

**The Law Society of
New South Wales**

**Review of the Composition
and Governance of the
Council**

Report to Members

September 2022



THE LAW SOCIETY
OF NEW SOUTH WALES

The Law Society of New South Wales Review of the Composition and Governance of the Council – Report to Members

Members of The Law Society of New South Wales (**Law Society**) are invited to consider and approve a number of reforms to the governance framework at this year's Annual General Meeting on 27 October 2022 (**AGM**). The Law Society Council (**Council**) has weighed up a range of possible reforms, guided by the recent membership online survey and expert advice on corporate governance, and has chosen to propose an incremental approach towards a modern representative system. The Council encourages all members to have a say in the future governance of the Law Society by voting on the proposed changes explained below (either in person or by proxy) at the AGM.

Background and introduction

In February 2022, the Council resolved to review the Council's structure from the perspective of modern/best practice governance (the **Governance Review**). This expanded the three-yearly review by Council of its composition (**Composition Review**), which is required under the Law Society constitution (**Constitution**). The Council is required to report to the members at the AGM on both the Composition Review and the Governance Review.

The outcomes of the Governance Review and the Composition Review are detailed in this Report together with the proposed Constitutional Changes (defined below) that Council resolved at its August meeting to put to members.

If approved by members at the AGM, the Constitutional Changes will:

- reduce the Council to a more manageable and effective size consistent with current best practice (from 21 to 15 Councillors);
- provide for the regular renewal and refreshment of the Council by introducing term limits for Councillors; and
- improve the ability of the Council to lead through modernising certain leadership positions, including providing for flexibility of term for the President.

This Report informs members of the steps Council has taken in developing the proposed Constitutional Changes and avails members of information to assist them to decide whether to approve the Constitutional Changes at the AGM. This Report is divided into a project overview, a summary of the current structure of the Council, the proposed Constitutional Changes and a summary of the proposed transitional mechanisms to apply if the Constitutional Changes are approved at the AGM. Capitalised terms not defined in this Report have the meaning given to them in the Constitution unless the context requires otherwise.

Project Overview

Over the last twenty years, there have been a number of changes considered in respect of the Law Society's Memorandum and Articles of Association (now its Constitution) regarding Council composition, the size of the Council and other governance-related matters, however members approved changes to the Council composition only once in that period (in 2003). In that year, the current Council structure of two Reserved Positions per segment or practice area, one Young Lawyer Councillor and eight unreserved positions was adopted.

At the 2021 Annual General Meeting, the members also approved the adoption of a modern form of constitution to replace the then existing Memorandum and Articles of Association. This aligned the Law Society's governing document with the *Corporations Act 2001* (Cth) and best practice for a member-based company. Following its Governance Review, and noting that nineteen years have passed since changes were last made to the Council composition, the Council considers it is now appropriate to propose the governance-centric Constitutional Changes for member approval.

Since February 2022, the following steps have been taken by Law Society management with the oversight of the Council and support from independent consultants, Cameron Ralph Khoury (**CRK**).

Engagement of CRK

The Law Society engaged CRK in March 2022 to advise on the Governance Review. CRK has provided structural governance advice to a range of other large-scale organisations in the past, including professional associations such as the Law Institute of Victoria, Law Council of Australia, Chartered Accountants Australia and New Zealand and The Royal Australian College of General Practitioners.

CRK's work for the Law Society has included: (i) establishing a project framework and timeline; (ii) engaging extensively with Law Society stakeholders both internally and externally; (iii) assisting with the development of a whole-of-membership survey and related analytics; (iv) advising on the Constitutional Changes from a best practice/modern governance perspective; (v) providing ongoing advice and project support to Law Society management and the Working Group (defined below).

Working Group

A Council working group (the **Working Group**) was formed in March 2022 following expressions-of-interest sought from all Councillors. The Working Group was comprised of the Law Society President and Councillors Rebekah Hunter, James Skelton and Sylvia Fernandez, representing between them many years of senior corporate legal and governance experience. The Working Group was tasked to investigate and advise on various aspects of the Governance Review and, if considered appropriate, to propose changes to the Council structure and/or composition. The Working Group's proposals for change were adopted by the Council as the Constitutional Changes and the Non-Constitutional Changes (defined below).

Stakeholder Engagement

From April through July 2022, CRK held a combination of workshops and one-on-one meetings with internal and external stakeholders, including Councillors, Regional Presidents, Committee Chairs, past Presidents, the current President and the Chair of Lawcover.

Governance-related feedback received during this exercise included concerns that:

- the Law Society may not be adapting quickly enough to some of the challenges facing the organisation and profession (eg. growth and restructuring of the profession, changing community expectation of governance, increasing financial complexity of the organisation).
- the Council is just too big to be effective.
- Council is not able to consistently find all the skills needed for governing the organisation.

- the current Council structure may not always adequately reflect the true diversity of the profession.
- the absence of tenure limits is old-fashioned and constraining refreshment of the Council.

Member Survey

As members are aware, a member-wide survey opened on Friday, 24 June 2022 and closed on Friday, 22 July 2022. Over 500 surveys were completed by members and many respondents included considerable free-text feedback. CRK has advised that this is a meaningful response, representing roughly double the engagement received by a comparable organisation for which CRK has recently run a member survey.

In addition to the survey, Law Society management made a dedicated email available for members to provide general feedback on the Governance Review. This remains open to members and to date we have received a handful of responses to it. Both the survey and email address were promoted through the Law Society's usual communications channels.

The Law Society also made two separate webinars available during the survey period, to allow members to ask questions about the Governance Review.

By way of summary only, member feedback included:

- An appreciation of the challenges facing the Law Society and the need to adapt to meet them.
- Mixed views about the appropriateness of the Reserved Positions for the current segments.
- Support for improving the skills mix on Council with the ability to appoint a few Councillors on a skills-basis (but some opposition to appointing non-lawyers).
- On balance, support for a reduction in the size of Council.
- Support for reforming the office-bearer pathway system.
- Support for changing the role and possible term length for the President.
- Strong support for imposing a tenure limit on Councillors.

Engagement of Allens

Law Society management engaged external counsel, Allens, to review the proposed form of amended Constitution. Allens was also engaged in 2021 to advise on replacing the Memorandum and Articles of Association with the current Constitution.

What we have now

Like many organisations, the Law Society operates in a dynamic environment that throws up ongoing challenges to its success and survival. By way of summary only, the Law Society's characteristics and functions include:

1. co-regulator and licensing authority for the legal profession under the Legal Profession Uniform Law;
2. one of the world's largest professional membership bodies;
3. a Corporations Act company with group net assets of circa \$280,000,000 and an annual group gross revenue in the 2021/2022 Financial Year of \$140,000,000.
4. the parent company of Lawcover;
5. a 50% shareholder in the trustee of Legal Super;
6. the body engaged in the administration of the Public Purpose Fund; and
7. the body to which board seats are allocated on external public bodies, including Legal Aid.

The Law Society is a public company limited by guarantee. Its board of directors is referred to as a "Council" in the legal profession legislation. The Law Society's current Council is comprised of 21 Councillors elected for three-year terms (and re-electable without limit) from the membership, structured as follows:

1. two Reserved Positions from each of the City, Country, Suburban, Large Firm, Corporate and Government segments;
2. one Young Lawyer Councillor Reserved Position; and
3. eight unreserved positions, open to members from any segment.

Three of the Senior Office-Bearers (Treasurer, Junior Vice-President and Senior Vice-President) are elected under clause 13.3 of the Constitution after the annual general meeting each year. The current usual practice is for the Treasurer to serve for one year and then be elected (generally unopposed) as Junior Vice-President for a year and then Senior Vice-President for a year. The Constitution provides that the Senior Vice-President shall become President (a full-time remunerated position) for a year. The President then automatically becomes the Immediate Past President for a final year.

The Council has delegated relevant powers to its Audit, Risk and Finance Committee (**ARFC**) and Executive Committee. The ARFC meets mostly quarterly and the Executive Committee meets mostly monthly, in each case reporting back to the Council on discussions, resolutions and recommendations (as relevant). A large number of other committees are also constituted, including policy committees, regulatory committees, segment committees, including the Young Lawyers Committee. Separately, 38 Regional Law Societies are currently constituted as entities independent of the Law Society.

Why governance reform?

This Report has been prepared to inform members of the results of the Composition Review under clause 12.1.3 of the Constitution, and the broader Governance Review. In undertaking these reviews, Council has identified the importance of a periodic review of the Council's composition to ensure ongoing consideration of its composition vis a vis the Solicitor Membership of the Law Society. For this reason, no changes are proposed to clause 12.1.3 itself.

The Council has the very important roles of determining Law Society strategy and overseeing delivery of that strategy. Councillors also play pivotal roles in the Law Society's exercise of its co-regulatory responsibilities and public advocacy. Accordingly, to be fully effective, a Councillor must be able to understand how the organisation (which is sizeable and unique) works, what the consequences of possible decisions might be and be adept at making complex judgements in relation to co-regulatory issues and public advocacy. Of course, management also has a responsibility to support and facilitate the Council to be effective.

CRK's experience is that good practice governance in professional bodies (with or without formal regulatory functions), includes some or all of the following:

1. Recognition that a range of perspectives and deep knowledge of the profession is important to the governing body – but that a large representative Board is no longer likely to produce best outcomes. A mid to large size Board (10 -12) is most likely to be effective, allowing for better contribution from each member, works better in partnership with management and works with more effective group dynamics, agility and the capacity to build expertise over time.
2. Composition of the Board needs to be focused on consistently bringing the best skills to the table. Refreshment and succession planning are essential to ongoing effectiveness of the governing body. That requires a skills orientation (maintaining the needed skills over time, looking for up-to-date knowledge, investing in training and education and getting a 'return' on that investment from more effective Councillors who serve for a sufficient period).
3. The Council needs to be well-placed to lead the continuous process of adaptation and evolution that all professional bodies require to remain successful and relevant. This means having individuals in leadership roles for long enough to lead change and innovation – both Board members generally and office bearers.

The Constitutional Changes

The constitutional changes proposed in the table below (the **Constitutional Changes**) were prepared in consultation with the Working Group and CRK and the Council has resolved that they be presented to members for approval at the AGM.

The table below sets out areas for change, the Council's recommendations, CRK's assessment from the perspective of modern/best practice governance and the current position for comparison. As noted in the table, two of the changes do not require amendments to the Constitution (the **Non-Constitutional Changes**). If the members do not resolve to adopt the proposed amended Constitution attached to the AGM Notice, the Council does not intend to adopt the Non-Constitutional Changes.

Area for Change	Council Recommendation	Reasons for change	Current position
Size and Composition	Reducing all Reserved Positions (other than the Young Lawyer Reserved Position, which is already one), to one. This would reduce the Council size by 6 from 21 to 15.	<p>Reductions in the size of governing boards/councils in professional and other member-based bodies has been a trend in good practice for decades. The growing size, sophistication and complexity of these bodies, the changing nature of volunteerism and the increasing need to rely on employed, skilled managers and specialist staff has driven this trend.</p> <p>An effective working relationship/group dynamic between the governors and management in today's environment is the main driver to smaller, more skills-based governing bodies.</p>	<p>The Council is currently comprised of 21 Councillors elected for three-year terms (and re-electable without limit) from the membership, structured as follows:</p> <ol style="list-style-type: none"> 1. two Reserved Positions from each of the City, Country, Suburban, Large Firm, Corporate and Government segments; 2. one Young Lawyer Councillor Reserved Position; 3. eight unreserved positions.
Skills/Experience	Councillor candidates to submit a skills-focused CV (as part of the nominations kit/election materials) to be made available to the voting membership during elections. The Law Society would publish a set of desired skills/experience with emphasis placed in	A greater emphasis on skills is increasingly common in professional body governance and widely considered good practice.	Currently there are no requirements that candidates for Council provide any information regarding their relevant skills.

Area for Change	Council Recommendation	Reasons for change	Current position
	<p>election communications on skills-based selection</p> <p><u>This change does not require constitutional amendment and as such is not reflected in the proposed amended Constitution accompanying the AGM Notice.</u></p>		
Max Tenure	<p>Introduce a cap on tenure of Councillors of three 3-year consecutive terms and a proportionate approach to Young Lawyers, provided that Young Lawyer Councillor tenures won't impact the length of any future non-Young Lawyer Councillor's tenure.</p> <p>Permit a gap equivalent to one 3-year term during which a person who has already served a maximum term must wait before being allowed to compete for re- election.</p>	<p>Tenure limits are accepted the world over as good practice – in order to systematically refresh governance. This is not about 'fairness' to the candidate – it is about what is best for the organisation.</p>	<p>Currently Councillors may be elected for three-year terms but there are no limits on aggregate tenure.</p>
President's Role	<p>Lengthening tenure for a maximum of two further one-year terms but only in specific and exceptional circumstances, such as where a key strategic Law Society priority requires a longer presidential term, and subject to strict Council</p>	<p>It is commonly accepted that a one-year term is insufficient for long-term achievement. There are practical limitations to longer terms, but good practice is now to allow for flexibility for longer terms when needed.</p>	<p>The current term-limit of the President is one year.</p>

Area for Change	Council Recommendation	Reasons for change	Current position
	<p>approval mechanisms.</p> <p>Development of parameters around the President’s role by the Council itself. <u>This second change does not require constitutional amendment and as such is not reflected in the proposed amended Constitution accompanying the AGM Notice.</u></p>	<p>It is very common for the roles of the President of a professional body to expand over time – to the point of being a near full-time position (or even unachievably large). It is good practice to regularly review and cut this back to the most value-adding activity.</p>	<p>While the role of President is broadly understood, no thorough review of the President’s role has been undertaken since 2016.</p>
Office Bearer Pathway	<p>Abolish the position of Treasurer, with the Chair of the ARFC to be appointed by the Council yearly.</p>	<p>Good practice is to abolish the Treasurer position. It implies a hands-on, directive role. Most organisations no longer have a Treasurer and have instead a Chair of Audit & Risk or Chair of Finance Committee selected by the Board, usually for two to three years.</p>	<p>The current position regarding the Treasurer and other Office Bearers is as described above under the heading “What we Have Now”.</p>

Transition

If approved, the Constitutional Changes will be effective on and from the date of the AGM (the **Adoption Date**). This means that the Treasurer role will be abolished and the Councillor tenure limit of 3 three-year terms in a row will apply to Councillors holding office as at that date. To clarify, the Councillors and Office Bearers (other than the Treasurer) who are holding office on the Adoption Date will continue to hold office after that date for the remainder of their terms, subject to early retirement or removal in accordance with the Constitution.

As at the Adoption Date, the Council will consist of 21 Councillors appointed prior to or on the Adoption Date. As a Reserved Position from each set of two Reserved Positions (City, County, Corporate, Government, Large Firm and Suburban) becomes vacant, that Reserved Position will be permanently removed so as to reduce the number of Reserved Positions from 12 to 6 over time. The Constitutional Changes will not affect the election of candidates at the 2022 Annual General Meeting, which will proceed as per the current Constitution. Changes to the size of the Council will occur from the 2023 Annual General Meeting onwards.

As soon as practicable following the AGM, the Council will meet to discuss the Non-Constitutional Changes and develop an approach to their implementation, subject to approval of the Constitutional Changes and member feedback.

The Composition Review

Given the proposed reduction of the size of the Council involves reducing Reserved Positions from two to one, the Council considers further changes to composition based on segment percentages will not be necessary if the changes are approved. If the proposed changes are not approved, Council notes its obligation under clause 12.1.3 of the existing Constitution to review the composition of Council again in 2025.

Matters for future review by the Council

As this year's review was primarily focused on governance, the Council did not make a detailed assessment of the geographical classifications of City, Country and Suburban member segments under clause 16.2 of the Constitution. The appropriateness of these classifications was a subject of feedback in the member survey. The Council considers a review of these classifications is warranted in future years and will work to develop a framework and timeline for that review either as part of the three-yearly review of the composition of the Council under the Constitution or separately.

The proposed amended Constitution

The proposed form of amended Constitution will be provided to Law Society members with the Notice of 2022 Annual General Meeting on or around 27 September 2022.