



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

LIBRARY BOARD OF WESTERN AUSTRALIA

Consultation Paper 3

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

Prepared for
Western Australian Publishers, Authors and Creators of
Music, Film, Electronic and Print Publishing
June 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:

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

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:

- Publishing community including print, electronic, music and film;
- 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; and
- State Library of Western Australia staff.

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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Feedback

The Library Board of Western Australia welcomes feedback on the proposed changes outlined in this document. Feedback is welcomed from:

- Western Australian publishing organisations, including group responses;
- Individual publishers;
- Individuals who self-publish materials in Western Australia; or
- Any other interested person.

All feedback should be sent marked 'Confidential – Legislation Review Feedback' to:

By post - Oliver Gatty Policy and Research Officer State Library of Western Australia Alexander Library Building Perth Cultural Centre PERTH WA 6000	By email - oliver.gatty@slwa.wa.gov.au	By fax - 08 9427 3336 Marked 'Attention – Oliver Gatty'
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Feedback should be received by Friday 20 July 2007.

Background to the Library Board Act

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).

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 into 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.

It is in this area of Legal Deposit that will be of most interest to Western Australian publishers, authors and creators.

1. Legal Deposit

What is it and who benefits from it?

Legal deposit is a legislative provision that requires 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. One of the stated missions of the State Library of Western Australia is "to enrich the lives of Western Australians by collecting and preserving our social and documentary heritage for current and future generations". Legal Deposit provisions enable the State Library of Western Australia to systematically collect, preserve and make available this State's rich social, cultural and business life through our recordings whether they be in print, film, tape or electronic form.

From a publisher's perspective the benefit is that access is made available to a published work without undue threat to copyright. Catalogue records are created for their works and these are then available on the State Library's Internet based catalogue and Libraries Australia, a nationwide Internet-based library catalogue. Through these two catalogues a work may become known not only now but long into the future.

Publishers', authors' and creators' commercial interests will be safeguarded. Detail will be in the Regulations which prescribe the conduct of the *Act*. Included in the Regulations will be provision for the terms and conditions that must be observed before access is permitted. This is especially so with electronic publications. Consultation on the Regulations will occur after the Legislation is passed.

Another benefit is in the preservation of a publisher's works. All Legal Deposit materials are collected for preservation, which transfers the primary need for, and costs of, archiving from creators to the State Library. Printed materials remain in climate controlled conditions and can only be used within the Alexander Library Building, Perth. Legal Deposit materials are never lent to readers to use at home or sent to other libraries (generally a second copy of 'popular' titles is purchased as the loan copy). Electronic publications are preserved on the State Library's computer servers or added to National co-operative electronic initiatives like [PictureAustralia](#), [Pandora](#), or [MusicAustralia](#).

From the Library's perspective the main benefit is the systematic collection of the State's published works. It is not always easy to guess what will be important in the future so by collecting as much as possible publishers and the State Library of Western Australia allow future generations a comprehensive window into our present. The State Library of Western Australia is the pre-eminent repository of this State's publications, and with appropriate Legal Deposit provisions this will continue.

Repealed Western Australian Legal Deposit Provisions

Legal Deposit provisions were previously found in two separate *Acts* now both repealed. The *Acts* in whole are not available on the Internet. Printed versions can be viewed at the J S Battye Library of Western Australian History on the third floor of the State Library of Western Australia, Perth Cultural Centre. The relevant sections of the *Acts* are quoted below:

Copyright Act 1895 (ss4, 7-9)

The *Act* stated that printed copies of all books, maps, prints or other engravings published in Western Australia had to be deposited with the Victoria Public Library (named in honour of the Golden Jubilee of Queen Victoria) which eventually became known as the State Library of Western Australia.

In 1994, in the process of tidying up seemingly obsolete legislation, the State Government repealed the *Copyright Act 1895* because this was a Commonwealth issue.

From the *Act*:

“7. A PRINTED copy of the whole of-

(1.) Every book which is first published in Western Australia after the coming into operation of this Act, together with all maps; prints, or other engravings belonging thereto, finished and coloured in the same manner as the best published copies of the same; and

(2.) Any second or subsequent edition of any- book which is so published, with any additions or alterations, whether the same is in letter-press or in the maps, prints, or other engraving belonging thereto, and whether the first edition of such book has been published before or after the coming into operation of this Act; and

(3.) Any second or subsequent edition published in Western Australia of any book, of which the first or some preceding edition has not been delivered for the use of the Victoria Public Library at Perth, bound, sewed, or stitched together, and upon the best paper on which the same is printed; shall, within two calendar months after the day on which any such book is first sold, published, or offered for sale within Western Australia, be delivered by or on behalf of the publisher thereof at the Victoria Public Library aforesaid.

8. (1.) EVERY copy of every book which under the provisions of this part of this Act ought to be delivered as aforesaid shall be delivered at the Victoria Public Library aforesaid, between the hours of ten in the forenoon and five in the afternoon, to one of the officers of the said Library, or to some person authorised by the committee or trustees thereof to receive the same.

(2.) Such officer or other person receiving such copy shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this part of this Act.

9. 'WHENEVER any-such publisher neglects to deliver such book as aforesaid in pursuance of the provisions of this Act, he shall be guilty of an offence against this Act and liable for every such default to a penalty not exceeding Five pounds, to be recovered, together with the value of such copy of such book or edition which he ought to have delivered, by the librarian of the said Library in a summary way on conviction before two Justices of the Peace, or by action of debt or other action at the suit of such librarian in any court of competent jurisdiction in Western Australia, together with such costs of suit as are allowed.'

Newspaper Libel and Registration Act 1884 (s 16)

The *Act* stated that at least one copy of every newspaper printed in Western Australia was to be sent to the Library Board within 24 hours of publication.

Once again, in 2005, the State Government, in the process of tidying up seemingly obsolete legislation, repealed the *Newspaper Libel & Registration Act 1884*.

From the *Act*:

“16. Names and addresses of printers and their employers to be printed on newspaper

The printer of every newspaper shall print upon each of such papers printed by him his name and usual place of abode or business, and shall also, within 24 hours after publication of such paper, send to the Library Board one copy (at least) of every such paper, signed by such printer, and on which shall be written or printed the name and place of abode of the person or persons by whom he shall have been employed to print the same; and every person neglecting or omitting to comply with any of the provisions aforesaid shall, on conviction thereof before a court of summary jurisdiction, be liable to a penalty for every such offence not exceeding \$20.”

Current situation

Western Australian is the only State or Territory in Australia without legislative provisions for Legal Deposit. Since the repeal of Western Australian Legislation, the State Library of Western Australia has relied upon a Premier' Circular (2003/17) for government publications, and the goodwill of publishers to ensure the preservation of Western Australian publications. Under Premier's Circular 2003/17 all Western Australian Government agencies must deposit all publications of agencies and statutory authorities with the State Library of Western Australia and the National Library.

Most non-government publishers have continued to abide by the spirit of the original legislation, and the State Library of Western Australia welcomes their ongoing support, however it is possible that some important material such as pamphlets, maps, plans, sheet music, etc, may not have been gathered into the collection since the *Act* was repealed.

All Western Australian publishers also have a National obligation under the Commonwealth *Copyright Act 1968 (s 201)* to supply a copy of their material to the National Library within one month of publication. Library materials are defined as any book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table, being a literary, dramatic, musical or artistic work. While this is important for the National collection, there is still a vital need for collection, preservation and access at a State level.

Proposed re-introduction of Legal Deposit Provisions

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.

It is not intended with the proposed legislation to make compliance retrospective. The expectation would be for publications to be deposited after the proclamation date. There will be consultation, as part of the revision of the Regulations, after the Legislation is passed, for producers of materials 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.

Why put Legal Deposit Provisions in the Library Board Act?

The past demonstrates the value in having Legal Deposit provisions in the Act that covers the body that oversees the process. The Library Board and the State Library of Western Australia are responsible for the collection, preservation and making access available to this State's documentary heritage so the best place for legislation is the *Library Board Act*. It will also ensure that in the future any decision that affects Legal Deposit provisions will be properly considered and reviewed before action is taken.

While the rest of this paper deals with other aspects of the Legislation under review and does not directly deal with Legal Deposit provisions, publishers and other interested persons are invited to comment on any aspect of the paper.

2. 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 vigour 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.

3. Library Board Relationship with Local Government and Public Libraries

Most public library services in Western Australia are offered by the State Library of Western Australia in partnership with Local Governments. The State provides library materials, training and advice to Local Government on public library services while Local Government provides the infrastructure (library buildings being the most visible) and staff to house and make available these materials.

The State Library of Western Australia also coordinates interlibrary loans and other document delivery services, and provides a general reference and information service and online information systems to supplement and complement services offered by public libraries. Specialist areas of strength are being enhanced, namely, WA documentary heritage in the Battye Library, collections and services for children and Indigenous people, family history, music and business. Joint initiatives are forged, eg, the *Better Beginnings* early literacy program which the State Library, in partnership with the Rio Tinto Future Fund and WA local governments, delivers statewide.

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 participating bodies;
- 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.