



Reform of SA Associations Incorporation Act

Background

While some charities and community organisations are registered as not-for-profit corporations under Commonwealth legislation, many are incorporated under the South Australian Associations Incorporation Act – as is SACOSS itself. The Act is the legal instrument which enables incorporation and it sets the rules for what is possible and not possible for associations. It is therefore of vital interest to many organisations in the not-for-profit sector.

In June this year SACOSS was informed by Consumer and Business Services within the Attorney-General's Department that the Associations Incorporation Act was being reviewed. Despite this being the first major review since 1997, there was no forewarning or consultation on the scope or direction of the review. Rather, we were given just a few weeks to comment on nearly 30 pages of provisions with limited explanation of their purpose. This was particularly problematic because, on our reading, some of the changes proposed would significantly change the nature of regulation of associations and have potentially large ramifications for the autonomy of sector organisations.

SACOSS put in a submission on the proposed amendments, criticizing the consultation process, highlighting a range of problems with specific clauses and making recommendations for change. Our concerns were supported by the Conservation Council and the Arts Industry Council as peak groups for other sectors who will be impacted by the proposed changes.

After that, SACOSS was provided with a briefing from the Director of the Consumer and Business Services, and we were pleased to note that a number of the originally proposed amendments had been changed or dropped in response to the concerns we raised. There was further consultation after the bill was introduced into parliament, and further amendments promised. Without seeing those final amendments, SACOSS was not in a position to support or oppose the bill. We know that there was at least one issue which was still problematic for a number of organisations in our sector, but we also recognized that the revised bill now contained a range of good measures that would reduce red tape, or enable better support for organisations in our sector.

The bill was in committee in the House of Assembly when parliament finished, so it has now lapsed.

Policy Response

Given that the last review of the Act was so long ago, SACOSS recognizes that it would be good to review and update the Act. However, the review and update should not simply be a reintroduction of the existing amendment bill in the new parliament. Despite the good measures that were eventually in the bill, that bill still reflects the one-sided process from which it was developed. There was never a chance for our sector to have a wholistic discussion about the purposes the Act and whether these were still fit for purpose, or the overarching regulatory model in Act.

By contrast, a collaborative review could have begun with a mutual exploration of the purposes of a review, weaknesses or gaps in the current Act and the range of changes required. That would have allowed us a greater understanding of the drivers of change and what problems the government was trying to address, and our sector would also have been able to put forward possible issues or areas that we would like to see change. For instance, some consideration could have been given to:

- whether social enterprises are able to be brought under this Act and if the provisions are suitable for such organisations;
- any necessary additions or changes to the s18 list of eligible purposes;
- facilitation of alternative models of organization management;
- complexities and barriers in winding up associations; or
- other visions for how associations regulation should happen, requiring overhaul of the Act.

SACOSS is not necessarily seeking action on the above items, but simply highlighting the need for a more broad-ranging, collaborative review. The good work that has been done on the 2021 bill could go into that review, but not be definitive of the review.

Recommendation

Implement a broad-based, collaborative review of the Associations Incorporation Act.