



22 November 2020

Department of Attorney-General
4 National Circuit
BARTON ACT 2600

PrivacyActReview@ag.gov.au

Dear Sir/Madam,

SUBMISSION TO PRIVACY ACT REVIEW – 2020

I am a member of the Committees of Management of several Not-for-Profit Incorporated Associations in Western Australia.

I have serious privacy concerns in relation to the limited interpretation of the *Associations Incorporation Act 2015 (WA) (Act) Section 53* relating to the member register.

The view of the WA Department of Mines, Industry, Regulation and Safety (DMIRS) (and Charities) relating to the Commonwealth's *Privacy Act 1988* is that it **does not apply** to Incorporated Associations in WA in relation to the member register.

This creates a conflict for associations in providing the member register with either residential, postal or email addresses, breaches our requirement under the privacy laws ensuring we comply with legal requirements regarding any personal information we hold about members.

Clearly, this interpretation of the *Act*, puts the security and protection of members at risk.

BACKGROUND

Member Register pursuant to *Associations Incorporation Act 2015 (WA) (Act)*

Not for profit associations have an obligation placed on them to provide particulars of member details to members generally under the *Associations Incorporation Act 2015 (WA) (Act) Section 53*.

An association is also expected to protect the personal information of its members.

The *Associations Incorporation Act 2015 (WA) (Act)* gives rise to concerns relating to the disclosure of members personal information.

Section 53(2) of the *Act* provides that an association must keep a register of its members and that the register must include the name of each member and –

a) residential address; or

b) postal address; or

c) email address; or

d) information, by means of which contact can be made with the member, that is prescribed for the purposes of this paragraph.

It is noted that **section 53(2)** of the *Act* overrides association Rules and **section 53(2)(d)** should allow an association to use telephone contact information which is publicly available.

An association should be able to update member register to contain full name of each member and contact details default to contact phone details as publicly available (unless members advise ASSOCIATION differently).

However, DMIRS Associations & Charities have stated that the choices set out in section 53(2) above are **limited** to either residential, postal or email addresses as no information has been prescribed in the regulations for the purposes of **section 53(2)(d)** and an association is not permitted to utilise this section in providing publicly available information only.

RECOMMENDATION

To protect the privacy of members of incorporated associations, I support the inclusion in *the Privacy Act* the addition of ***Not for Profit Incorporated Associations*** to the list of sectors in which people's information will be protected and to note these protections apply across all states and territories and are not over-ridden by state and territory laws

Thank you.

Yours sincerely,



Attachment: Extract from DMIRS website.

Extract from DMIRS website.

<https://www.commerce.wa.gov.au/books/inc-guide-incorporated-associations-western-australia/members-access-records>

Some people have held a belief that the Commonwealth's privacy legislation overrides the rights of members to access the register of members.

In the case of the register of members, the privacy legislation **does not protect this information from other members and members do not need to give consent for another member to view the register**. The Australian Privacy Principles allow for an organisation to disclose personal information when required or authorised under law. The *Associations Incorporation Act 2015* is the law that enables a member to access the members' register as discussed above.

It is a good idea to advise people of these legal requirements when they apply to become members. If someone raises a concern about their name and address being made available to other members, it can defuse some of the emotion by pointing out that this information can also be obtained through sources such as the electoral roll and the telephone directory. Alternatively, members can give an email address or post office box address for the purposes of the.

Associations need to ensure they comply with legal requirements regarding any personal information it holds about clients, employees, members and other individuals. Any personal information collected must be kept private and confidential and individuals have a right to:

- have their privacy rights respected;
- be assured their information will not be passed onto a third person unless it is authorised by law or they have given their consent;
- know what information will be kept and why; and
- **be assured that information will only be used for the purpose it was supplied.**

The Commonwealth's [Privacy Act 1988](#) regulates how personal information is handled by an organisation. The Privacy Act includes thirteen Australian Privacy Principles setting out the standards, rights and obligations for the handling, holding, use, accessing and correction of personal information. While these principles may not be legally binding for all incorporated associations, they do provide a framework for managing personal information which any group could use.

Access to Member Register

Section 54 of *the Act* provides that association must:

- a) at the request of a member, make the register available for inspection; and
- b) subject to association rules requiring a statutory declaration,

allow a member to make a copy of the register or an extract of the register.

Section 54 also specifies the scope and content of the statutory declaration which may be included as a requirement in an association's rules. Specifically, the Rules can require the declaration to state:

- a) the purpose for which the copy or extract is required; and
- b) a declaration to the effect that the purpose is connected with the affairs of the association.