

# Regulatory Impact Statement

## **Associations Incorporation Regulation 2009**

A Regulation under the  
*Associations Incorporation Act 2009*



**Fair  
Trading**

November 2009

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## 1. INTRODUCTION

### 1.1 Title and proponent of the proposed Regulation

The Associations Incorporation Regulation 2009 has been developed by NSW Fair Trading and is proposed by the Minister for Fair Trading, the Hon. Virginia Judge, MP.

### 1.2 Why is the Regulation being made?

The *Associations Incorporation Act 2009* was passed by Parliament on 31 March 2009. The new Act will repeal and replace the *Associations Incorporation Act 1984*. It is anticipated the Act will commence in early 2010. Accompanying regulations need to be made before the 2009 Act can commence.

The attached draft Regulation has been developed to accompany the 2009 Act and is now being released for public consultation.

### 1.3 Status of the proposed Regulation

The proposed Regulation is only a draft at this stage. This regulatory impact statement is being released along with the draft Regulation so that associations and other interested people and organisations can consider the proposed requirements and submit comments and suggestions. The draft Regulation may then be amended to take into account suggestions made in submissions. Notice of the making of the new Regulation will be published on the NSW Legislation website before the Regulation comes into effect.

### 1.4 What is the purpose of this regulatory impact statement?

The *Subordinate Legislation Act 1989* controls the making of regulations in NSW. This Act aims to reduce unnecessary regulation by government. It requires that a regulatory impact statement be prepared and public consultation be undertaken before a new Regulation can be made.

The regulatory impact statement explains the purpose of the Regulation, weighs up the economic and social aspects of the proposed Regulation and considers other possible options to meet the aims of the proposed Regulation. The regulatory impact statement must demonstrate that the proposed Regulation is the option which brings, on balance, the greatest overall benefit to the public.

The regulatory impact statement procedure aims to ensure that:

- the proposed Regulation is the most efficient and effective way of achieving the policy objective of the legislation; and
- the proposed Regulation imposes minimum costs on the community or produces an outcome where the expected benefits outweigh the expected costs.

The regulatory impact statement must:

- state the objectives of the proposed Regulation and the reason for them;
- identify any alternative options by which those objectives might be achieved;
- assess the costs and benefits of each alternative - this assessment must consider the alternative of not taking any action;
- assess which of the alternatives will bring about the greatest net benefit or the least net cost to the community; and
- outline the consultation program to be undertaken.

The impact of a proposed regulation is generally expressed in terms of:

- 'cost-benefit' analysis of the options, where the costs and benefits flowing from the regulation can be measured in monetary terms; or
- 'cost effectiveness' analysis, where the benefits of the regulation cannot readily be expressed in monetary terms.

## **2. BACKGROUND**

### **2.1 The Associations Incorporation Act 1984**

The *Associations Incorporation Act 1984* provides small, non-profit and non-commercial organisations with a simple and inexpensive means of becoming a legal entity and provides a form of limited liability. The Act also provides a legislative framework to assist in an association's general administration and brings obligations, including maintaining proper financial and membership records. Similar legislation is in operation in all other States and Territories of Australia.

Incorporation is voluntary. Non-profit organisations are not obliged to incorporate in New South Wales. Associations may choose to operate as unincorporated bodies or incorporate under some other legislation, for example, as a co-operative or corporation. Currently there are approximately 36,000 incorporated associations in New South Wales, including social, sporting, cultural and hobby groups often made up of volunteers.

A review of the 1984 Act yielded a range of recommendations to improve the regulation of associations and update the legislation. A consultation draft Bill was released for public comment on 27 February 2008 with the closing date for submissions being 11 April 2008. Fifty-nine submissions were received from individuals and various organisations during that period. Revisions were made to the Bill in response to the feedback provided in the submissions and in meetings held with stakeholders before the Bill was introduced into Parliament.

### **2.2 The Associations Incorporation Act 2009**

The Associations Incorporation Act 2009 was passed by Parliament on 31 March 2009 and received assent on 7 April 2009. The 2009 Act introduces a more modern and streamlined approach to the regulation of associations and removes a number of archaic requirements. It allows more flexibility for associations and provides for stronger protection of association finances. Most of the day-to-day procedures and operations of associations will not be directly impacted. The new laws have been carefully designed to make the transition as smooth as possible for associations and their members.

It is anticipated that the 2009 Act and the Regulation will commence in early 2010. Until then, the existing Associations Incorporation Act 1984 will remain in place and associations should keep following the current requirements. Fair Trading will carry out an extensive information campaign to ensure all associations are made aware when the new legislation commences.

The most important changes are outlined below.

#### ***Changes to association constitution***

Under the new Act, an association's 'rules' will instead be called its 'constitution'. The constitution will need to specify the association's end of financial year. A 'model constitution' will be set out in the Regulations and made available on the Fair Trading website.

***Association's constitution will automatically comply with the new requirements***

To ensure there is no unnecessary work for associations in the transition to the new laws, the current 'rules' of an existing association will automatically be taken to comply with the new Act until the association chooses to make changes. When the association lodges changes it will need to ensure all aspects of the constitution comply with the new requirements.

***More flexibility for meetings and resolutions***

An association will be able to hold a postal ballot to pass any kind of resolution where this is provided for in the association's constitution. An association's constitution may also permit meetings to be held at more than one venue using technology that allows members in different places to participate. This should make it easier for meetings to be organised and for more members to be involved.

***More choices for official address of the association***

Currently, the only address for an association that can be put on the public register is the residential address of the public officer. The new Act allows the official address to be the association's premises or the public officer's residence or place of business or employment. The address will still have to be in New South Wales. The public officer's address currently on the public register will continue to be the official address of the association until notice of another address is lodged with Fair Trading.

***Common seal will no longer be required***

Associations will no longer need to use a common seal to execute documents. Instead, documents can be signed by two of the association's authorised signatories. The public officer will automatically be an authorised signatory.

***More flexibility for annual general meetings***

Associations will still have a financial year of 12-18 months. Associations will no longer be required to hold an annual general meeting in each calendar year, but will still need to hold one within 6 months of the end of the financial year.

***Two tiered financial reporting***

The new Act divides associations into two tiers for reporting purposes. The requirements will not change for smaller, or 'Tier 2' associations as they will be known, and they will still only need to lodge a summary of their financial affairs.

Larger, or 'Tier 1', associations above a certain financial threshold will be required to provide an audited financial statement each year, unless they have been granted an exemption by Fair Trading. The audit requirements will protect associations that have responsibility for significant financial turnover or assets.

The amount of the threshold is to be prescribed in the Regulation, see section 7.3 of this regulatory impact statement.

***Statutory duties of committee members and obligations of office bearers***

New provisions imposing statutory duties on committee members are set out in the new Act. Committee members will need to disclose any potential conflict of interest and will not be able to use their position or information for a dishonest purpose. Office bearers will have to hand over any documents of the association within 14 days after ceasing to hold office. This will make it easier for new committee members to carry out their duties.

### ***Australian residency***

At least three committee members will have to reside in Australia and the public officer will have to be a resident of New South Wales.

### ***Penalty notice system***

Certain offences under the new Act will be able to be dealt with by a 'penalty notice', which is a type of fine issued as an alternative option to having a matter dealt with in court. No penalty notices will be issued in the first six months after the new Act commences, they will only be used where other warnings and notices have not been followed.

## **3. OBJECTIVES OF THE PROPOSED REGULATION**

The primary objective of the Government in developing the proposed draft Associations Incorporation Regulation 2009 is to ensure that the objectives of the Act can be achieved effectively and efficiently.

The objectives of the Regulation, arising from the objectives of the Act are:

- to enable the *Associations Incorporation Act 2009* to operate effectively by prescribing matters of a procedural and administrative nature;
- to facilitate active participation in associations;
- to assist incorporated associations in their operation by providing a model constitution;
- to ensure associations are financially accountable; and
- to support effective regulatory supervision of associations.

These objectives have been used as the criteria against which each of the regulatory options has been assessed in section 7 of this document.

## **4. OPTIONS TO ACHIEVE OBJECTIVES**

Two options for achieving the above objectives are considered in this regulatory impact statement:

### **Option 1: Do nothing**

This option would mean that the *Associations Incorporation Act 2009* would operate without any accompanying Regulation.

### **Option 2: Make the proposed Regulation**

This option would enable the *Associations Incorporation Act 2009* to operate with the Regulation to provide the required administrative detail for the operation of the Act.  
***This is the preferred option.***

## 5. CRITERIA USED TO ASSESS THE REGULATORY OPTIONS

The following criteria, which relate to the objectives of the proposed Regulation, are used in the evaluation of the above options:

1. The extent to which the Regulation supports the regulatory objectives outlined above in section 3.
2. The cost effectiveness of each option, in terms of costs and benefits to consumers, industry and government; associations.
3. The extent to which the Regulation supports an affordable scheme for the incorporation and effective management of non-profit organisations.

## 6. SCOPE OF THE REGULATION AND REGULATORY FRAMEWORK

The proposed Regulation provides the administrative detail to enable the intent of the Act to be implemented. The scope of any regulation is limited by the regulation making powers provided under the enabling legislation. The regulation making powers of the Act and the scope of the proposed Regulation are summarised in Table 1 below.<sup>1</sup>

**Table 1: Regulation making powers of the *Associations Incorporation Act 2009* and scope of the proposed *Associations Incorporation Regulation 2009***

Section	Regulation making power provided by the Act	Clause	Scope of the proposed Regulation
<b>Part 1 Preliminary</b>			
<b>4 Definitions</b>			
4(1)	To prescribe any modifications to the standards issued by the Australian Accounting Standards Board	-	None prescribed
	To prescribe any modifications to the standards issued by the Auditing and Assurance Standards Board	-	None prescribed
	To declare any law of this or another State or Territory, or any law of the Commonwealth, to be a corresponding law for the purposes of this Act	-	None prescribed
	To prescribe the model constitution	10	Prescribes a model constitution
<b>5 Definition of "pecuniary gain"</b>			
5(1)(d)	To prescribe an organisation, or a class of organisations, as providing pecuniary gain for members	-	None prescribed
5(2)(g)	To prescribe a class of pecuniary gain whereby an organisation is deemed not to provide pecuniary gain for its members	-	None prescribed
<b>Part 2 Registration of associations</b>			
<b>6 Application for registration</b>			
6(3)(h)	To prescribe information required for an application for registration of an association	4	Prescribes documents to be included with an application for registration by a registrable corporation  Prescribes documents to be included with an application for registration by associations proposing to amalgamate
6(3)(i)	To prescribe the fee to accompany an application for registration of an association	17	Prescribes fee
<b>10 Application for change of particulars</b>			
10(3)(d)	To prescribe the fee to accompany an application for registration of a change in an association's name, objects or constitution	17	Prescribes fee
<b>15 Application for reservation of name</b>			
15(2)(c)	To prescribe the fee to accompany an application for reservation of a name	17	Prescribes fee

<sup>1</sup> In this table, the provisions of the legislation are paraphrased. For the exact wording, refer to the Act on the Parliamentary Counsel's Office legislation web site and to the draft Regulation at Appendix A to this regulatory impact statement.

Section	Regulation making power provided by the Act	Clause	Scope of the proposed Regulation
15(3)	To prescribe the maximum number of alternative names for an association	5	Prescribes 3 names as the maximum
<b>18 Unacceptable names</b>			
18(1)(g)	To declare unacceptable names for an association	6 & Schedule 2	Declares unacceptable names for an association
<b>Part 4 Management of associations</b>			
<b>29 Register of committee members</b>			
29(2)(d)	To prescribe particulars to be included in the register of committee members	11	Prescribes details of office holders to be included in the register
<b>31 Disclosure of interests</b>			
31(3)	To prescribe the maximum fee for inspection, by any member of an association, of the book that records particulars of any disclosure made under section 31 by a committee member	17	Prescribes fee
<b>37 General meetings</b>			
37(2)(b)	To prescribe the further period of time after the close of an association's financial year (beyond six months), for holding an annual general meeting	-	None prescribed
<b>38 Voting generally</b>			
38(2)	To prescribe the manner for the conduct of postal ballots for voting on an ordinary resolution	12 & Schedule 3	Prescribes procedures for the conduct of postal ballots
<b>39 Voting on special resolutions</b>			
39(3)	To prescribe the manner for the conduct of postal ballots for voting on a special resolution	12 & Schedule 3	Prescribes procedures for the conduct of postal ballots
<b>Part 5 Financial reporting</b>			
<b>42 Application of Division</b>			
42(1)(a)	To prescribe the manner for calculating gross receipts of Tier 1 associations	7(1)	Prescribes the manner for calculating gross receipts of Tier 1 associations
42(1)(b)	To prescribe the manner for calculating current assets of Tier 1 associations	7(2)	Prescribes the manner for calculating current assets of Tier 1 associations
42(1)	To prescribe the amounts for gross receipts and current assets for financial reporting to determine a Tier 1 association	7(3)	Prescribes a proposed amount for gross receipts of \$200,000  Prescribes a proposed amount for assets of \$500,000
<b>43 Financial statements</b>			
43(2)	To prescribe matters to be dealt with in financial statements of Tier 1 associations	8	Prescribes matters to be dealt with in financial statements of Tier 1 associations
<b>45 Lodgement of documents with Director-General</b>			
45(2)(b)	To prescribe the fee to accompany documents to be lodged by Tier 1 associations in accordance with section 45	17	Prescribes fee
<b>47 Financial statements</b>			
47(2)	To prescribe matters to be dealt with in financial statements of Tier 2 associations	9	Prescribes matters to be dealt with in financial statements of Tier 2 associations
<b>49 Lodgement of summary with Director-General</b>			
49(2)(b)	To prescribe the fee to accompany the summary of the association's financial affairs to be lodged by Tier 2 associations in accordance with section 49	17	Prescribes fee
<b>50 Keeping of accounts and minutes of proceedings</b>			
50(4)	To make provisions for or in respect of the keeping and inspection of records and minutes under section 50	-	None prescribed
<b>Part 6 External administration and winding up</b>			
<b>54 Appointment of administrator—Corporations legislation</b>			
54(1)(f)	To prescribe such other modifications (within the meaning of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> ) relating to the declaration of an association as an applied Corporations legislation matter	-	None prescribed
<b>Division 3 Winding up</b>			
<b>64 Modifications to text of applied Corporations Act 2001 of the Commonwealth</b>			
64(1)(b)	To prescribe such other modifications (within the meaning of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> ) relating to the declaration of the winding up of an association as an applied Corporations legislation matter	-	None prescribed

Section	Regulation making power provided by the Act	Clause	Scope of the proposed Regulation
<b>Part 7 Cancellation and transfer of registration</b>			
<b>78 Application for transfer of registration declaration</b>			
78(3)(d)	To prescribe information to be included in an application by an association for transfer of registration declaration in relation to its proposed registration under a corresponding law	13	Prescribes documents to be included with an application for transfer of registration declaration
78(3)(e)	To prescribe the fee to accompany an application for transfer of registration declaration	17	Prescribes fee
<b>84 Reinstatement of registration</b>			
84(3)	To make provision of a savings or transitional nature consequent on the reinstatement of an association's registration and incorporation under section 84	-	None prescribed
<b>Part 8 Enforcement provisions</b>			
<b>88 Manner in which power of entry to be exercised</b>			
88(1)(a)	To prescribe the issue of a certificate of authority to evidence the authority of an authorised officer to exercise, in relation to any premises, the powers conferred by this Division	14	Prescribes the manner for the issue of a certificate of authority under section 88(1)(a) of the Act
<b>93 Penalty notices</b>			
93(6)(a)	To prescribe a penalty notice offence by specifying the offence or by referring to the provision creating the offence	15 & Schedule 4	Prescribes penalty notice offences
93(6)(b)	To prescribe the amount of penalty payable for the offence	15 & Schedule 4	Prescribes a penalty notice amount of \$50 for penalties of 1 and 2 penalty units and \$200 for penalties of 5 penalty units
93(6)(c)	To prescribe different amounts of penalties for different offences or classes of offences	15 & Schedule 4	Prescribes a penalty notice amount of \$50 for penalties of 1 and 2 penalty units and \$200 for penalties of 5 penalty units
<b>Part 9 Application of Corporations legislation</b>			
<b>96 Applying the Corporations legislation to associations</b>			
96(1)	To declare any matter relating to associations to be an applied Corporations legislation matter for the purposes of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration)	16	Declares associations to be applied Corporations legislation matters for the purposes of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> in relation to section 1322 (1)–(3A) and (4)–(6) of the Corporations Act, subject to certain modifications.
96(2)(a)	To specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration	-	None prescribed
96(2)(b)	To specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person	-	None prescribed
96(2)(c)	To identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time	-	None prescribed
96(2)(d)	To specify a New South Wales court (other than the Supreme Court) to exercise any function conferred by any excluded Corporations legislation provision to which the declaration relates	-	None prescribed
<b>Part 10 Miscellaneous</b>			
<b>98 Register of Incorporated Associations</b>			
98(2)(a)	To prescribe the fee to inspect any document that has been lodged with the Director-General under this Act	17	Prescribes fee.
98(2)(b)	To prescribe the fee to be given a copy (including a copy certified by the Director-General) of, or an extract (including an extract certified by the Director-General) from, any document lodged with the Director-General under this Act	17	Prescribes fee.
<b>107 Regulations</b>			
107(1)	Provides a general regulation making power for the making of regulations necessary or convenient to be prescribed for carrying out or giving effect to the Act	-	None prescribed
107(1)(a)	To prescribe the form and content of a model constitution	10 & Schedule 1	Prescribes the form and content of a model constitution
107(1)(b)	To prescribe the manner and form in which an application for an extension of time under section 37 (2) is to be made, and the fees that are payable in connection with any such application	-	None prescribed

Section	Regulation making power provided by the Act	Clause	Scope of the proposed Regulation
107(1)(c)	To prescribe additional fees payable for late payment of any prescribed fee	17	Prescribes fee
107(1)(d)	To exempt any association, or class of associations, from the requirements of the Act in relation to the preparation and auditing of financial statements	-	None prescribed
107(1)(e)	To prescribe the books, documents and other records that must be kept by associations	-	None prescribed
107(1)(3)	To impose a penalty not exceeding 2 penalty units for any offence against the provision of any regulation	-	None prescribed
<b>Schedule 4 Savings, transitional and other provisions</b>			
(1)	To make provisions of a savings or transitional nature consequent on the enactment of the Act	-	None prescribed

## 7. IMPACT ASSESSMENT OF THE PROPOSED REGULATION

This part of the regulatory impact statement:

- discusses the provisions of the proposed Regulation;
- weighs up the costs and benefits of the proposed provisions and alternative options; and
- assesses the overall impact of the proposed Regulation.

The impact of the clauses of the proposed Associations Incorporation Regulation 2009 on consumers, traders, industry, government and the general community is assessed below.

A copy of the proposed Regulation is in Appendix A to this regulatory impact statement.

### 7. Impact of individual clauses of the proposed Regulation

#### 7.1 Part 1 Preliminary (clauses 1-3)

##### **Objective**

To prescribe machinery matters necessary for the operation of the Regulation.

##### **Provision**

Clause 1 cites the name of the proposed Regulation. Clause 2 specifies the commencement date. Clause 3 defines the term *the Act*.

##### **Comment**

These provisions are the same as those contained in the current Regulation, with the exception of the omission of the definition of Director-General. This term is defined in the Act and the same definition applies to the Regulation.

##### **Alternative options**

There are no alternative options to clauses 1 to 3 as these are purely machinery provisions.

##### **Assessment of costs and benefits of proposed clauses**

The provisions contained in clauses 1-3 are of a machinery nature and no costs arise from them.

## 7.2 Part 2 Registration of associations (clauses 4-6)

### **Clause 4 - Additional information to be included with application for registration**

#### **Objective**

To ensure the financial accountability of entities applying for registration as an association.

#### **Provision**

Clause 4 prescribes that:

- an application for registration made on behalf of a *registrable corporation* must include a copy of the corporation's financial statements for the two preceding financial years and evidence that the statements have been lodged with the Australian Securities and Investments Commission or the NSW Registry of Co-operatives & Associations (whichever is applicable); and
- an application to amalgamate two or more associations must include an estimate of the income and expenditure of the amalgamated association for the first financial year; an itemised statement of the combined assets and liabilities, a copy of the original certificate of incorporation of each association and a copy of any outstanding annual statements for each of the amalgamating associations for the preceding three financial years.

#### **Comment**

These are new requirements made under section 6 of the 2009 Act, which will allow corporations and co-operatives to apply for incorporation as an association. The current requirements for transfer of incorporation by a company or co-operative seeking registration as an association are set out in section 48 of the 1984 Act.

#### **Alternative options**

The alternative would be not to require the financial information to be provided with an application. However this would reduce the ability to scrutinise the financial situation of corporate bodies applying for registration as an association.

#### **Assessment of costs and benefits of proposed clause**

There are no costs arising from the proposed clause. The clause simply requires entities seeking to register or amalgamate to provide with their application copies of documents they are required to prepare under other provisions of the Act or other legislation. The benefits are to enable the Director General to assess the financial situation of corporate entities applying for registration as an association and associations applying to amalgamate.

### **Clause 5 - Reservation of name - maximum number of alternative names**

#### **Objective**

To ensure the number of alternative names proposed for an association are not excessive.

#### **Provision**

Clause 5 prescribes a maximum of three alternative names that may be nominated in an application for reservation of a name under section 15 of the Act.

#### **Comment**

This is a new provision.

**Alternative options**

The alternative would be to not restrict the number alternative names that may be nominated. This could create possible delays in processing of applications.

**Assessment of costs and benefits of proposed clause**

There are no costs arising from the proposed clause. The benefits are streamlined and faster processing of registration applications.

**Clause 6 - Unacceptable names****Objective**

To ensure inappropriate names are not registered for associations.

**Provision**

Clause 6 refers to Schedule 2 of the proposed Regulation, which sets out names declared to be unacceptable, in addition to those listed in section 18 of the 2009 Act.

**Comment**

This provision reflects current requirements under section 12 of the 1984 Act.

**Alternative options**

The alternative would be not to declare any names as unacceptable. This could result in inappropriate names being used by associations, for example, names that may be misleading in relation to the nature, objects or purposes of the activity conducted or names that may suggest a connection with certain entities where that connection does not exist.

**Assessment of costs and benefits of proposed clause**

There are no identifiable costs arising from the proposed clause. The benefits are that inappropriate names would not be able to be used by associations, resulting in a more accurate indication about associations and their activities for members and the general public.

**7.3 Part 3 Financial reporting (clauses 7-9)****Objective**

To ensure associations are subject to appropriate financial accountability requirements.

**Clause 7 - Gross receipts and current assets for Tier 1 associations**

Part 5 of the 2009 Act divides associations into two 'tiers' for reporting purposes. Larger, or 'Tier 1' associations, will have additional financial reporting requirements.

All associations will continue to be required to prepare annual financial statements and lodge a summary of the association's financial affairs with the Director General. 'Tier 1' associations will additionally need to lodge a copy of the financial statements and an auditor's report on the statements.

Whether an association is categorised as Tier 1 or Tier 2 will depend on whether its gross receipts during the relevant year or its current assets exceed an amount prescribed in the Regulation. It is also necessary for the Regulation to prescribe how gross receipts and current assets are to be calculated.

In regard to calculating gross receipts and current assets, the proposed Regulation prescribes that:

- gross receipts are equal to the total revenue recorded in the association's income and expenditure statement for the financial year; and
- current assets are equal to assets (other than real property or assets capable of depreciation) held by the association as at the end of the association's last financial year, including amounts held in financial institutions, stocks and debentures.

The proposed clause 7 prescribes that an association is a Tier 1 association if:

- its gross receipts exceed \$200,000; or
- its current assets exceed \$500,000.

### ***Comment***

This is a new provision that prescribes the manner for calculating gross receipts and current assets of associations and sets a threshold to determine if an association is categorised as Tier 1 or Tier 2, for financial reporting purposes.

### ***Alternative options***

The alternative would be not to prescribe the method or amounts. This would mean that the requirements under the Act could not be enforced and there would be no differentiation between large and small associations in terms of financial reporting. There could be a lack of accountability and an imbalance in the reporting burden, with larger associations preparing minimal financial statements, or smaller associations preparing detailed financial statements.

### ***Assessment of costs and benefits of proposed clause***

The proposed clause 7 does not impose any costs. Tier 2 (small) associations are required by the Act to prepare financial statements and lodge a summary with the Director General, and the proposed Regulation does not add any further requirements. Similarly, the cost for Tier 1 associations of having their financial statements audited is imposed by the Act, rather than the proposed Regulation.

The aim of the two-tiered system is to ensure that larger associations are properly accountable for their management of significant assets or financial turnover and to recognise that smaller associations should not be unduly burdened by the same financial reporting requirements. The audit requirements will protect associations that have responsibility for significant financial turnover or assets.

Although the proposed clause 7 does not impose any costs in itself, it will determine which associations are categorised as Tier 1 and, consequently, subject to the additional financial reporting and auditing requirements set out in the Act.

The proposed thresholds have been determined as the appropriate levels above which an association's financial responsibilities are significant enough to warrant additional accountability and financial monitoring, as a means of ensuring the assets are properly managed. The proposed thresholds are also consistent with the requirements of the equivalent regulations in place in Victoria.

### ***Clause 8 - Financial statements for Tier 1 associations***

Section 43 of the 2009 Act requires that Tier 1 associations' financial statements be prepared in accordance with Australian Accounting Standards and deal with matters prescribed in the regulations.

Clause 8 of the proposed Regulation prescribes that Tier 1 associations' financial statements must include details of any mortgages, charges and other securities affecting

any association property and a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

**Comment**

Section 26 of the 1984 Act currently requires these documents to be presented to members at the annual general meeting along with a range of other financial documents.

**Alternative options**

The alternative would be to not specify the proposed matters be dealt with in Tier 1 associations' financial statements. This could result in inaccurate financial statements and reduced accountability.

**Assessment of costs and benefits of proposed clause**

The prescribed documents are currently required to be presented to members, therefore the requirement to include them in the financial statements will not impose any additional costs. The benefits are more complete and accurate financial statements and better financial accountability for larger associations with significant assets and turnover.

**Clause 9 - Financial statements for Tier 2 associations**

The proposed clause 9 prescribes that the financial statements prepared by Tier 2 associations include an income and expenditure statement and balance sheet, details of any mortgages, charges and other securities affecting association property and a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

**Comment**

The requirements for financial statements will not change for Tier 2 associations and are the same as are required under the 1984 Act (sections 26 and 27).

**Alternative options**

The alternative would be to not prescribe the details of matters to be dealt with in financial statements. This could result in inaccurate financial statements and reduced accountability.

**Assessment of costs and benefits of proposed clause**

There are administrative and accounting costs arising from the requirement to prepare detailed financial statements. The benefits are better financial accountability.

**7.4 Part 4 Miscellaneous (clauses 10-17)**

**Clause 10 and Schedule 1 – Model constitution**

**Objective**

To provide a model constitution that can be adopted by associations.

**Comment**

The proposed model constitution set out in Schedule 1 of the proposed Regulation reflects the current model rules, with some changes to comply with the requirements of the 2009 Act.

**Alternative options**

The alternative would be to not provide a model constitution. In that case, an association could incur additional costs in obtaining legal and financial advice to develop a constitution.

**Assessment of costs and benefits of proposed clause**

There are no identifiable costs arising from the proposed clause. It is entirely optional for an association to use the model constitution. The benefits are that the model constitution provides a framework for fair, efficient and accountable administration of an association and can save an association the time and costs of developing its own constitution.

**Clause 11 - Register of committee members—prescribed particulars****Objective**

To ensure that data on the incorporated association's register of committee members is current and accurate.

**Provision**

The proposed Regulation prescribes that the register of committee members include the names of members of the committee who hold the positions of president, vice-president, secretary or treasurer, the date they were elected to the position and the date they ceased to hold the position.

**Comment**

This provision is identical to clause 13 of the current Regulation.

**Alternative options**

The alternative would be not to require the register of committee members to include the names of members of the committee.

**Assessment of costs and benefits of proposed clause**

This provision is of machinery nature and there are no direct costs arising from it. The benefits are that public information is available about current office bearers particularly in the case where legal action is being taken against an association. As there is no current requirement that information about changes to office bearers be lodged with NSW Fair Trading, any person wishing to contact an officer bearer is dependent upon the accuracy of the association's register.

**Clause 12 and Schedule 3 – Conduct of postal ballots****Objective**

To ensure postal ballots are conducted fairly.

**Provision**

The proposed Regulation provides sets out procedures for voting on an ordinary or special resolution.

**Comment**

This is a new provision under sections 38 and 39 of the Act.

**Alternative options**

The alternative would be not to prescribe the manner for the conduct of postal ballots. This could result in ad-hoc procedures by associations that may lead to disputes about the manner of conducting or results of the ballot.

**Assessment of costs and benefits of proposed clause**

There are no identifiable costs arising from the proposed clause. The benefits are consistent, effective and transparent postal ballot procedures for associations to pass resolutions and minimise disputes.

**Clause 13 – Application for transfer of registration declaration****Objective**

To protect the assets and legal arrangements of associations applying to transfer registration under a corresponding law.

**Provision**

Division 3 of Part 7 of the Act enables an association to apply to the Director General for a 'transfer of registration declaration' in relation to a proposal to transfer registration under a *corresponding law*, that is, the *Co-operatives Act 1992* or the *Corporations Act 2001* (Cwlth). The application must include any information required by the regulations.

The proposed clause 13 prescribes that the application include:

- a statement as to whether the entity to which the association is transferring is subject to rules that prohibit a distribution of profits to members;
- if the association receives funding, written evidence that the association's funding bodies have been advised of the proposed transfer;
- a statement declaring that the association's creditors are not likely to be materially prejudiced by the transfer;
- a statement declaring that the law under which the association is being transferred will adequately provide for the continuation of the association's legal personality after the transfer; and
- the association's financial reports for the preceding 3 years if these have not yet been lodged with the Director General under section 45 or 49 of the Act.

**Alternative options**

The alternative would be not to require the detailed information with an application. This could result in inappropriate decisions being made about applications to transfer to a different type of registration under a corresponding law, leading to a potential loss of the association's assets, inappropriate distribution to members and unintended impacts on arrangements with funding bodies and dealings with creditors.

**Assessment of costs and benefits of proposed clause**

There are minor administrative costs in preparing the required documents. The benefits are that adequate information will enable an appropriate decision to be made about applications to transfer to a different type of registration under a corresponding law. It will benefit organisations whose structure and size and/or nature of activities warrant a different type of registration.

**Clause 14 - Certificates of authority****Objective**

To support effective regulatory supervision of associations.

**Provision**

Part 8 of the Act enables an officer authorised by the Director General to obtain information and documents from an association, if the officer holds a certificate of authority, issued in accordance with the regulations. Clause 14 of the proposed Regulation provides that a certificate of authority must be in an approved form and contain details of the officer, the powers conferred on them under the Act and limitations to those powers and the certificate's expiry date.

**Provision**

The proposed clause prescribes the detail that must be included in a certificate of authority held by an authorised officer.

**Alternative options**

The alternative would be not prescribe the manner for the issue of a certificate of authority. This would mean the enforcement provisions of the Act, in relation to power to obtain information and documents, could not be fully exercised.

**Assessment of costs and benefits of proposed clauses**

There are no identifiable costs arising from the proposed clause. The benefits are that associations that are the subject of a requirement to produce information or documents or allow access to premises would be able to verify the investigating officer has been properly authorised by the Director General.

**Clause 15 and Schedule 4 – Penalty notice offences and penalties****Objective**

To prescribe the offences that may be dealt with administratively by issue of a penalty notice as an alternative to having a matter prosecuted in court.

**Provision**

The proposed 15 and Schedule 4 list certain offences under the Act for which penalty notices may be served and the penalty amount for each offence.

**Comment**

This is a new provision reflecting the provision in the 2009 Act that enables penalty notices to be issued.

**Alternative options**

Alternatives would be not to prescribe any offences as penalty notice offences, or to prescribe fewer offences or higher or lower penalty amounts. However, reducing the list of offences would reduce the benefits of taking matters away from the courts. The penalties applied by penalty notices are significantly lower than the maximum penalty that could be applied if a matter were taken to court, recognising the costs savings made. Increasing the penalty amount may result in offenders opting to have the matter heard in court in the hope of receiving a lesser penalty. Reducing the penalty amounts would lessen the deterrent factor.

**Assessment of costs and benefits of proposed clause**

There are no identifiable costs arising from the proposed clause. A penalty notice system saves associations, Fair Trading and the courts the costs and time involved in prosecuting offences. It enables minor breaches to be dealt with quickly and appropriately, without taking away the person's right to have the matter determined by a court if they choose.

**Clause 16 – Application of Corporations legislation to associations****Objective**

To provide certainty for associations that outcomes of meetings and votes are not invalidated as a result of minor errors.

**Provision**

Section 96 of the Act enables the regulations to declare that provisions of the *Corporations Act 2001* apply to associations. The proposed clause 16 would apply section 1322 (1)–(3A) and (4)–(6) of the Corporations Act, which relates to procedural irregularities. This provision ensures that the outcomes of a proceeding, such as a meeting or vote on a

matter, are not invalidated as a result of a minor, innocent or technical error which has not given rise to any substantial injustice, unless the appropriate court has determined that the irregularity has caused or may cause substantial injustice that cannot be remedied by an order of the Court.

***Alternative options***

The alternative would be to not declare section 1322 of the Corporations Act as applying to associations. This would mean associations would be uncertain about whether to proceed with the results of ballots and decisions made at meetings if it was later found there had been a procedural error, for example, an inadvertent failure to notify a member of a meeting.

***Assessment of costs and benefits of proposed clauses***

There are no identifiable costs arising from the proposed clause. The benefits are that associations will be able to proceed with implementing their decisions, despite the existence of a minor procedural irregularity or technical error, and avoid the cost of holding another meeting or ballot where the outcome would be the same.

***Clause 17 - Fees***

***Objective***

To enable partial fee recovery for services provided by NSW Fair Trading in relation to incorporated associations.

***Provision***

Various sections of the Act provide for the payment of a prescribed fee. The proposed clause 17 and Schedule 5 prescribe fees in relation to matters such as the registration, administration, reporting and lodgement requirements of associations.

***Comment***

The fees are for similar matters, and in the same amounts, as in the current Regulation, with a number additional fees relating to new requirements of the 2009 Act.

***Alternative options***

An alternative would be to not prescribe fees, which would mean that no fees could be charged and NSW taxpayers would bear the full cost of regulating associations. Another alternative would be to prescribe fees tied to a formula which reflects inflation. However, developing an effective formula for this process may be complex, and be unclear or difficult for members of the public to understand, and may still require regular revision.

A third alternative would be to prescribe higher fees which enable full cost recovery. This would mean that the services provided by Government would be fully funded by the parties who use the services. However, this option could make incorporation unaffordable for some associations.

***Assessment of costs and benefits of proposed clauses***

The fees impose a small cost to associations, with all but one fee being under \$100. Other than the small annual fee to lodge financial reports, the need to pay fees would arise infrequently. The proposed fees are set at a level which supports a low cost, efficient and accessible scheme for the registration of incorporated associations. Incorporation is not compulsory, and provides significant protection for association members at a low cost. The proposed fee structure also maintains the viability of services provided by NSW Fair Trading in relation to incorporated associations.

## 8. CONCLUSIONS

### Option 1 - Do nothing

The “Do Nothing” option would mean that the *Associations Incorporation Act 2009* would operate without any accompanying regulation, which means some of the provisions would not operate effectively or at all. While the Act would still operate, a number of provisions would be unworkable and the objectives of the Act could not be achieved. It would not be possible to give effect to the intention of the Act without some further action by the Government, such as amending the Act.

The purpose of the Act is to provide a simple and inexpensive means of incorporation, thereby limiting liability for members of non-profit and non-commercial organisations. Absence of a Regulation would leave the administrative framework of the Act without procedural backing and would effectively remove the benefit of incorporation for these groups. It would also remove access to the model constitution which aims to assist associations in the incorporation process and running the organisation. Without fees prescribed in the Regulation, taxpayers would bear the burden of meeting the full cost of administering the Act and providing Government services to associations.

Option 1 – Do nothing:

- fails to meet the regulatory objectives; and
- involves a high financial and intangible cost to the individuals, associations, government and the community generally.

Option 1 is not supported.

### Option 2 – Make the proposed Regulation

This option would provide a procedural framework and administrative detail to support the effective operation of the Act. The proposed Regulation would continue to ensure a simple and inexpensive form of incorporation is available for non-profit and non-commercial organisations and support proper management and financial accountability by associations.

Option 2 – the proposed Regulation:

- meets the regulatory objectives;
- provides financial and intangible benefits to associations, the community and government;
- imposes low costs to government, associations and the general community.

Option 2 provides the greatest net benefit to the community and is the preferred option.

**Table 3 Summary of overall assessment of the options**

Options	Compliance with Assessment Criteria			
	Benefits	Costs	Supports regulatory objectives	Supports affordable scheme for incorporation and effective management
1. Do Nothing	Low	Medium	Low	Low
2. Proposed Regulation	High	Low	High	High

## **CONSULTATION**

Individuals and organisations are being invited to comment on the proposed Regulation in the following ways:

- publication of a notice in a state wide newspaper;
- publication of a notice in the NSW Government Gazette;
- publication of a notice on the NSW Fair Trading website; and
- invitations to comment on the proposed Regulation will be forwarded to a range of stakeholders.

**9. APPENDIX A: Associations Incorporation Regulation 2009**