



Regulatory Impact Statement

Associations Incorporation Regulation 2016 – June 2016



Fair
Trading

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Executive summary

A statutory review of the *Associations Incorporations Act 2009* (the Act) was undertaken in 2015 and the report was tabled in Parliament on 17 November 2015. The report gives full background to the consultation which occurred and the consideration of the operations of the Act.

The Government adopted all the recommendations made by the review. To effect the recommendations which required changes to the Act, the *Associations Incorporation Amendment (Review) Act 2016* (Amendment Act) was made. It received assent on 2 March 2016. Parts of the Amendment Act commenced on 15 April 2016 and the remaining parts have been proclaimed to commence on 1 September 2016.

Implementation of the Amendment Act as well as a review of the Regulation required by the *Subordinate Legislation Act 1989* mean that the Regulation needs to be remade.

This Regulation Impact Statement (RIS) concerns the proposed Associations Incorporation Regulation 2016. Once the Regulation is finalised the Regulation will commence at the same time as the remaining parts of the Amendment Act. This must occur before 1 September 2016 when the Associations Incorporation Regulation 2010 will be repealed.

The main changes in the proposed Regulation are a result of the statutory review. These are:

- procedures to allow for electronic voting
- a provision to keep records for at least 5 years, where there was previously no time period specified
- a non-distribution and wind-up clause is inserted into the model constitution
- two additional unacceptable names are included in the relevant schedule
- the proposed fees, in particular the fees to lodge the annual statement of financial affairs, as the fee has been reduced for Tier 2 associations and raised for Tier 1 associations. In general, fees have been revised to reflect the amount of work required to process the documentation
- other minor changes to simplify and update requirements.

This RIS sets out the rationale and objectives of the proposed Regulation and various options for achieving those objectives. It includes an assessment of the costs and benefits of each of the alternative options. The proposed Regulation is the alternative which provides the greatest net public benefit.

The RIS also provides a discussion on important aspects of the proposed Regulation and seeks feedback from stakeholders and the community. Submissions are invited on any of the matters raised in the discussion or anything else contained in the proposed Regulation. All submissions will be considered and evaluated and any necessary changes will be made to address the issues identified before the final Regulation is made.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. Matters covered by the principal Act – the *Associations Incorporation Act 2009* – are not the subject of the consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an ‘accessible’ format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at

<http://webaim.org/techniques/word/>.

We invite you to read this paper and provide comments. Additional copies of the RIS and the proposed Regulation can be downloaded from www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

You can make submissions by:

- email to: policy@finance.nsw.gov.au
- post submissions to the following address:

Associations Incorporation Regulation 2016
Policy and Legislation
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

The closing date for submissions is COB Friday, 29 July 2016.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

The RIS has been provided directly to some key stakeholder organisations. A list of these stakeholders is provided at Appendix 3.

Evaluation of submissions

All submissions will be considered and assessed and the proposed Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Commencement of the Regulation

After the Minister for Innovation and Better Regulation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed the Regulation will commence on 1 September 2016.

Objective and rationale of the Regulation

Rationale

It is necessary to remake the Regulation at this time because:

- the current Associations Incorporation Regulation 2010 made under the *Associations Incorporation Act 2009* does not contain regulations which are required by the *Associations Incorporation Amendment (Review) Act 2016* (the Amendment Act) which will come into effect on 1 September 2016
- the Amendment Act modifies the model constitution which is contained in the Regulation and many associations have adopted the model constitution as the constitution for their association
- under the sun-setting provisions contained in the *Subordinate Legislation Act 1989*, the current Regulation will be automatically repealed on 1 September 2016
- without supporting regulations, the Act cannot be effectively administered or enforced.

Objectives

The proposed Regulation will support the Act and is integral to its effective operation and the achievement of its aims. The objects of the Act are:

- (a) to establish a scheme for the registration of associations that are constituted for the purpose of engaging in small-scale, non-profit and non-commercial activities, including:
 - (i) associations that are currently unincorporated (which become bodies corporate when they are registered), and
 - (ii) associations that are currently incorporated under other legislation (which retain their corporate status following registration)
- (b) to make provision with respect to the corporate governance and financial accountability of associations registered under that scheme.

The Act is designed to find a balance between freedom and flexibility for associations to establish themselves and to operate while ensuring there are sufficient safeguards in place to an appropriate level of governance.

The primary objective of the Regulation is to provide the legislative support and administrative detail necessary for the operation of Act, enabling it to function efficiently. The proposed Regulation will provide details for many features of the Act including:

- information for registration of an association, the maximum number of names that can be reserved and a clause to enable a schedule of unacceptable names

- provision about the contents for the annual financial statement which must be provided to the Department's Secretary by Tier 1 and Tier 2 associations
- procedures for both electronic and postal voting
- a provision for keeping records of accounts and minutes of meeting proceedings
- a model constitution which has amendments to take into account electronic communications. For example, the chairperson may sign the minutes electronically and technology is acknowledged as means in which the committee could take advantage of to hold meetings or to manage funds electronically
- addressing committee vacancies regarding the solvency of committee members
- specifying the financial year and ensuring that the financial year for associations registered before 1 July 2010 remains the same
- revising the fees to reflect the amount of work required to administer and process the lodgement of various documents relating to maintaining registration.

Options for achieving objectives

The objective of the proposed Regulation is to provide operational and administrative detail to support the Act. Options for achieving those objectives are:

Option 1

Maintain the status quo – do not make the proposed Regulation, and instead remake the Regulation to be identical to the existing Regulation.

Option 2

No action – allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Option 3

Make the proposed Regulation – the provisions of the Regulation will provide updated legislative support and administrative detail for the Act.

Impact assessment of options

Assessment of Option 1

Maintain the status quo – do not make the proposed Regulation and instead remake the Regulation to be identical to the existing Regulation.

Option 1 - Costs

This option has a low level of associated direct costs as it will effectively remake the existing Regulation. There would be no additional direct costs for associations or the Government. Systems and procedures would not need to be modified and associations would not need to adapt to many of the changes in the Act.

However, the Government has identified the need for improving the practicalities of the legislation and amendments in the Associations Incorporation Act have been passed by Parliament. These amendments will ensure that the Act will support a sound framework for associations to operate within, in an effective and efficient manner.

If the Regulation is not updated to accommodate amendments in the Act, the new provisions in the Act will be without the administrative detail and support required to achieve the Act's objectives. There would therefore be an opportunity cost to associations not having the benefit of the amendments in the Act including electronic voting, a sound constitution insofar as it deals with winding up and fee changes including a reduction for Tier 2 associations to lodge the annual financial statement. These would not be able to operate without the proposed Regulation.

Option 1 - Benefits

The primary benefit of this option is that associations would not be required to update any systems or procedures, or adjust to the new legislative requirements in the Act. However, the current Regulation is outdated and does not provide the flexibility and efficiency that the proposed Regulation offers and therefore the associated benefits are minimal for associations.

Option 1 - Conclusion

Option 1 is unlikely to have any substantial impact. The full benefits and objectives of the findings of the statutory review and the Amendment Act cannot be realised without an updated Regulation.

Consequently, the overall benefit of this option has been assessed as low for associations.

Assessment of Option 2

No action – allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Option 2 - Costs

The current Regulation has been in place since 2010. It will automatically be repealed on 1 September 2016 if it is not remade, under the sun setting provisions contained in the *Subordinate Legislation Act 1989*.

Allowing the 2010 Regulation to lapse will deliver a small cost saving as the Government will not be required to remake the Regulation. There will also be no direct costs for associations as they will not be required to update their systems and procedures. Nor will they be required to comply with any Regulations.

Similar to option 1, under this option there will be no support for the Act which represents a cost to associations especially for those associations which have adopted the model constitution as their constitution. Further, there was consultation undertaken for the statutory review and the Amendment Act and an updated Regulation will bring those suggestions to fruition. For example, during consultation associations requested that there be a time limit on the keeping of financial records and the proposed Regulation includes a clause for this period to be set at 5 years, the period sought by the majority of respondents.

The Act responds to this feedback and aims to increase participation in associations by making it easier for members to attend meetings through the use of modern technology and alternative forms of voting.

To operate effectively, the Act relies on details to be prescribed in the Regulation. If the current Regulation lapses and is not replaced by the proposed Regulation, the majority of these reforms will be inoperable.

Option 2 - Benefits

There are no significant benefits to this option. Associations will not need to adjust to the new legislative requirements in the Act. However, they will also not receive the benefit of these amendments.

Option 2 - Conclusion

Allowing the current Regulation to lapse would not result in any major costs. However, it does not deliver any significant benefits for associations. Therefore, the overall benefit of this option is estimated to be low.

Assessment of Option 3

Make the proposed Regulation.

Option 3 - Costs

Commencement of the remainder of the Amendment Act and the proposed Regulation will result in some costs to various stakeholders in the association community. Adjustment to the new provisions may be significant for certain stakeholders and NSW Fair Trading will provide a detailed information and education campaign to ensure associations understand their new rights and obligations. This will include e-news, detailed web pages, facts sheets and presentations aimed at various stakeholders.

Any associated compliance costs for associations should be minimal as the aim has been to enhance the flexible approach in setting requirements for associations.

Option 3 - Benefits

The proposed Regulation together with the to-be-commenced parts of the Amendment Act will enhance the way incorporated associations are administered. The proposed Regulation will give effect to significant parts of this regulatory framework.

Red tape provisions have been removed and flexibility increased in recognition of the diverse circumstances in which associations operate.

Reforms are also designed to proportionately match the accountability of an association regarding financial management and general governance.

Option 3 - Conclusion

The practical application of many parts of the Act relies on the proposed Regulation being made. The benefits to associations of option 3 have been assessed as high and are considered to substantially outweigh any costs to be borne by Government and the industry.

Summary of costs and benefits for each option

Option	Likely costs	Likely benefits	Overall benefit
Option 1	Low	Low	Negative
Option 2	Low	Low	Negative
Option 3	Medium	High	Positive

Figure 1.0: Summary of costs and benefits for each option

Preferred option

Option 3 - making the proposed Regulation is the preferred option as it will introduce benefits agreed by Government as a consequence of the statutory review and facilitate the operation of the amendments to the Act, which has been enhanced.

Discussion of the proposed regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this Regulatory Impact Statement. However, the following discussion points provide greater context for the provisions in the proposed Regulation which are different compared to the Associations Incorporation Regulation 2010. Feedback is sought on some particular proposals.

A summary of the proposed Regulation is provided at Appendix 2.

Part 2 Registration of associations

Additional information to be included with application for registration (clause 5)

The only change to this Part is in clause 5 of the proposed Regulation. The provision no longer contains a requirement to include evidence that the last two financial statements have been lodged with the Australian Securities and Investments Commission (ASIC) or the NSW Registry of Cooperatives and Associations (whichever is applicable).

Small companies limited by guarantee are not required to prepare or lodge financial reports with ASIC. In addition, companies limited by guarantee that are registered as a charity with the Australian Charities and Not-for-profit Commission do not have to report annually to ASIC. The proposed change is intended to reduce and simplify the requirements for an application for registration made on behalf of a registrable corporation.

The proposed clause provides that only necessary information is required for the registration of a proposed association and reduces the complexity for a registrable corporation to make an application to be a registered association.

Part 3 Financial reporting

There are no changes to this Part of the Regulation. It is proposed to retain this in its current form.

Part 4 Miscellaneous

Conduct of postal and electronic ballots (clause 13) and Schedule 3

The majority of respondents to the survey conducted for the statutory review agreed that electronic voting should be allowed, provided this is permitted by the association's constitution. The Act was amended to enable electronic as well as postal ballots.

The provisions proposed in the Regulation have drawn on the procedures in the *Strata Schemes Management Act 2015* as associations and strata body corporates have considerable similarities; they

both largely comprise of volunteers. The provisions are set out in Schedule 3 and outline straight forward procedures for a returning officer to follow.

1. Are the procedures for electronic and postal voting set out in clause 13 and Schedule 3 fair and reasonable? If not, what procedures would be preferable and why?

Keeping of accounts and minutes of meetings (clause 14)

The obligation on the Committee to keep records that correctly record and explain its financial transactions and financial position, and minutes of the proceedings of its committee meetings and general meetings, is set out in section 50 of the Act. The section provides that the Regulations may make provision for or in respect of the keeping and inspection of records and minutes under this section. The statutory review report recommended that when the Regulation is remade, provision should be made that the records can be kept in electronic format and that financial records must be kept for at least 5 years. This was the view of the majority of respondents to the statutory review survey.

2. Are the procedures for keeping of accounts and minutes of proceedings in clause 14 reasonable? If not, what procedures would be preferable and why?

Application for transfer registration declaration (clause 15)

An association may apply for a transfer of registration declaration when the association seeks to transfer its registration to a registration under a corresponding law. Corresponding laws are defined to mean the *Co-operative National Law (NSW)* or either of the Commonwealth laws being the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strata Islander) Act 2006*.

A requirement (if applicable) to include in the application evidence that the association's funding bodies have been advised of the transfer has been removed. This is a matter for the association and funding bodies and is not relevant to the making of the transfer declaration.

Transitional provision relating to financial year clause in model constitution (clause 19)

As a result of the statutory review, section 25 of the Act was amended so that where an association's constitution is the model constitution, any amendments to the model constitution take effect on the day the relevant changes to the model constitution comes into operation. This takes effect without the association having to pass a special resolution or requiring approval of the Department's Secretary.

From 1 September 2016, section 25 as substituted by the Amendment Act will apply to all associations. If an association's constitution (irrespective of when the association was registered) fails to address a matter in Schedule 1 of the Act, the provision in the model constitution automatically applies.

Schedule 1 of the Act provides that one of the matters that must be addressed in the constitution is the association's financial year. However, if an association (formed and constituted under the former 1984 Act) is operating under the previous scheme, then its constitution will not deal with a financial year as clause 4 of Schedule 4 to the Act will apply until the association changes its rules under the Act¹. From 1 September 2016, an association whose constitution does not deal with a financial year will have the financial year provision in the model constitution (proposed clause 47 of Schedule 1 of the Regulation) included in its constitution.

Clause 19 has been inserted in the proposed Regulation to provide a transitional provision so that the amendment to section 25 of the Act and the model constitution addressing the financial year does not have the effect of changing the financial year of those associations formed and constituted under the former 1984 Act. This clause provides a substitute provision for the financial year in the model constitution for these associations to ensure that these associations do not go through the costly process of amending their constitution simply to retain their original constituted financial year. The substitute provision will apply until the association changes its financial year in accordance with the Act.

3. Is the effect of clause 19 clear?

4. Does the substitute provision for the financial year in the model constitution adequately address the issue for those associations registered under the former 1984 Act?

Schedule 1 Model constitution

Every association must have a constitution. The constitution can be the association's own constitution (which may incorporate provisions from the model constitution) or the model constitution (adopted without modifications) prescribed under the Regulation. However, it must address each of the matters referred to in Schedule 1 of the Act.

¹ **Schedule 4 Associations Incorporation Act 2009**

4 Rules of existing associations

(1) The rules of a former association are taken to be its constitution under this Act and, until the former association changes them under this Act, are taken to comply with the requirements of this Act.

(2) To the extent to which a former association adopted the model rules established under the 1984 Act, and until it changes its rules under this Act, those model rules continue in force in relation to that association.

These requirements were amended as a result of the statutory review and new requirements were included to Schedule 1 of the Act to provide that the constitution must:

- within the composition and function of the committee, address the maximum number of consecutive terms of office of any office-bearer on the committee, and
- provide for postal or electronic voting, and
- provide for the winding up of the association.

Many associations adopt the model constitution set out in the Regulation, which provides a structure for fair, efficient and accountable administration of an association and can save an association the time and costs of developing its own constitution.

The model constitution set out in Schedule 1 of the proposed Regulation reflects the current model constitution, with some changes to comply with the new requirements and other minor amendments as follows:

Part 2 Membership

- clause 3 has been amended to also allow nominations for membership to be made by email or other electronic means, if the committee so determines.

Part 3 The committee

- a new subclause 5 has been inserted to clause 14 to provide that there is no maximum number of consecutive terms for which office-bearers on the committee may hold office. This way the status quo will be maintained for the majority of associations who formed and constituted on this basis. If an association wishes to ensure that leadership is refreshed, it would amend this rule.
- clause 16 has been amended to provide that the association's secretary can keep minutes in written or electronic form, and the chairperson may sign meeting minutes electronically.
- a new clause 21 has been inserted to enable committee members to appoint (even if a quorum cannot be established for making the appointment) an association member as a committee member to make up a quorum for a committee meeting. This will address situations where committee members have resigned leaving an association with insufficient committee members to establish a quorum. This way the remaining committee members will have the ability to act validly when they cannot establish a quorum. The provision is modelled on similar provisions in section 201H(1) and (3) of the *Corporations Act 2001* of the Commonwealth and section 173(3) of the *Co-operatives National Law (NSW)*.
- a new clause 22 has been inserted to recognise that committee meetings can be held at two or more venues using any technology the committee approves. Teleconference, videoconference and online video communication are some examples of the technology that can be used. A committee member who takes part in a committee meeting through the use of technology has the same rights as the members who are present at the meeting, including voting rights.

Part 4 General meetings

- clause 36 (current clause 34) has been amended to permit electronic voting.
- a new clause 37 has been inserted to recognise that general meetings can be held at two or more venues using any technology the committee approves that gives each of the association's members a reasonable opportunity to participate. A member who participates at such a meeting has the same rights as the members who are present at the meeting, including voting rights.

Part 5 Miscellaneous

- clause 40 (current clause 37) has been amended to take into account funds that are managed electronically as a significant number of associations now use electronic banking.
- a new clause 41 has been inserted to indicate the non-profit nature of an association by providing that the association must only use its funds and assets so it is consistent with its objectives and that it must not conduct its affairs to provide a monetary gain for any of its members.
- a new clause 42 has been inserted to provide that on the winding up of the association, any surplus property of the association is to be transferred to another non-profit association with similar objectives.
- clause 44 (current clause 39) has been amended to provide that the records, books and other documents relating to the association are to be kept in New South Wales at the main premises of the association or at the association's official address rather than just being kept in the public officer's custody.
- clause 47 (current clause 42) has been amended to include an additional note that clause 19 provides a substitute provision for the financial year in the model constitution for associations incorporated under the former 1984 Act whose constitution does not address the financial year.

5. Do the matters proposed in the model constitution properly address the requirements under Schedule 1 of the Act? If not, which matter(s) and why?

6. Do you support the changes made to the model constitution? If not, explain which change you do not support and why?

Schedule 2 Unacceptable names

Schedule 2 of the Regulation sets out the circumstances in which a name may be declared to be unacceptable, in addition to those categories listed under section 18 of the Act. The statutory review contained recommendations about unacceptable names which should be added to Schedule 2 of the Regulation. The proposed Regulation amends the existing Schedule 2 to give effect to those recommendations.

Item 1 of Schedule 2 in the proposed Regulation has been amended to provide two exceptions to the existing prohibition relating to registered business names to allow some flexibility to permit registration. These exceptions will mean that a name will now be acceptable, despite being identical to, or closely resembling a registered business name if:

- the Department's Secretary is of the opinion that it is unlikely that the public would be misled if the association were to operate under that name, or
- where the applicant for registration of the relevant association has reserved or registered that name under the Business Names Registration Act of the Commonwealth.

A new Item 4 has been inserted within Schedule 2 of the proposed Regulation to provide that a name will be deemed to be unacceptable if it is a name that is identical to, or closely resembles the name of a 'criminal organisation' or 'declared organisation' as defined in *Crimes (Criminal Organisations) Act 2012*.

Item 14 of Schedule 2 in the proposed Regulation (current Item 13) has been slightly modified to simply clarify that a name that is identical to, or closely resembles a name used by a former association is also deemed as unacceptable if the Department's Secretary is of the opinion that the public would be misled if the association operated with that name.

These proposed changes are necessary as they will ensure that inappropriate names cannot be used by associations. For example, names that may mislead the public or names that may suggest a connection with entities engaging in serious criminal activity as declared by the Court. This results in having a more accurate indication about associations and their activities for members and the general public.

7. Are there any other circumstances in which a name should be declared unacceptable? If so, what are the circumstances and why?

Schedule 3 Conduct of postal or electronic ballots

Schedule 3 sets out the procedures for voting on an ordinary or special resolution. The benefits of prescribed procedures are that there is a uniform, effective and transparent procedure for associations to use to pass resolutions, which minimises the potential for internal disputes.

The existing procedures in Schedule 3 have been redrafted in the proposed Regulation to enable electronic voting. Schedule 3 in the proposed Regulation covers matters such as:

- returning officer
- voting rolls
- procedures for electronic voting
- procedures for postal voting
- informal votes

- determining the result of a ballot
- returning officers' statements
- notification of special resolution ballot results
- retention of ballot papers.

If permitted by its constitution, an association will now have the flexibility to use either method (postal or electronic) for voting on an ordinary or special resolution. The proposed electronic voting procedures will allow association members to vote remotely either by using email or accessing a voting website. This is more cost effective compared to postal voting and can also increase member participation by making the voting process more convenient.

8. Are the voting procedures clearly expressed and easy to understand? If not, which procedure(s) is/are difficult to understand and explain how it can be improved?

9. Is the method in which electronic voting may be conducted (email or accessing a voting website) sufficient? If not, what other electronic voting methods should also be permitted?

10. Are there other ways the voting procedures can be improved? If so, what are they?

Schedule 4 Penalty Notice Offences

The proposed Regulation retains the existing Schedule 4, which lists the offences under the Act for which a penalty notice (commonly known as 'on-the-spot fines') may be issued and the penalty amount for each offence.

Penalty notices are a proportionate tool for ensuring compliance with the legislation.

Schedule 5 Fees

Schedule 5 prescribes the fees payable to the Department's Secretary for carrying out the administrative functions under the Act (including lodgement and late lodgement fees), and fees payable to an association. Fees are generally set on a cost recovery basis and should reflect the costs of providing the service as far as practical. The fee amount set needs to reflect the actual work involved, and revenue for effectively administering the legislation must be maintained.

The fee structure in Schedule 5 of the proposed Regulation has been reviewed which has resulted in:

- increases to most fees by 1.97 per cent which is in line with changes in the Consumer Price Index (CPI) for the preceding calendar year
- introduction of two fees relating to certain applications where a name has not been reserved
- decrease in one fee for the lodgement of financial statements for Tier 2 associations, and
- increases above the CPI for certain fees to reflect the actual amount of work involved in processing certain documents and/or providing the service.

New fees

The Regulation currently prescribes a fee for an application to register an association (Item 1) and a fee for an application for the approval to change an association's name (Item 2). If the proposed or nominated name in either application has not been reserved, these applications can be rejected. To reserve a name, a separate application must be made and a separate fee is payable.

Following the recommendation in the statutory review of the Act, failure to reserve a name will no longer be a ground in which the Department's Secretary can refuse a registration application or an application to change an association's name. As a result, applications for which a name has not been reserved will need to have the name assessed as part of the registration process. To recover the costs for the additional work needed, fees have been introduced to Items 1 and 2:

- Item 1(b): the proposed fee for an application for the registration of an association where the name of the association has not previously been reserved is \$164. The proposed fee represents a \$13 reduction in the total amount that would be payable if the name was not reserved (name reservation fee is \$49 plus registration fee \$128 totals \$177)
- Item 2 (b): the proposed fee for an application to change an association's name where the name of the association has not previously been reserved is \$98. The proposed fee represents a \$13 reduction in the total amount that would be payable if the name was not reserved (name reservation fee is \$49 plus name change fee \$62 totals \$111).

The proposed new fees represent the costs involved in carrying out additional work that will be required in assessing the proposed name of an association where the name has not previously been reserved.

Fee reduction

The statutory review contained a recommendation to reduce the fee for a Tier 2 association which lodges its financial statement within the due period to the extent possible by increasing other fees. As majority of the associations (93 per cent) are Tier 2 and receiving annual financial returns represents the majority of the cost of administering the Act, there is a limited capacity to make up the difference in revenue by raising other fees. Therefore under the proposed Regulation, the lodgement of summary of Tier 2 association's financial affairs (Item 12) has been reduced from \$54 to \$44, which represents an 18.5 per cent reduction to the fee.

Fee increases above CPI

Fair Trading sustains costs each year to ensure associations are compliant with the legislative requirements. These costs are recouped through fees which associations pay when lodging various documents. For equity reasons, that is, to ensure that the fees reflect the cost of the Act's administration, certain fees have increased above the CPI rate. These increases, however, have been limited so that the overall fee income remains the same and to ensure that the proposed fee amount still represents the actual work involved and the services being provided as follows:

- the fees for Items 8, 17, 24 and 26 have increased to \$83 as the current fee amount for each item does not reflect the level of work involved in processing the application. The work involved for Items 8, 17, 24 and 26 each require a higher level of assessment and is similar to the amount and level of work involved for Item 23. The proposed fee for Item 23 is \$83 (CPI increase)
- the fee for Item 9 for the lodgement of summary of Tier 1 association's financial affairs has increased to \$187. Tier 1 associations are a more complex entity therefore considerable amount of work is involved in processing and assessing financial summaries, audits and resolutions for Tier 1 associations. Fees for Tier 1 associations may however be much lower if the association were to become a special purpose company, that is, incorporated under the Commonwealth's *Corporations Act 2001*. In this way Tier 1 associations have a choice about their form of incorporation
- the late lodgement fees for documents of Tier 1 associations (Item 11) have increased by 3.46 which is proportional to the increase to the lodgement fee under Item 9
- the fees for Items 15 and 16 have increased to \$187. The matters for both these items relate to Tier 1 associations and the decision making and associated time required for both matters is as complex as processing Tier 1 association financial documents. An application under Item 15 requires examination of the qualifications to determine the person's experience in conducting audits. About 10 applications each year of this type are lodged. An application under Item 16 requires a review of the financial statements and if the exemption is approved, a mini-audit is carried out by the Registry and the exemption is usually only for one year. About 120 applications of this type are received each year.

11. Are the new fees for applications to register an association or change its name (if the name has previously not been reserved) reasonable? If not, why?

12. Are the other changes to the fee amounts appropriate? If not, which fee amounts are inappropriate and why?

Appendix 1

Background information

Incorporated associations enable community interest groups to develop and provide services to the members in a manner which is consistent with their purpose and objects and as set out in their constitution. Their legal identity is provided by the *Associations Incorporation Act 2009* (the Act).

The Act commenced on 1 July 2010. The Act contains a requirement for the Minister to review the Act as soon as possible after 5 years from the date of assent to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The report of the statutory review of the Act was tabled in Parliament on 17 November 2015. The review found that the legislation is popular with its users and that it could be improved with amendments to deal with certain aspects of running an organisation which are either unclear or proving to be impractical. The Government has approved the recommendations of the report. The recommendations are brought into being through the *Associations Incorporation Amendment (Review) Act 2016* and the making of the Associations Incorporation Regulation 2016.

The report of the statutory review benefited from both the input of organisations whose constituency includes incorporated associations and from the more than 1500 association members who completed a survey thereby supplying the 'grass roots' perspective.

Aside from the requirements of the Act, many associations are part of other networks and comply with additional and different accountability. In this way the Act and its accompanying regulation is the foundation to enable the achievement of an organisation's purpose.

Appendix 2

Summary of the Regulation

Clauses 1, 2 and 3 include the name of the Regulation, the date of commencement and the definitions used in the Regulation.

Clause 4 prescribes a corresponding law for the purposes of section 4(1) of the Act.

Clause 5 provides the additional information to be included with the application for registration.

Clause 6 prescribes the maximum number of alternative names that can be nominated in an application for reservation of a name.

Clause 7 provides that unacceptable names for the purposes of section 18(1)(g) of the Act are set out in Schedule 2.

Clause 8 provides the manner for calculating gross receipts and current assets for Tier 1 associations, and prescribes an amount of \$250,000 for gross receipts and an amount of \$500,000 for current assets.

Clause 9 provides the matters that must be included in the financial statements for Tier 1 associations, and that the Department's Secretary may provide an exemption from having to prepare financial statements in accordance with the Australian Accounting Standards.

Clause 10 provides the matters that must be included in the financial statements for Tier 2 associations.

Clause 11 provides the model constitution for an association is set out in Schedule 1.

Clause 12 specifies the details of office holders to be included in the register of committee members.

Clause 13 provides that postal ballots or electronic ballots for voting on ordinary or special resolutions are to be conducted in accordance with Schedule 3.

Clause 14 provides that association records and minutes must be kept in written or electronic form (convertible to hard copy), and hard copy records must be made available for inspection. Also provides that financial records should be kept for at least 5 years after it is made.

Clause 15 prescribes the documents that an association must include with an application for a transfer of registration declaration.

Clause 16 provides the manner and form in which a certificate of authority is issued under section 88(1)(a) of the Act.

Clause 17 provides that penalty notice offences and the penalty amount for such offences are specified in Schedule 4.

Clause 18 declares associations to be an applied Corporations legislation matter, subject to certain modifications.

Clause 19 provides a transitional provision to address the financial year of certain associations incorporated under the former 1984 Act in the model constitution.

Clause 20 provides that a fee is payable as specified in Column 2 of Schedule 5 for each matter listed in Column 1 of Schedule 5.

Schedule 1 sets out the model constitution.

Schedule 2 sets out unacceptable names.

Schedules 3 sets out the procedures for conducting postal and electronic ballots.

Schedule 4 sets out the offences under the Act for which penalty notices apply in Column 1, and the penalty amounts that apply to each offence in Column 2.

Schedule 5 sets out the fees payable to the Department's Secretary and fees payable to an association.

Appendix 3

List of stakeholders

Key stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Associations Forum
- Justice Connect
- Council of Social Services NSW
- ProBono Australia
- Fundraising Institute Australia
- Law Society of NSW
- Financial Rights Legal Centre
- NSW Business Chamber
- Governance Institute of Australia
- Illawarra Forum
- Australian Institute of Company Directors
- Institute of Chartered Accountants
- CPA Australia
- Public Fundraising Regulatory Association



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