

Institute of Professional Editors Limited (IPEd) - Direct Member Model Issues List

We understand that IPEd is looking to restructure its current model of operations. Currently IPEd is the peak national body (company limited by guarantee) of the Institute of Professional Editors, and is constituted by State and Territory members (incorporated associations under their relevant State and Territory legislation). We understand that going forward IPEd is considering a move to a direct member model under which the individual members of each State and Territory member of IPEd would transfer their membership directly to IPEd. Set out below is a list of issues which IPEd will need to consider and in turn deal with in order to give effect to the proposed restructure. In our experience, the enormity of the task that is being contemplated should not be underestimated. Further, the more organisation and strategic thinking that can be done prior to going to members, the easier it will be to have them agree to the proposal and to have a smooth transition.

No.	Issue	DLA Comment
<i>General Issues</i>		
1.	All State and Territory members must be willing to restructure the operation of IPEd	It will be important to ensure that there is unanimous agreement between all State and Territory members of IPEd that the direct member model is to be implemented and that the State and Territory bodies will be wound up and replaced by the national body. Without, unanimous resolution in this respect, attempts to progress the implementation of the direct member model will likely become protracted and adversarial. That also means that there needs to be an agreed timeline for members of the State and Territory bodies to become direct members of IPEd.
2.	Mutual agreement on all details of the proposed restructure	<p>To the extent possible, all parties should determine and agree upon the details of all aspects of the restructure prior to it being voted on.</p> <p>All policies, agreements etc. of IPEd, which will be in effect after the restructure should be in an agreed form prior to the restructure. These documents would include the new constitution of IPEd (or the amendments to the current constitution) (discussed below), the new policies related to State and Territory branches and their operation and management, spending policies etc. (discussed below). This would need to include a clear plan and timetable for each State and Territory body to be wound up. Only after the various documents are agreed on between all State and Territory members, as well as IPEd, should a decision to implement a restructure be voted on.</p> <p>If certain matters, or documents are left to be agreed at a later point, disputes between IPEd and the State and Territory members will inevitably ensue over differences of opinion related to how those matters or documents were to be dealt with.</p>
3.	Transition period	<p>To avoid confusion and to ensure a smooth transition of individual members to membership of IPEd, the period between the first State or Territory's members becoming members of IPEd and the last State or Territory's members becoming members of IPEd should be as brief as possible. Where the process is drawn out, complications may arise with respect to voting, expenditure of funds, the practical operation of IPEd in conjunction with the remaining State or Territory members. Also, it will be important to get as many of the State and Territory members across at the beginning as possible. Quite often the tendency of member organisations will be to 'hang' back. This should be discouraged. Your aim should be to get the majority of State and Territory members across in the first week or two.</p> <p>In this respect, a clear and agreed timeframe for the transfer of all individual members to IPEd and the winding up of the State and Territory members should be in place.</p>

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		Agreement should also be reached on the practical operation of IPEd and the State and Territory members during the transition phase, i.e. control of the website, control of State and Territory activities, control of expenditure.
<i>Specific considerations for the restructure process</i>		
4.	Amendment to the constitution	<p>It will be necessary to adopt a new constitution of IPEd or amend certain provisions of the current constitution as part of the restructure. In order to achieve either outcome, 75% of the current State and Territory members will need to vote on such a resolution. Note that as discussed above, for the transaction to really work this entire process ultimately requires 100% of State and Territory bodies to be in favour of it. The matters which would need to be addressed in the new constitution, or in the current constitution by way of amendment, are as follows:</p> <ul style="list-style-type: none"> • A new class of members specific for individuals will need to be created as the current constitution only permits "Industry Representative Bodies" to become members. • Additional drafting will be required regarding the circumstances of cessation for the new class of members. • During the transition period, the allocation of votes will need to be considered with respect to the new class of members as individual members will have one vote to exercise whereas the old State and Territory members will have one vote per 15 individual remaining members. This issue could be overcome by removing the current formula for the allocation of votes to the State and Territory members from the constitution (clause 11.2) so that the remaining State and Territory members have one (1) vote per remaining individual member. • IPEd will need to consider how the composition of the Council will be determined. Much of the current clause 12 of the constitution is inappropriate for a direct membership model. • One of the ways to avoid regional concentrations of control of the National body is for there to be residential qualification on the board of directors. For example, the requirement that there be a director from each State and Territory. However, this can become tricky in a direct membership model. If you were to have a residential qualification then we would recommend that there be a requirement for it to be reviewed after three years. • IPEd should consider whether the current Council should be spilled upon the restructure and all members given the opportunity to vote for new councillors. <p>Consideration should also be given to whether the constitution should be further amended after the last State and Territory member ceases their membership to remove any reference to "Industry Representative Bodies" as a class of member.</p>
5.	Current paid up memberships	<p>Consideration will need to be given to individual members who have already paid membership fees for the year and how that will be credited towards their new membership with IPEd.</p> <p>We assume the terms of membership and any related privileges of membership for each State and Territory Member are identical. Where they are not, individual members may be reluctant to the proposed restructure due to concerns about losing privileges or having additional obligations imposed on them.</p>
6.	Winding up of the State and Territory Associations	<p>Once all individual members of a State or Territory member have become members of IPEd, the State or Territory member, as an incorporated association, will need to be wound up in accordance with the respective legislation in each State and Territory. This will require a divestiture of all assets and an application for winding up to be made to the relevant regulator. Any assets retained by the incorporated association after winding up, generally vest in the regulator so it is important that all assets are transferred to IPEd before this occurs.</p>

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		<p>A review of all State and Territory regulation on that process should be undertaken to ensure that the process can be quickly and efficiently achieved.</p> <p>To the extent that the process may take time, or is unexpectedly delayed, the State and Territory members could resign as members of IPEd once all of their individual members had transferred to IPEd.</p>
7.	Current State and Territory funds	<p>We understand that some State and Territory members have amassed large surpluses of funds. As discussed above, surplus assets of each State and Territory member will need to be transferred to IPEd before they are wound up.</p> <p>However, members with surplus funds are likely to be reluctant to transfer to IPEd those funds for general use amongst all members. It is extremely likely that obtaining the agreement of these members to the restructure will be conditional upon agreement being reached with IPEd about the use of 'their funds' after the restructure. Consideration will need to be given to the most effective way to " earmark " those funds for future use. We believe that this could be achieved by using a trust structure within the National body.</p>
8.	Other State and Territory assets and liabilities (including intangibles)	<p>We are unaware of what assets and liabilities the State and Territory members might currently have. Consideration needs to be given to the following matters:</p> <ul style="list-style-type: none"> • IP - All IP (including trademarks, business names, copyright etc.,) will need to be transferred to IPEd (See comments regarding winding up). • Domain Names - Consideration needs to be given to who will operate and be the registered holder of current State and Territory member domain names (See comments regarding winding up). Consideration will also need to be given to whether State and Territory domain names will be required after the transition period. • Rental/Lease/Hire Agreements - Where the State and Territory members currently rent/lease/hire property (personal or real), consideration will need to be given as to how best to deal with this. Many such agreements cannot be assigned without consent, and for those which are no longer required, termination of the agreement may give rise to a claim for damages. • Physical Assets - Consideration will need to be given to the ownership after the restructure of any physical assets which are currently owned by the State and Territory members (See comments regarding winding up). Similar to the issue surrounding the use of State and Territory member's funds after the restructure, State and Territory members may be reluctant to transfer physical assets to IPEd unless agreement is reached that those assets are for the benefit of the members who reside in that State or Territory. • Real Property - Consideration will need to be given to any real property which is owned by the State and Territory members. See our comments above with respect to Physical Assets.
9.	Taxation consequences for transfer of assets	<p>Consideration should be given to possible methods of avoiding or minimising exposure to taxation and stamp duty obligations as a result of State and Territory members transferring property to IPEd. This should include a thorough review of the State and Territory legislation on the transfer of property and consideration of any exemptions which may exist by virtue of the State and Territory members being members of IPEd.</p> <p>Donating or lending (in the case of surplus funds) may assist in minimising tax exposure.</p>
10.	State branch management	<p>As already identified by you, the following issues will need to be resolved in order to effectively and efficiently manage each State and Territory branch from the moment it is established:</p> <ul style="list-style-type: none"> • Develop new rules governing State and Territory branches, their responsibilities, role, committees, funding arrangements, etc.

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		<ul style="list-style-type: none"> • Develop new policies governing the budgeting and funding of branch activities, and specific definitions of branch roles and activities. • Develop specific policy for branch control of the spending, or allocation, of funds which their previous society brought to IPEd. • If structured territory branches are established then they should not be a separate legal entity. Instead they should be sub-committees of the board. They could then report into and be subject to the board's direction and control.
11.	Formal agreement on the restructure process to be reached.	Written agreements between all State and Territory members and IPEd should be entered into, which documents the process for the restructure and the terms of each of the matters discussed above to avoid dispute. Only once this has occurred should a decision by all State and Territory members and IPEd be made to commence the restructure.