



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Consumer Protection

Our Ref: Job No. 1830163;
IARN: A1014456P
Enquire



By email: lewis.yip@artifactory.org.au

14 June 2023

Dear Mr Yip

ASSOCIATIONS INCORPORATION ACT 2015
PERTH ARTIFACTORY INC. (the Association)

I refer to the Notice of special resolution to change the rules form (Form 5) received by the Department of Mines, Industry Regulation and Safety - Consumer Protection Division (Consumer Protection) on 30 March 2023.

You are advised that the changes have been lodged effective **13 June 2023** and placed on our records on the basis that the Association's executive or committee have declared that the amendments were passed by special resolution (75% majority) of members at a general meeting.

Consumer Protection undertakes random audit reviews of revised rules (also referred to as the constitution) with regard to the matters set out in Schedule 1 but this is not conducted for every form. However, the Association will be advised of any findings in the event that a review is undertaken.

However, at this occasion, we have reviewed the amendments made to the rules of the association and our observations are stated on the page 3.

It is important to be aware that under the Act the rules of every incorporated association are required to contain the Schedule 1 matters. If the rules do not include all of the Schedule 1 requirements or are inconsistent with the Act, parts of the Prescribed Model Rules that deals with the matter will automatically apply until corrected by the Association.

It is appreciated that the process of applying the Prescribed Model Rules has the potential to be confusing for members. In light of this Associations are strongly encouraged to conduct their own review of the rules to ensure the mandatory requirements set out in the Act are addressed.

Consumer Protection's webpage has a range of publications, tools and videos designed to assist associations with understanding the requirements of the Act, as well as reviewing and updating the rules. Associations are encouraged to visit www.dmirs.wa.gov.au/cp/changerules to utilise these resources.

Lastly, it is also opportune to remind the Association that under the Act there is now the requirement to submit an Information Statement (the Statement) to Consumer Protection. The Statement is required to be lodged no later than six months after the end of the association's end of financial year. The Statement can be submitted using AssociationsOnline which is available at www.commerce.wa.gov.au/associationsonline.

Should you require any further information in relation to this matter, please contact Associations Registration staff on 1300 30 40 74 or by email to associations@dmirs.wa.gov.au.

Yours sincerely



for
Commissioner for Consumer Protection

PERTH ARTIFACTORY INC. - A1014456P
NOTICE OF SPECIAL RESOLUTION TO CHANGE THE RULES
Associations Incorporation Act 2015

As indicated in our letter, a partial review of the above-named association's rules has been conducted with regards to the Schedule 1 requirements of the Act. The Association is encouraged to address the following matter outlined below. Please be aware that any further changes to the rules need to be passed by Special Resolution (75% majority vote) at a new meeting of members in the future:

- Schedule 1(19) of the Act requires the manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation cancelled.

Section 24(1) of the Act restricts the distribution of surplus property to one or more of the following entities:

- An association incorporated under the Associations Incorporation Act 2015; or
- A company limited by guarantee registered under the Corporations Act 2001 section 150; or
- A company holding a licence that continues in force under the Corporations Act section 151; or
- A body corporate that holds a license under the *Charitable Collections Act 1946*; or
- A body corporate that is a former member of the association that is winding up, whose rules prevent the distribution of property to its members; or
- A trustee for a body corporate referred to in paragraph (e); or
- A co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.

We note that clause 72.2 of the rules complies with the above requirements of the Act, however clause 72.4 is contradicting with 72.2 and it is also inconsistent with the requirements of the Act. As Clause 72.2 is already compliant, it is recommended to remove clause 72.4.