



Proposed amendments to Article II of the LAWASIA Constitution

Purpose

To seek Council's endorsement of proposed amendments to Article II of the Constitution of LAWASIA. The proposed amendments will update the Constitution to bring it in line with current Australian legal requirements to ensure LAWASIA's continued eligibility for Australian income tax exempt status.

Background

LAWASIA is the Law Association for Asia and the Pacific. It is an unincorporated association. As an unincorporated association, LAWASIA is not able to hold assets or enter into contracts.

LAWASIA's Executive Committee (**ExCo**) decided in 1999 to incorporate a holding company. The purpose of incorporating the holding company was to create an entity which could enter into contracts on behalf of LAWASIA so that no individual was personally exposed.

The Australian Company, LAWASIA HOLDINGS Pty Ltd (**the Company**), was established in 1999. The Company holds assets, enters into contracts and arrangements, employs staff and provides other financial and incidental support to and on behalf of LAWASIA.

Charitable status

The Company is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and is endorsed as an income tax exempt entity under section 50-5 of the *Income Tax Assessment Act 1997* (Cth).

The key advantage of charitable registration with the Australian Charities and Not-for-profits Commission (ACNC) is entitlement to income tax exemptions; the Fringe Benefits Tax (FBT) rebate; and the Goods and Services Tax (GST) concession.

As a registered charity, the Company can only have charitable purposes. Acting as a service and holding company for a charitable organisation is considered to be a charitable purpose under Australian law. Accordingly, the Company's continued eligibility for registration as a charity while acting as a service and holding company for LAWASIA depends on LAWASIA's objects being charitable.

Based on LAWASIA's current Constitution, LAWASIA has been advised by independent legal counsel that it appears LAWASIA is predominantly charitable under Australian law.

LAWASIA's charitable purposes include the purposes of:

- a) promoting the administration of justice, the protection of human rights and the maintenance of the rule of law within the Asia Pacific region;
- b) advancing the standard of legal education within the Asia Pacific region;
- c) furthering the diffusion of knowledge of the laws of various countries within the Asia Pacific region;
- d) promoting the development of law in the Asia Pacific region; and
- e) advancing the science of jurisprudence and promoting the study and development of international law and comparative law.

However, LAWASIA's stated purposes also include:

- a) representing and acting 'as a voice' for the interests of the legal community; and
- b) enhancing members' legal practices and their professional and business relations within the Asia Pacific region.

Legal counsel has advised that the abovementioned stated purposes are likely not charitable purposes. Accordingly, if LAWASIA pursues these stated purposes as independent purposes, then LAWASIA is not charitable under Australian law.

Noting the Company exists to support LAWASIA, and as LAWASIA must itself be charitable at law for the Company to maintain its registration as a charity, a significant consequence of LAWASIA not being charitable is that the Company would not be entitled to continued registration as a charity with the ACNC and would lose entitlement to the associated tax exemptions.

Amendment to the LAWASIA constitution

To ensure the Company can continue to be eligible for registration as a charity, it is proposed that LAWASIA's Constitution be amended to reflect its exclusively charitable purposes. To be charitable, the enhancement of members' business relations and legal practices must be limited as a by-product of charitable purposes and not a purpose in and of itself. Under the legislation, such purposes must be 'incidental' or 'ancillary to' the organisation's charitable purposes.

The proposed amendment to the LAWASIA Constitution to reflect its exclusively charitable purposes is attached at **Annexure A**. Current Article II is attached at **Annexure B**.

The amendments have been worded to reflect the current requirements under Australian legislation – i.e. that 'The Association shall not promote members' interests except for purposes that are incidental or ancillary to the objects of the Association as described in Article II(1)' (see paragraph 3 at Annexure A).

Recommendations

- That the LAWASIA Council **RESOLVES** to endorse the proposed amendments to Article II of the LAWASIA Association Constitution.

Attachments:

- **Annexure A:** proposed amendments to Article II of the LAWASIA Constitution.
- **Annexure B:** current Article II of the LAWASIA Constitution.

ANNEXURE A: Proposed amendments to Article II of the LAWASIA Association Constitution

**ARTICLE II
NATURE AND OBJECTS**

1. The objects of the Association are to pursue charitable purposes only, particularly by:
 - (a) promoting the administration of justice, protecting human rights and maintaining the rule of law within the Region for the benefit of the public;
 - (b) advancing the standard of legal education within the Region by all practicable means including the interchange of students, teachers of law and practitioners, assistance in staffing of universities and the provision of advanced studies, including (but not limited to):
 - (i) advancing the science of jurisprudence in all its phases and promoting the study and development of international law and of comparative law; and
 - (ii) disseminating knowledge of the laws of the various countries within the Region and thereby promoting the development of the law in the Region.
 - (c) doing such other things as are incidental or conducive to the attainment of the above objects, including (but not limited to):
 - (i) promoting uniformity within the Region in appropriate fields of law;
 - (ii) furthering international understanding and goodwill;
 - (iii) assisting and co-operating with international, regional, or other organisations having all or any of the abovementioned objects or similar objects;
 - (iv) fostering relations and intercourse between lawyers and associations and organisations of lawyers within the Region; and
 - (v) upholding and advancing the legal profession within the Region.
2. The Association shall not engage in political activities or regulatory activities for the legal profession.
3. The Association shall not promote members' interests except for purposes that are incidental or ancillary to the objects of the Association as described in Article II(1).
4. This Constitution shall be construed in accordance with the law of the jurisdiction in which the Secretariat is located for the time being.

Explanatory note:

External legal counsel has advised that the old paragraphs (a) – (e) are “predominantly charitable at law”.

Concern was expressed about the old paragraph (d) on the basis that it could potentially be regarded as non-charitable unless “pursued in furtherance of the charitable purpose of the development of law in the Asia pacific region, rather than as an independent purpose of LAWASIA”. While the purpose to advance the law and its profession for the benefit of the public may be charitable at law, the purpose of providing professional or regulatory support is not a charitable purpose. The proposed amendments to the objects clause have addressed this concern and to ensure that it reflects the charitable nature of LAWASIA.

Annexure B: Current Article II of the LAWASIA Constitution

ARTICLE II

NATURE AND OBJECTS

1. The objects of the Association are:
 - (a) To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the Region.
 - (b) To advance the standard of legal education within the Region by all practicable means including the interchange of students, teachers of law and practitioners, assistance in staffing of universities and the provision of advanced studies.
 - (c) To encourage communication and liaison between Members in relation to general and specialised areas of law.
 - (d) To enhance the development of Members' legal practices and their professional and business relations within the Region.
 - (e) To further the diffusion of knowledge of the laws of the various countries within the Region.
 - (f) To promote development of the law in the Region.
 - (g) To advance the science of jurisprudence in all its phases and to promote the study and development of international law and of comparative law.
 - (h) To promote uniformity within the Region in appropriate fields of law.
 - (i) To further international understanding and goodwill.
 - (j) To assist and co-operate with international, regional, or other organisations having all or any of the abovementioned objects or similar objects.
 - (k) To foster relations and intercourse between lawyers and associations and organisations of lawyers within the Region.
 - (l) To uphold and advance the status of the legal profession within the Region.
2. The Association shall not engage in political activities.
3. This Constitution shall be construed in accordance with the law of the jurisdiction in which the Secretariat is located for the time being.