).

Despite this, the overall “disagree” response was at similar levels to other issues, so a higher “no comment response” could be seen to indicate a higher level of indifference to the question, or a lack of legal expertise to comment on such a technical matter.

The only additional comment received was in relation to requiring at least 10 members or 10% of members to petition the Supreme Court for a voluntary court winding up.

Table 26: Court Winding Up in accordance with Corporations Act 2001

Estimated Turnover	Agree	Disagree	No Comment	Grand Total
Up to \$10,000	20	7	34	61
\$10,000 to \$49,999	8	2	20	30
\$50,000 to \$100,000	4	3	6	13
\$100,001 to \$1 million	6	2	17	25
\$1 million to \$10 million		3	14	17
Over \$10 million	1	1	7	9
n/a	41	13	107	161
Total	80	31	205	316

There was widespread acceptance by turnover category to retaining the Court Winding up provisions set out in the *Corporations Act 2001*. This would apply, for instance, if an incorporated association was trading insolvent and needed Court intervention to wind up. Those that were least accepting of the idea were those in the \$1 million to \$10 million category.

As a general comment, there appears to be a small, but distinct, 'lobby' within incorporated associations for:

- better harmony with the *Corporations Act 2001*;
- distinction between incorporated associations legislation and corporations legislation, to ensure that small groups interests are considered; and
- some who would prefer national associations and charities legislation.

There is another group that clearly does not want 'corporatism' to take over incorporated associations and would prefer the legislation to provide a structure for small organisations only (i.e. that larger organisations should be excluded from eligibility for incorporation).

There was also a strong view that the penalties that may be applied by a Court should not fall on a Public Officer for matters that are an association's responsibility. The Green Bill is drafted in a way that does support this view.

5.2 Voluntary Winding up and Distribution of Surplus Property

Your views sought #16

In your view should the Act be amended to:

- simplify the procedures for voluntary winding up of an association;*
- 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;*
- 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;*
- introduce a provision to allow local government authorities to receive the surplus property of an incorporated association;*
- 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;*
- provide that any distribution of surplus property in a way other than that provided for by the Act be an offence; and*
- empower the Commissioner for Consumer Protection to determine the way in which surplus property are to be distributed in certain circumstances?*

Table 27: Voluntary Winding Up and Distribution of Surplus Property

Response	Simplify procedures for Voluntary Winding Up	Individual or group to take on the duties of a liquidator	Surplus property distribution plan approved by Commissioner	Allow LGA to receive surplus property	Return unexpended monies to funding bodies	Offence for not following surplus property plan	Commissioner may determine distribution of surplus property
Total Agree	124 39%	111 35%	111 35%	90 28%	117 37%	97 31%	91 29%
Total Disagree	12 4%	20 6%	22 7%	49 16%	17 5%	27 8%	33 10%
Total No Comment	180 57%	185 59%	183 58%	177 56%	182 58%	192 61%	192 61%
Total	316	316	316	316	316	316	316

There was a resounding level of support (96% “agree” and “no comment”) for simplifying the voluntary winding up and distribution of surplus property for incorporated associations.

The suggestion for returning unexpended public monies to the funding bodies was met with the same level of support. A similar level of support was gained for the other proposed changes (“disagree” responses ranged from 4% to 16%) which indicates the overall high level of support for the idea of simplifying the voluntary winding up procedures.

Most additional comments in this area were in relation to the distribution of surplus property – and show how complex this issue is for some incorporated associations⁷.

Table 28: Top Comments on Surplus Property in a Voluntary Wind up

Make grounds for Commissioner's amendment to distribution plan clear in Act	5
Appeal to SAT on Commissioners decision to cancel incorporation only after attempt to show cause has failed	2
Organisations with ATO tax exemption are not able to dispute surplus property to local government authorities	4
Allow incorporation to distribute assets to current members on windup <i>(Note: This is illegal under the current Act unless members are also incorporated associations with a charitable purpose).</i>	2
Surplus property to be able to be distributed to approved research institutes (s73A of Income Tax Assessment Act 1936 as amended)	3
Local Government Authorities to have access to contact details of incorporated associations in their area (i.e. to assist community building or build the capacity of the incorporated association).	2
Allow corporations sole to receive surplus property, especially of religious organisations	4
Express limitations (e.g. consent, use) on surplus property distributed to Local Government Authority and & company limited by guarantee	3

The wording of this question raised alarm in some groups. It was interpreted to mean that the intention behind the Green Bill was that local government authorities would be the ONLY approved recipients of surplus property. This is not the case. The intention in the Green Bill is to give members the option to direct surplus property to local government if that is the best option for the association. This option would not be available to associations registered as charities with the Australian Taxation Office.

Equally, some local government authorities suggested that they would prefer the Commissioner not to approve a surplus property distribution plan until there was evidence in writing that the nominated recipient would be willing to accept the surplus property of an incorporated association.

⁷ Further consideration will be given to providing community information about 'how to wind up' when the new legislation is introduced

5.3 Voluntary Cancellation of Incorporation

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; and
- b) allow incorporated associations with less surplus property than the prescribed amount to apply for a voluntary cancellation of incorporation?

Table 29: Voluntary Cancellation of Incorporation

Response	Permit a solvent association with no surplus property to apply for voluntary cancellation of incorporation	Allow incorporated associations with less surplus property than the prescribed amount to apply for voluntary cancellation of incorporation
Total Agree	120 38%	105 33%
Total Disagree	6 2%	16 5%
Total No Comment	190 60%	195 62%
Total	316	316

There was resounding support for a solvent association with no surplus property to apply for voluntary cancellation of incorporation, with only 2% of respondents actively disagreeing with this idea. The idea of allowing incorporated associations with less surplus property than the prescribed amount to apply for voluntary cancellation of incorporation saw similar levels of support.

Table 30: Voluntary Cancellation under prescribed amount

Response	Quantity
Total Agree	41 13%
Agree – offered amount	40 13%
Total Disagree	6 2%
Total No Comment	229 72%
Total	316 100%

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

Table 31: Suggested caps for voluntary cancellation

Under \$100	\$500	\$1000	\$2000	\$2500	\$3000	\$5000	\$10000	\$20000	\$1 Mill	Total
3	3	14	4	1	1	6	4	2	2	40
7.5%	7.5%	35%	10%	2.5%	2.5%	15%	10%	5%	5%	100%

The total “agree” response recorded suggests that respondents were largely happy with the \$1,000 cap suggested in the question within the consultation process. An additional 13% of respondents suggested alternative amounts ranging between \$50 and \$1,000,000. Even within these suggestions by far the most popular amount was \$1000. However, it may be worthwhile considering a slightly higher revenue figure to as a starting point, to reduce the regulatory burden on smaller incorporated associations (e.g.\$5,000).

5.4 Cancellation of Incorporation by the Commissioner

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;
- 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?

Table 32: Cancellation of Incorporation by Commissioner

Response	Not eligible for incorporation at the time it was incorporated	Has suspended operations or been dormant for a whole year	Has no property and the members resolved to discontinue activities of the association	Resolved to wind up but no-one is prepared to act as liquidator	Fails or refuses to remedy a contravention of the Act or Regulations within 60 days of notice in writing form the Commissioner
Total Agree	94 30%	88 28%	107 34%	109 34%	93 29%
Total Disagree	23 7%	31 10%	10 3%	10 3%	22 7%
Total No Comment	199 63%	197 62%	199 63%	197 63%	201 64%
Total	316	316	316	316	316

Between 90 and 97% of respondents recorded “agree” or “no comment” for each suggested amendment in this section indicating a high level of support for the cancellation provisions proposed.

Most additional comments suggested that being dormant or inactive for one whole year was not a long enough period for automatic cancellation, especially in areas of the State where the population is transient. For example, a junior surfing club may be dormant for a season, but rekindle the following season when someone with an interest in junior surfing arrives in town.

6. Miscellaneous Changes

6.1 Doctrine of Constructive Notice

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?

Table 33: Doctrine of Constructive Notice

Response	Quantity
Total Agree	86 (27%)
Total Disagree	18 (6%)
Total No Comment	212 (67%)
Total	316

Only 6% of people recorded a “disagree” response indicating a strong level of support for idea of ensuring that the Doctrine of Constructive Notice does not apply. It may be that many people did not have the legal expertise to deal with this particular question, as it was a technical legal issue.

6.2 Proceedings for an offence

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?

Table 34: Legal Action Timeframe

Response	Quantity
Total Agree	89 28%
Total Disagree	33 10%
Total No Comment	194 62%
Total	316

The support for this suggested amendment was very high with 90% of respondents either “agreeing” or offering “no comment”. The only comment made was to increase the timeframe to allow investigations to commence up to 7-10 years after the offence.

6.3 Authority to Register as a Body under Part 5B of the Corporations Act

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?

Table 35: Part 5B of the Corporations Act

Response	Quantity
Total Agree	71 23%
Total Disagree	7 2%
Total No Comment	238 75%
Total	316

With a “no comment” response of 75%, this area didn’t rate particularly highly in terms of obtaining opinions at all. Once again, access to a legal opinion was an important ingredient in responding to this issue⁸. The very low “disagree” response of 2% also suggested that the issue had a good level of support from those people that did answer.

The low level of response on such a technical matter was anticipated.

6.4 Penalties and Infringement Notices

Your views sought #22

In your view:

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

Table 36: Penalties and Infringement Notices

Response	Increase penalties for a breach of the Act	Will increasing penalties increase compliance with the Act
Total Agree	86 27%	46 15%
Total Disagree	93 30%	134 42%
Total No Comment	137 43%	136 43%
Total	316	316

Responses to the questions about increasing penalties for breaches and non-compliance were evenly split between “agree” and “disagree”.

However, the vast majority of respondents did not feel that increasing the penalties would generate higher levels of compliance.

A large number of additional comments were received about penalties and they were overwhelmingly related to three topics in the Table below–

⁸ A low response to this question was anticipated.

Table 37: Additional Comments

	Agree
Tiered approach to penalties (e.g. Tier 3 full amount; Tier 2 50% & Tier 1 Nil)	69
Penalties to organisation not individuals (either assumed or stated preferred approach)	29
Exempt Tier 1 from penalties	15

The relatively common view that penalties be attributable to an incorporated association, and not the individual(s) who conduct themselves unlawfully, is of concern. This view assumes that it is acceptable for all members of an association to bear the cost and consequences for the unlawful activities of management committees (e.g. not holding an AGM; not keeping member's register), that disempowered members from participating in the management of their association.

The Act provides limited liability to members for lawful conduct and activities, and does not exempt individuals from their own unlawful decisions, actions or activities.

7 Additional Comments

7.1 Unsolicited ideas

In addition to the "Your Views sought" issues for consideration, respondents were invited to make any further "comment on any other incorporated association matters" that they felt "could be addressed in legislation".

This was an opportunity to obtain spontaneous comment. It reveals some well considered issues and those issues that respondents may be passionate about.

Table 38: Additional Comments Tally

Additional comments	Tally
Lodgement times too short (e.g. annual return, appeals, public officer)	62 20%
General exemption for very small groups (including prefer no changes to the Act)	53 17%
Legal matter raised for consideration when drafting Act or regulations (e.g. Plain English, legal or accountancy technicality to consider when drafting)	44 14%
No new fees	32 10%
Regulations/Model Rules to be circulated for public comment (i.e. model rules, fees, voting requirements, grounds)	15 5%

One in five (20%) respondents provided "additional comment" on the proposed lodgement times (in relation to lodgements for annual returns, appeals and public officer information) feeling that the time frame (e.g. one month after an AGM was too short, especially if there was a penalty attributable to the time frame).

Many small, voluntary groups (17%) called for a general exemption from the new legislation and expressed a preference for no change to the Act at all. Small groups do not want any red tape or, to be accountable in any way to Government. Others raised concern about how information was to be used by Government.

Some 14% of respondents raised what could loosely be called "legal matters", covering issues such as using plain English in the Act and model rules, or raising a technicality of

legal or accounting procedures that will affect them. They are important and will be considered as far as possible.

No new fees (10%) was also a common unsolicited comment. There was a concern that Government will charge additional fees to offset the higher cost of regulation of incorporated associations.

Some 5% of forward thinking respondents called for the regulations and model rules to be circulated for public comment. Again, this is an area that generated a high level of comment in responses to relevant “*Your Views Sought*” sections.

7.2 Capacity building suggestions

One clear theme in “Additional Comments” was a call for better information, education, skills training and support – sometimes called ‘capacity building’. There are two streams to the capacity building suggestions:

- those affecting volunteers involved in incorporated associations; and
- those specific to adapting to the new law.

By far the most common suggestions surrounded the topic of enhancing the information, education and training for volunteers. This attracted 59 unprompted responses, representing nearly 20% of respondents.

The next most popular suggestion was for the resources and capacity of incorporated associations to be enhanced to enable them to respond to the proposed changes.

There was a wide recognition that adapting to a new law may be challenging for some groups. Many incorporated associations are established to respond to an interest or community need, and people involved were not necessarily interested in complex ‘paper work’, but very keen on the activities of their association.

All following comments were in relation to increasing and developing further training, education, workshops, guidelines and funding to assist incorporated associations and committees with increasing their understanding and ability to comply with regulations. Some suggestions included:

- expanding small business training subsidy to volunteer management committees;
- funding local government to help small clubs;
- better governance training;
- more online information and services;
- tools to make compliance simple; and
- more funding for small groups.

Please note that DOCEP actively promoted the Lotterywest Capacity Building Grants available to not-for-profit organisations in Western Australia during the public comment period. These grants are very flexible and allow not-for-profit organisations to approach Lotterywest for assistance to promote and support organisational development, by increasing the management and leadership skills of staff, committee and board members and volunteers. Lotterywest also has other grant opportunities, including grants for capital equipment. The availability of these grants does not diminish the need to provide adequate information, education and training so that volunteers are able to meet the requirements of a new law for incorporated associations. Go to www.lotterywest.wa.gov.au for specific information and application forms.

ADDITIONAL INFORMATION

Strategies to encourage deliberation

A letter from the Commissioner for Consumer Protection was delivered to all incorporated associations with a current postal address in early December 2006.

People were then invited to take one of the following actions:

- visit the webpage and download documents;
- visit their local library and view the documents;
- contact the Consumer Protection Call Centre and request a copy relevant Consultation Documents; and
- let people know about the review.

The letter was followed up by a Press Release supported by standard advertisements in the *West Australian* and community newspapers in January 2007.

A media strategy was developed to coincide with the advertisements. Articles appeared in most community news papers throughout WA. This provided an effective reminder about the changes.

The Commissioner for Consumer Protection was interviewed by Geoff Hutchison ABC 720 AM. More than 34,000 people were listening, and this interview received excellent feedback.

Graham Mayberry on 6PR Nightline also featured the release to good effect.

Email alerts and bulletin points for use by our communications partners.

Business News completed a series of articles after the closing date for submissions on the Green Bill that explored some contentious issues.

The Consumer Protection Call Centre 1300 30 40 54 and Associations Hotline 1300 30 40 74 continued to answer common questions and distribute information throughout the public consultation period. This service was used by a range of organisations, but the smaller incorporated associations were more likely to contact them as a primary source of information.

Consultation Documents Distributed 30/11/ 06 to 30/04/07:

Small Green DL Flier	44,900	Remainder:	100
Consultation Guides	4,650	Remainders:	25
Green Bill Package	690	Remainders:	10
DVDRom	348	Remainders:	2

Webpage Visitors 1/1 to 30/04/07 (3575 individuals)

Conservative Estimated of Telephone Contact (1900 individuals):

Associations Team	425
Policy and Strategic Development	425
Consumer Protection Call Centre	1,050

Type of Submissions Received - Soft closing date 30 April 2007

E-mail	70
Fax	21
Post	201
On-line	14
(Note: Not available for last 2 weeks)	
Total @ 30/06/2007	316

Contracts Managed for this project

External Projects

Drafting a Settled Amendment Bill
Converting amendment bill to New Bill
FREELANCE WEBPAGE WRITER AND EDITOR
Liaison with State Library WA
Printing and finalising database and mail outs
Templar – Distribution of consultation materials as part of DOCEP document management contract
Alexander Library for DOCEP Information Event
Seventeen information seminars
Filming, editing and production - DVD Rom limited release – Rodney Stratton
Distribution of DVD ROMs
Submission Code Data Entry Project
Summary of Findings
Draft Model Rules RFQ
Draft Model Rules Consultation RFQ

Internal

Developing a postal database of all incorporated associations
Ongoing liaison with Business Services to settle policy directions
Print Management – DL Flier and Consultation Guide
Print Management – Green Bill and Explanatory Memo
Webpage development and maintenance
Consumer Protection Call Centre Information
Associations and Charities Team Information
DOCEP Regional Officer Information
QA and publication distribution
Registration of submissions, scanning and letters of receipt (337)
Lodgement of approved submissions on webpage (approx 180)
Liaison with Finance and Legal on Request for Quotes

Acknowledgments

A special mention is made for the support provided by the State Library WA and local libraries throughout WA to this review. They made hard copies of the Green Bill and consultation documents were made available in each community throughout WA. In addition, Libraries provide internet access to people who may not have this facility at home or work.

Communications Partners

238 Local Libraries throughout WA

Local Government Authorities

City of Canning
City of Cockburn
City of Mandurah

Community Organisations (in no particular order)

Youth Affairs Council of Western Australia
WA Sports Federation Inc
WA Council of State School Organisations Inc
WA Council of Social Services Inc
The Law Society of WA Inc
Noel Harding & Associates
Local Government Community Development Network
Australian Institute of Public Accountants
Ethnic Communities Council Inc
CPA Australia
Country Arts Network
Clubs WA Inc
Chamber of Commerce and Industry Inc
Australian Society of Association Executives (WA Branch) Inc
Association of Local Government Managers Inc
ACROD
Telecentre Network
Rural, Regional and Remote Women's Network
Friends of Libraries WA

and all of the individuals and organisations that forwarded information to their members and affiliates.

State Government

Library and Information Service of Western Australia
Department for Sport and Recreation
Tourism WA
Department for Culture and the Arts
Department for Local Government & Regional Development
Department for Community Development (DCD)
DCD Office for Women's Policy
DCD Office for Volunteers and Seniors Interests
Disability Services
Department for Indigenous Affairs
Department for Education & Training
Racing, Gaming and Liquor
Lotterywest
Regional Development Commissions, especially the Pilbara Development Commission
Department for Premier & Cabinet Public Sector WA Announce

Seminar Sponsors and Attendance

More than 1,000 individuals attended information sessions hosted by Consumer Protection and our Communications Partners. In addition, Volunteering and Seniors' Interests invited Consumer Protection to address a Westlink Broadcast on National Police Clearances and Volunteers.

DOCEP offers sincere thanks to all of the information session sponsors and influential members of incorporated associations. Your involvement had a direct benefit to the quality and number of submissions on the Green Bill.

Australian Society of Association Executives Inc
City of Canning
Council on the Aging Inc
Aged and Community Services Inc
DOCEP Consumer Protection Information Session
WA Sports Federation Inc & DSR
WA Council of Social Services Inc
Ethnic Communities Council Inc
WA Council of Churches
Learning Centre Link (WA) Inc
Chamber of Commerce and Industry Inc
City of Cockburn
City of Mandurah
Kalgoorlie – DSR/Consumer Protection
DCD Office of Seniors Interests and Volunteering
Westlink Broadcast to 20 towns and regional areas with DCD Volunteering

Your views and support make a difference.

DOCEP REGIONAL OFFICES

Goldfields Esperance

Viskovich House, 377 Hannan Street Kalgoorlie WA 6430
P O Box 10154, Kalgoorlie WA 6433
Telephone: (08) 9021 5966

Great Southern

Unit 2/129 Aberdeen Street
P O Box 832, Albany WA 6330
Telephone: (08) 9842 8366

South West

9th Floor, 61 Victoria Street Bunbury WA 6230
P O Box 1747, Bunbury WA 6231
Telephone: (08) 9722 2888

North West

Unit 9 Karratha Shopping Centre, Sharpe Ave
P O Box 5, Karratha WA 6714
Telephone: (08) 9185 0900

Mid West

Shop 3 Post Office Plaza 50-52 Dulacher Street Geraldton WA 6530
P O Box 1447, Geraldton WA 6531
Telephone: (08) 9964 5644

Kimberley

Shop 24 Kununurra Shopping Centre 64 Konkerberry Dve
P O Box 1104, Kununnurra WA 6743
Telephone: (08) 9169 2811

Consumer Protection Advice Line:

consumer@docep.wa.gov.au or 1300 30 40 54 (weekdays only)

DOCEP Internet address: www.docep.wa.gov.au

Associations Incorporation Review e-mail address: agb@docep.wa.gov.au;

Associations Incorporation Review Internet address

www.docep.wa.gov.au/agb