



Department of Culture and the Arts
Government of Western Australia
State Library of Western Australia

LIBRARY BOARD OF WESTERN AUSTRALIA

Consultation Paper 1

PROPOSED CHANGES TO THE *LIBRARY BOARD OF WESTERN AUSTRALIA ACT 1951*

Prepared for the Western Australian Local Government Association
May 2007

Importance of Consultation

The Library Board of Western Australia recognises the importance of engaging our partners and the community in consultation to benefit from the experiences and knowledge of those people in the community who are most affected by our policy decisions.

The Library Board of Western Australia's consultation into the review of the *Library Board of Western Australia Act 1951* will be open and fair. All views will be sought, valued and considered so that we achieve the best outcome for the people of Western Australia.

Statement of Intent

The purpose of this briefing is to outline the proposed amendments to the *Library Board of Western Australia Act 1951* and provide a basis for discussion about these changes.

Open to consultation are key areas of the proposed legislation amendments:

- Library Board Structure and Governance;
- Library Board Relationship with Local Government and Public Libraries; and
- Legal Deposit Provisions.

Opportunities for discussion will be provided through seminars and workshops which will be initiated by the State Library with a focus on the following stakeholders:

- Local Government represented by WALGA (named in Act);
- Cities of Perth and Fremantle (named in Act);
- Australian Library and Information Association (named in Act);
- Public Library staff;
- State Library of Western Australia staff;
- Publishing community including print, electronic, music and film.

Any other interested parties or individuals not named above are also encouraged to participate.

Papers prepared will be available on the State Library of Western Australia's website and posted as a print document to key stakeholders. Written submissions are also welcome. A report will be on the Library's website outlining the information and views expressed through these processes.

Any person who wishes to comment on this process, positive or negative, may contact the State Librarian.

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Documents Relating to the Consultation

All Consultation Papers (pdf) and a link to the *Library Board of Western Australia Act 1951* are available on the State Library website's Legislation page.

<http://www.slwa.wa.gov.au/legislation.html>

If you do not have access to the Internet and would like a printed copy of any of the Consultation Papers please contact Oliver Gatty.

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Background

The *Library Board of Western Australia Act* was enacted in 1951 to establish a free public library system in Western Australia. It established the Library Board of Western Australia as a statutory body with management responsibility to oversee this process. The first public library opened in York in 1954 and 53 years later there are now 239 registered public libraries throughout the State operated in partnership between Local Governments and the State Library of Western Australia.

The Act provides for the constitution and functions of the Library Board and prescribes the relationship between the Board and Local Government in the provision of public library services.

Management of the State Library was added to the Library Board's responsibilities in 1955, which included the delivery of reference services and the collection and preservation of the State's documentary heritage. Official responsibility for the State's public records was added to the Act in 1974, but was repealed in 2001 with the passage of the *State Records Act 2000* and the establishment of a separate State Records Commission.

The Ministry for Culture and the Arts was established in 1997. In 2001 it was renamed Department of Culture and the Arts. The Department forms the culture and arts portfolio with the five following organisations:

- Art Gallery of Western Australia (a statutory authority);
- State Library of Western Australia (a statutory authority);
- Western Australian Museum (a statutory authority);
- Perth Theatre Trust (a statutory authority); and
- ScreenWest Incorporated (an incorporated association).

Framework Agreement

The relationship between the Library Board, through the State Library of Western Australia and Local Government has been a long and successful partnership. The first agreements between the Board and Library Authorities (Shire Councils) were signed in 1950s, prescribing the collections and services to be offered and responsibilities of each party.

These original agreements served their purpose well but over the years it became increasingly obvious that an updated agreement was required. Following a long consultation process, the *Framework Agreement Between State and Local Government for the Provision of Public Library Services in Western Australia* was signed on December 2004.

Key objectives of the *Framework Agreement* are to:

- Develop a statement of key principles for the provision of the Western Australian Public Library Service;
- Define the mutual and respective roles of State and Local Government in the provision of public library services; and
- Provide an overarching, agreed framework of broad parameters within which to develop a template for a more detailed agreement. The Library Board of WA and each Local Government will sign an individual, local-level agreement based on the template, with the addition, where appropriate, of additional specific arrangements required for the delivery of public library services to particular Western Australian communities.

An agreed set of key principles guide the joint provision of public library services by State and Local Government in Western Australia. These principles are:

- A commitment to the partnership – a shared belief that, by working together, State and Local Government can achieve the best possible public library service for Western Australian communities;
- Recognition that planning, development and service delivery decisions, including expansion or withdrawal of public library services, are driven by community needs;
- Within the partnership framework, autonomy and flexibility for Local Governments in response to community needs;
- Free, universal and equitable access by all Western Australians to relevant and up-to-date public library services, regardless of individual circumstances or geographic location;
- Within legal obligations, universal rights of access to information and ideas, free of censorship and the influence of sectional interests;
- A transparent approach where both partners are accountable for their respective and mutual responsibilities in accordance with agreed outcomes and performance standards; and
- On-going sustainability of services.

The Joint Advisory Committee (JAC) was formed with representatives from both parties working towards fulfilling the *Framework Agreement* objectives. The Agreement has a life of 2004 until 2008 and the JAC have now commenced work towards the next Agreement.

The review of the Library Board legislation is well timed to give broad legislative backing to a new Framework Agreement.

Legal Deposit

Legal deposit is a legislative provision that requires the producers of designated formats of publications to deposit a certain number of copies of each publication in libraries, or similar institutions, to ensure the preservation of that State or Nation's cultural heritage. For Western Australia this provision was part of the *Copyright Act 1895*, ss4,7-9. In 1994, the State Government, in the process of tidying up obsolete legislation, repealed the *Copyright Act 1895* because this was a Commonwealth issue. The State has been without legislation in this area since that time and has relied upon a Premier' Circular (2003/17) for government publications, and the goodwill of publishers to ensure the preservation of the State's publications. In 2005 the Government repealed the Newspaper Libel & Registration Act 1884. Under this Act the State Library had received legal deposit copies of Western Australian newspapers.

Proposed Amendments

Amendments are being proposed to the legislative provisions relating to all of the existing Statutory Authorities within the Culture and Arts Portfolio, and also for ScreenWest, which is currently an Incorporated Association but is proposed to also become a Statutory Authority.

These amendments are generally designed and based on the following principles;

- Accountability to Parliament (with the introduction of a Ministerial power of direction and access to information which is now standard for Statutory Authorities following the Burt Commission (1989)); and
- Preserving artistic independence from Government (with collections independently held and managed by the Statutory Authorities).

Uniformity of legislation provisions across the Statutory Authorities legislation are therefore required in the area of governance - Board structure, appointments and terms and payment, and these are dealt with in the proposed reforms. These include that some Culture and Arts Portfolio Boards should be included in *Schedule 1* of the *Statutory Corporations (Liability of Directors) Act 1996*, but not the Library Board as it is a non-commercial entity whose main purpose is not to generate profit.

In addition there are a number of amendments that need to be made in order to bring the Acts in to line with contemporary practice. These amendments relate to the updating of language, gender neutrality, powers to undertake commercial activity (eg, the Library Shop), fines and penalties, relevant definitions and new provisions relative to specific Statutory Authorities.

In relation to the Library, a major specific amendment relates to State Legal Deposit provisions. There are also a range of amendments including defining objectives and provisions that clearly identify the intent of the Act - with particular reference to operational aspects of the substantial partnerships with Local Government.

In terms of the language of the Act, there are several amendments proposed, with several out of date transitional provisions being removed.

The contractual capacity of the Library to act in a commercial way is also being amended to reflect current practice.

The name of the Library is now the State Library of Western Australia, and the Act is to be amended to reflect this name change.

The issues in relation to amendments to the Library Act which are discussed in this paper as a basis for consultation are the re-establishment of the Board and the re-definition of the functions of that Board in line with established Portfolio-wide governance structures and requirements - the revision of the powers and functions of the Board to emphasise and improve the policy and operational aspects of partnerships with Local Government - and the introduction of provisions relating to Legal Deposit.

1. Library Board Structure and Governance

The Library Board is currently a 13 member Board with 11 members appointed by the Governor, together with the Director General of the Department of Culture and the Arts and the Director General of the Department of Education. Of the 11 appointed by the Governor, five are nominated by the Minister and six are recommended by the Minister from nominees of:

- the Library Association of Australia – Western Australian Branch;
- City of Perth;
- City of Fremantle;
- Country Shire Councils Association of Western Australia;
- Country Urban Councils Association; and
- Local Government Association of Western Australia.

A quorum is seven, with the Chair and Vice Chair elected by the Board for terms of 12 months.

Given structural changes such as the Country Shire Councils Association of Western Australia, the Country Urban Councils Association and the Local Government Association of Western Australia being merged into the Western Australian Local Government Association, along with moves towards uniformity in provisions in Portfolio legislation in relation to Boards, it is now proposed that the Library Board be reduced to a total of nine members by reducing the number of representatives from key agencies and that members be appointed for up to three years with all to be appointed by the Governor including the Chair and the Vice Chair.

The Director-General of the Department of Culture and the Arts will be excluded from an ex-officio voting position on the Board, as is proposed for the other Statutory Authorities. The legislation will however allow the Director General, or a representative, to attend, or request, or be invited to attend any Board meeting in a non-voting capacity.

In relation to Local Government representation, it is now proposed that of the nine members of the new Board, three of these members will be nominated through the West Australian Local Government Association following their normal process of seeking nominees from the Local Government Sector. The remaining six members will be nominated by the Minister based on the skills, attributes and expertise these people would bring to the Library Board.

These changes are seen to be consistent with the principles of the Machinery of Government Review (2001), and also with some recommendations of the Burt Commission (1989).

Further, they recognise the importance of achieving principles of governance for Statutory Authorities in the Culture and Arts Portfolio – in particular it is important that the Board is re-structured and focuses its capacity on values, standards and performance obligations with performance measured against excellence in services and financially, decisions translated into actions, new challenges addressed with vigor and enthusiasm, opportunities recognised and exploited, actual performances evaluated against stated objectives and mission statements, and with statements of purpose for the Library kept under constant review.

It is important to create an environment in which the Board member's responsibilities can be fully realised – those being to set, monitor and review the Library's strategic directions and performance, to ensure the strategic operational and financial risks are defined and managed, and to oversee the policy framework of the organisation. In addition, it is necessary for the Board to take the responsibility of ensuring that the organisation meets its key areas of compliance including operational partnerships, legislative policy and internal compliance issues.

2. Library Board Relationship with Local Government and Public Libraries

In relation to the second major issue sought to be addressed through legislative reform in amendments to the *Library Board of Western Australia Act 1951*, it is seen as essential to more clearly express and reflect the co-operative and substantial partnership arrangements between the State Library of Western Australia and participating bodies such as Local Government organisations/libraries.

In this regard the proposed amendments to the Act seek to amend the objects of the Act to include provisions for the promotion and facilitation of an integrated system of public library services in the State, the provision for public access to library services, and the provision for acquisition, preservation, access and the display of material relating to the social and documentary heritage of the State.

It is proposed that the Act contains provisions which specify the duties of the Board to include overseeing the development and implementation of agreements between the State Government, Local Governments and/or other parties as they relate to the provision of library services, advising the Minister and/or other bodies on matters of general policy in relation to the provision of library services, registering public libraries as approved by the Board, overseeing the allocation of resources to Local Governments and/or other parties, formulating policies and standards for the provision to the public of library services, monitoring compliance with those policies and standards, and carrying out such other functions in connection with registered public libraries as the Minister may direct.

Clearly, these additional and revised provisions will considerably enhance (with legislative backing) the nature and effectiveness of partnerships with Local Government, and with other participating bodies. These are seen to be essential positive amendments which recognise and provide for the development of equitable and co-operative partnerships.

3. Legal Deposit Provisions

The third major issue that is being proposed in relation to the amendments to the Library Board of Western Australia Act 1951 relates to Legal Deposit.

Western Australian is currently the only State or Territory in Australia without legislative provisions for Legal Deposit. The purpose of Legal Deposit is to assist the preservation of Western Australia's documentary heritage. The scope of Legal Deposit is defined in terms of documents rather than books and encompasses any publicly available object that is intended to store or convey information through any medium, but excluding public records as defined by the *State Records Act 2000*.

The legislation is seen to require a legislative basis to minimise undue compliance costs and to provide for a flexible and adaptive response to future developments and the management of library materials. Legal Deposit should therefore be described as an entitlement to receive rather than an obligation to provide.

The Library will be required to exercise selectivity in both the formats of documents requested and the number of copies requested and there will be specific exclusions to Legal Deposit where warranted by circumstances. These would include costs of compliance or where alternative arrangements meet the purpose of Legal Deposit.

Formats that would not be selected or that might be specifically excluded from Legal Deposit provisions include broadcast material, both television and radio and motion pictures, noting that while existing arrangements for the archiving of these materials are adequate there would be the need for provisions to provide for a flexible regulatory instrument that can be applied if these circumstances alter.

It is noteworthy that consultation with the producers of materials not previously acquired through Legal Deposit would precede any application of an entitlement of Legal Deposit, and transitional provisions would be included to ensure continuity of collections to provide for producers of material not previously covered by Legal Deposit to become familiar with the new provisions, and to ensure that the Library is suitably prepared to receive materials