

# **Regulatory Impact Statement**

Associations Incorporation Regulation 2022



**July 2022**

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# 1. Background

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## 1.1 History of scheme and current overview

Incorporated associations represent a diverse range of activities, from the sports or music clubs to childcare services, community support groups and animal breeding clubs. There are approximately 38,000 associations currently registered in NSW. Incorporated associations enable community interest groups to develop and provide services to their members in a manner which is consistent with their purpose and objectives as set out in each association's constitution.

The *Associations Incorporation Act 2009* (the Act) establishes a scheme for the registration of associations engaging in small-scale, non-profit and non-commercial activities as well as providing for the corporate governance and financial accountability of these associations. Incorporation allows these associations to act as a body corporate and provides limited liability.

The legislation provides comprehensive operational and administrative guidance for associations, including a registration process, association names and objectives, a model constitution, election and meeting procedures and dispute resolution.

The legislation also includes a two-tiered system for reporting and accountability. Large, tier 1 associations are required to have their accounts audited annually by an appropriately qualified auditor. Small, tier 2 associations are exempt from this requirement. The threshold for tier 1 associations is \$250,000 in gross receipts and \$500,000 in current assets. The purpose of this system is to ensure that larger associations are properly accountable for financial and asset management while recognising that smaller associations should not be unduly burdened by the same financial reporting requirements.

The Act contains a statutory review requirement to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. As required, the review was conducted five years after assent and the review report was tabled in Parliament on 17 November 2015. The review found that the legislation is popular with its users but that it could be improved with amendments to deal with certain aspects of running an organisation which were either unclear or proving to be impractical. The Government approved the recommendations of the report. The recommendations were brought into being through the *Associations Incorporation Amendment (Review) Act 2016* and the making of the Associations Incorporation Regulation 2016 (current Regulation).

## **1.2 Why the Regulation is being remade**

Under the *Subordinate Legislation Act 1989*, most regulations are scheduled for automatic repeal after five years to ensure that they remain relevant and fit-for-purpose. Regulations that are due for repeal can be remade either with or without amendments, postponed, or allowed to lapse.

The Associations Incorporation Regulation 2016 (current Regulation) is due for staged repeal on 01 September 2022.

As there is no particular reason to postpone the repeal at this stage, it is proposed that it be remade. Preparation of a Regulatory Impact Statement (RIS) is required for the remake of this Regulation.

This RIS sets out the rationale and objectives of the proposed Regulation, as well as the options available to achieve those objectives, including an assessment of the associated costs and benefits.

## **1.3 Matters outside the scope of this consultation**

Matters covered by the Act are not the subject of this consultation process. This means that the RIS deals with matters only within the scope of the Regulation and does not deal with the provisions contained in the Act or any administrative policies and procedures associated with the operation of associations.

## 2. Consultation program

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### 2.1 Statement of public consultation to be undertaken

The proposed Regulation and this Regulatory Impact Statement (RIS) have been made available, for a period of 28 days on the NSW Government's 'Have Your Say' website at [www.haveyoursay.nsw.gov.au](http://www.haveyoursay.nsw.gov.au).

A notice advising the commencement of public consultation and the availability of the proposed Regulation and RIS has been published in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald.

Copies of the proposed Regulation and this RIS have been provided directly to known key stakeholders. A list of these stakeholders is provided at Appendix 2 of this document.

### 2.2 How to make a submission or provide feedback

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

We would prefer to receive your submission using one of the options available on the Have Your Say website, in an 'accessible' format. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word>.

Submissions can be made by:

- Completing the online survey on the [NSW Government: Have your say](http://www.haveyoursay.nsw.gov.au) website.
- Uploading a written submission on the [NSW Government Have Your Say](http://www.haveyoursay.nsw.gov.au) website
- Posting a written submission to: **Associations Incorporation Regulation 2022**  
Policy & Strategy, Better Regulation Division  
NSW Department of Customer Service  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

Please [contact us](#) if you have trouble making a submission or have any questions about this important consultation. [associations@customerservice.nsw.gov.au](mailto:associations@customerservice.nsw.gov.au)

**The closing date for submissions is Friday, 29 July 2022.**

## 2.3 Confidential submissions

All submissions are generally made publicly available on the 'Have Your Say' website. If you do not want any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient.

However, it should be noted 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 (though not made public), with the final version of the published Regulation.

## 2.4 Evaluation of submissions

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

## 2.5 Proposed commencement of new Regulation

After the proposed Regulation has been finalised, following the round of public consultation, it will then be submitted to the Minister for Small Business and Minister for Fair Trading and to the Governor for approval.

Once approved, the new Regulation will then be published on the NSW Government legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au), prior to commencing.

It is proposed that the Regulation will commence on 1 September 2022.



## 3. Objectives and rationale of the proposed Regulation

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### 3.1 Need for government action

Government action is necessary as the current Regulation is due for automatic repeal on 1 September 2022. Without a Regulation in place, the Act could not be effectively administered or enforced and associations will not have ready access to governance information or to the model constitution. It is therefore necessary that new regulations are made.

The proposed Regulation seeks to further improve upon the current Regulation to ensure that this regime functions effectively and is fit-for-purpose.

### 3.2 Objective

The primary objective of the Regulation is to provide legislative support and administrative detail for the operation of the Act, enabling it to function efficiently. It also provides valuable governance information and guidance for associations. The Act establishes a scheme for the registration of associations and makes provisions with respect to their corporate governance and financial accountability in NSW. These associations may be both unincorporated (which become bodies corporate upon registration) and incorporated under other legislation (which retain their corporate status following registration). 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 specific objectives of the proposed Regulation remain the same as the current Regulation. That is, to make provisions with respect to:

- 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
- contents for the annual financial statement which must be provided to the Department's Secretary by Tier 1 and Tier 2 associations
- particulars of register of committee members
- keeping of records of accounts and minutes of meeting proceedings
- procedures for electronic and postal ballots
- a model constitution

- addressing committee vacancies pertaining to the solvency and removal of committee members
- specifying the financial year and ensuring that the financial year for associations registered before 1 July 2010 remains the same.

The proposed Regulation will support the Act and is integral to its effective operation and the achievement of its objectives.

### 3.3 Rationale

The proposed Regulation is necessary to provide the legislative support and administrative detail for the effective operation of the Act.

It is necessary to remake the Regulation now because:

- the current Regulation will automatically repeal on 1 September 2022 under the sunset provisions of the *Subordinate Legislation Act 1989*, and
- without a supporting Regulation, the Act cannot operate effectively or be appropriately enforced and administered.

### 3.4 Options for achieving objectives

The primary objective of the proposed Regulation is to provide legislative and administrative detail to support the operation of the Act. There are three (3) options for achieving this objective and they are:

#### **Option 1: Maintain the status quo**

Do not make the proposed Regulation in the form set out in this RIS, and instead remake the Regulation with the same provisions as the current Regulation.

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

Make the proposed Regulation, with appropriate changes from the current Regulation, to improve legislative support and administrative detail for the Act.

#### **Option 3: Take no action**

Allow the current Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### **3.5 Criteria used to assess the regulatory options**

The following criteria have been used to evaluate the options:

- the extent to which the option best:
  - supports the objectives of the Act
  - improves administrative efficiency
  - improves operational flexibility
  - promotes a better regulatory framework for associations.
- the cost effectiveness of each option, in terms of costs and benefits to associations, members of the associations and government.

## 4. Impact assessment of options

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### 4.1 Assessment of Option 1

**Maintain the status quo** – Do not make the proposed Regulation and instead remake the 2016 Regulation without any changes.

#### Option 1 – Costs

The costs on associations or the NSW Government would remain substantially the same as they are currently. Systems and procedures would not need to be modified.

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.

However, the Government has identified opportunities for improving the practicalities of the regime. If the Regulation is not updated to accommodate these improvements, 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 a fit-for-purpose instrument in support of the Act.

The overall cost impact of Option 1 has been assessed as **low**.

#### Option 1 – Benefits

The primary benefit of this option is that associations would not be required to update any systems or procedures. However, the current Regulation could do with some added flexibility and efficiency that the proposed Regulation offers and, therefore the associated benefits are minimal for associations.

The overall benefits of Option 1 have been assessed as **low**.

#### Option 1 – Conclusion

Option 1 is unlikely to have any substantial impact. The full benefits and objectives of the proposed changes would not be realised without an updated Regulation. For these reasons, **Option 1 is not the preferred option**.

## 4.2 Assessment of Option 2

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

### Option 2 – Costs

Commencement of the proposed Regulation may result in some costs to associations. Any associated compliance costs for associations should be minimal as the aim has been to enhance the flexible approach in setting requirements for associations and generally improving the language to update the Regulation.

The overall cost impact of Option 2 has been assessed as **low**.

### Option 2 – Benefits

The proposed Regulation will enhance the way incorporated associations are administered. It will improve flexibility around use of technology for general and committee meetings by incorporating the latest trends in technology. It will also improve consistency with the *Interpretation Act 1987* to avoid any potential confusion. Other proposed changes to the Regulation are aimed at providing better operational guidance.

The overall benefits of Option 2 have been assessed as **high**.

### Option 2 – Conclusion

Option 2 is considered to be the most effective and beneficial option in providing and implementing enhanced regulatory support for the Act. Making the proposed Regulation will provide a net benefit to associations and government agencies alike. The proposed Regulation will apply modern and consistent regulatory principles to associations.

Updating the Regulation can also be achieved without imposing significant additional costs to stakeholders. Given the potential impacts of Option 2, and taking into account the option of letting the current Regulation sunset (Option 3) which would likely result in more costs than benefits, the **preferred regulatory option is to remake the 2016 Regulation with the proposed amendments (Option 2).**

## 4.3 Assessment of Option 3

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

### Option 3 – Costs

The current Regulation has been in place since 2016. It will automatically be repealed on 1 September 2022 if it is not remade, under the sunset provisions contained in the *Subordinate Legislation Act 1989*. Allowing the current 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. 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. To operate effectively, the Act relies on details to be prescribed in the Regulation.

The current Regulation provides considerable legislative support to the Act and helps to achieve its intended aims. The Regulation contains important processes, procedures, guidance and requirements that assist associations – for example, information to be provided with the application for the registration of the association, a list of unacceptable names for an association, thresholds for and details of financial reporting for associations, conduct of ballots, a model constitution, penalty notice offences and fees. Without prescribing these essential elements there is a risk that the Act becomes inoperable. Reinstalling a regulatory scheme in the future would be far more difficult, costly and time consuming after a protracted absence. Due to this, the costs of Option 3 have been assessed as **high**.

### Option 3 – Benefits

There are likely to be no significant benefits to this option given the Act could not function as intended without a supporting Regulation. Associations will not need to adjust to the new proposed improvements. However, they will also not receive the benefits of those improvements.

As such, the benefits of Option 3 have been assessed as **low**.

### Option 3 – Conclusion

Permitting the current Regulation to expire without any replacement Regulation is not considered appropriate as this would not achieve the Act's objectives. The associated risks and costs outweigh any potential benefits to associations and Government.

For these reasons, **Option 3 is not the preferred option.**

## 4.4 Summary of Options

Option 2 is the preferred option. Remaking the current Regulation with amendments will best support the objectives of the Act and, maintain the benefits of the 2016 Regulation while providing additional improvements. The proposed refinements to the current regulatory framework include simplifying provisions for better readability, modernising outdated provisions, providing governance guidance and promoting a stronger regulatory framework for associations.

Option 1 is not supported as it will simply carry forward the provisions of the current Regulation and will miss the opportunity to improve and enhance the regulatory framework for associations.

Option 3 is not supported as it would allow the Regulation to lapse. This will mean that parts of the Act will become ineffective, and the objectives of the Act could no longer be achieved. Option 3 would have a significant negative impact on associations, their members and the Government alike.

	Option	Costs	Benefits	Overall benefit
1	Maintain status quo	Low	Low	Neutral
2	Make proposed Regulation	Low	High	Positive
3	Take no action	High	Low	Negative

**Table 1: Summary of costs and benefits of each option**

Evaluation criteria	Option 1: Maintain status quo	Option 2: Make proposed Regulation	Option 3: Take no action
Supports objectives of the Act	Yes	Yes	No
Improves administrative efficiency	No	Yes	No
Improves operational flexibility	No	Yes	No
Promotes a better regulatory framework for associations	No	Yes	No

**Table 2: Summary of benefits of each option against evaluation criteria**

## 5. Regulation making powers

The following table sets out the current provisions of the Act that give powers to make a Regulation. It also identifies which of these powers are used in the proposed Regulation.

Section of the Act	What is the regulation making power?	Section in the proposed Regulation
4 (1)	Prescribe a model constitution	Schedule 3
4(1)	Declare a corresponding law for the purposes of the Act	Section 4
5 (1)d	Specify an organisation, or a class of organisation, for the purposes of defining 'pecuniary gain'	None prescribed
5 (2)g	Prescribe a class of pecuniary gain for the purposes of its definition	None prescribed
6 (3)(h) & (i)	Specify any information to be included in, and a fee to be accompanied with, an application for registration	(h) is prescribed in Section 6 and (i) in Schedule 4
10 (3)d	Prescribe the fee to accompany an application to change the name of the association	Schedule 4
15 (2)(c)	Prescribe the fee for the application for reservation of name	Schedule 4
15 (3)	Prescribe maximum number to nominate alternative names	Section 7
18 (1)(g)	Declare names which are unacceptable for associations	Section 8 & Schedule 1
29 (2)(d)	Prescribe particulars of a committee member to be included in the Register	Section 10
31 (3)	Prescribe the maximum fee required to inspect the book containing disclosures of interest by committee members	Schedule 4
37 (2)(b)	Prescribe a time within which an association must hold an annual general meeting	None prescribed
38 (2) & 39 (3)	Specify the way a postal or electronic ballot may be conducted for an ordinary and special resolution	Schedule 2
42	Prescribe the threshold limit in terms of gross receipts and current assets to define a Tier 1 association	Section 12
43 (2)	Prescribe the matters to be dealt with by Tier 1 associations in their financial statements	Section 13
45 (2)(b) & 49 (2)(b)	Prescribe the fee to lodge documents of Tier 1 and Tier 2 associations with the Secretary	Schedule 4
47 (2)	Prescribe the matters to be dealt with by Tier 2 associations in their financial statements	Section 14
50 (4)	Set out provision for or in respect of keeping and inspection of records and minutes	Section 15
53 (3)	Exempt any association or a class of associations from the financial reporting part of the Act	None prescribed



54 (1)(f)	Prescribe any modifications that declare an association to be an applied Corporations Legislation matter for the purposes of Part 3 of the Corporations (Ancillary Provisions) Act 2001	None prescribed
61A (6)	Prescribe a way in which the liquidator must give notice of his or her appointment	None prescribed
64 (1)(b)	Specify any modifications for the winding up of an association to be applied as a matter of Corporations legislation for the purposes of Part 3 of the Corporations (Ancillary Provisions) Act 2001	None prescribed
78 (3)(d)	Specify the information required in the application for transfer of registration declaration	Section 9
78 (3)(e)	Prescribe the fee for the application of transfer of registration declaration	Schedule 4
84 (3)	Provide for savings or transitional provisions consequent on the reinstatement of an association's registration and incorporation	None prescribed
88 (1)(a)	Specify the contents of the certificate of authority to exercise the power of entry by an authorised officer	Section 16
93 (2) & (4)	Prescribe penalty notice offence and the amount payable for it	Schedule 5
96	Declare any matter relating to associations to be an applied Corporations legislation matter for the purposes of Part 3 of the Corporations (Ancillary Provisions) Act 2001	Section 5
98 (2)	Prescribe fees to inspect any document that has been lodged with the Secretary under this Act	Schedule 4
101 (1)(f)	Specify additional ways of service of documents	None prescribed
106A (5)(b)	Prescribe an agency to be a relevant agency for the purposes of exchange of information	Section 17
107	General powers to make regulations	-

## 6. Discussion of the proposed Regulation

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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 context for some provisions in the proposed Regulation. A comparison of the current Regulation and provisions of the proposed Regulation is provided in **Appendix 2**.

### 6.1 Part 1 Preliminary matters

#### **Date of Commencement (Section 2)**

The proposed Regulation provides for commencement on 1 September 2022, as the current Regulation is due to be automatically repealed on that date, in accordance with the *Subordinate Legislation Act 1989*.

#### **Structure and formatting (Various clauses)**

A number of minor amendments have been made to the structure, numbering and grammar of the proposed Regulation. These changes are largely cosmetic and are not intended to alter the effect of any sections.

#### **Application of Corporations legislation to associations (Section 5)**

The only change in this section is the addition of a reference to “proceedings at the meeting” as a modification declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001*. This modification does not impose any costs on associations, nor does it require any changes to their operations. It only further clarifies the extent of the application of the Corporations legislation.

### 6.2 Part 2 Registration of Associations

This part will be remade in the same terms as the current Regulation.

### 6.3 Part 3 Management of Associations

This part will be remade in the same terms as the current Regulation.

## 6.4 Part 4 Financial Reporting

### Financial statements for Tier 2 associations (Section 14)

Under the proposed Regulation, the phrase “appropriately classified” has been removed from the requirement of Tier 2 associations to include their individual sources of income and expenses in their financial statements. This proposed change is suggested for a simpler reading of the Regulation. It does not carry any impact on the operations and the requirements of Tier 2 associations to prepare a financial statement.

**1. Do you support or oppose removing the phrase “appropriately classified”?**

## 6.5 Part 5 Enforcement provisions

This part will be remade in the same terms as the current Regulation.

## 6.6 Part 6 Miscellaneous

This part will be remade in the same terms as the current Regulation.

## 6.7 Schedule 1 Unacceptable names

This schedule will be remade in the same terms as the current Regulation.

## 6.8 Schedule 2 Conduct of postal or electronic ballots

There are 6 proposed amendments under this schedule.

1. References to voting papers have been replaced with references to ballot papers **(Sections 4 and 5)**.
2. The requirement to provide a box opposite and to the left of each question has been changed to “a space for the member to record the member’s vote” **(Sections 4 and 5)**.
3. The requirement of the committee to fix the date for forwarding ballot papers has been removed. This proposed change is to remove duplication of efforts as the returning officer is required to give ballot papers to members at least 14 or 21 days before the date fixed for the closing of the ballot. Thus, implying a date for forwarding ballot papers **(Section 1)**.
4. The returning officer is required to give a copy of the statement prepared by the committee to each member setting out details of the matter/s to be determined by a ballot. The current

Regulation requires a committee to prepare such a statement but is silent when it comes to giving that statement to members of the association. A returning officer is required to give to members a ballot paper (or access to an electronic ballot paper in case of electronic voting), a notice (or access to information in the case of electronic voting) and a returning envelope. The proposed change adds a copy of the statement to this list of documents that a returning officer is required to give to members of the association. This may incur additional costs on associations, but every member stands to benefit from receiving a copy of the statement **(Sections 4 and 5)**.

5. The returning officer is to give a copy of the statement of result of a ballot to the secretary of the association as opposed to a chairperson **(Section 7)**. The current Regulation did not establish an office of chairperson. Requiring a returning officer to give the statement of result to the secretary is keeping in line with the other functions of the secretary, for example making an entry of the result in the minute book and giving written notice to members, in case of a ballot for a proposed special resolution.
6. The requirement of the returning officer to include instructions on completing the ballot paper in a notice has been removed. The instructions are already mentioned on the ballot paper itself and thus this amendment removes the duplication of work **(Sections 4 and 5)**.

The proposed amendments outlined within this section are intended to keep the language consistent, remove duplication of efforts, provide greater flexibility and operational guidance to associations. It also streamlines the functions of the secretary pertaining to the results of a ballot.

**2. Are the procedures for postal and electronic voting set out in Schedule 2 fair and appropriate? If not, what procedures would be preferred and why?**

## **6.9 Schedule 3 Model constitution**

### **Fees and subscription (Section 5)**

The proposed amendments to Section 5 link the payment of the entrance and annual subscription fees to Section 3 that deals with membership applications. This linkage clarifies that the entrance fee needs to be paid only once by a successful applicant, and not again on becoming a member.

### **Election of Committee members (Section 15)**

The proposed amendment makes it clear that a minimum of two signatures, not including that of the nominated member, are required for a nomination of a member as a candidate for election as an office-bearer or ordinary committee member.

It also requires the presiding officer to direct a way in which further nominations must be sought if not enough nominations were received to fill the vacancies.

### **Vacancies in office (Section 17)**

Under the current Regulation, there was a duplication of duties of the association and the committee in terms of appointing an association member to fill a vacancy arising from the removal of a committee member. As per the proposed Regulation, the committee may appoint a member to fill a casual vacancy other than a vacancy arising from the removal of a committee member. The association, by resolution in a general meeting, has been given the power to fill such a casual vacancy. Additionally, a committee member, who has been removed from office, may request the committee to send a copy of a written statement to each member of the association at least 7 days before a resolution is considered at a general meeting.

## **3. Do you support the proposed changes? If not, why?**

### **Delegation to subcommittees (Section 20)**

The proposed changes to the section dealing with delegation to subcommittees has stripped back many provisions as they are covered by the *Interpretation Act 1987*.

### **Transaction of business outside committee and general meetings or by telephone or other means (Sections 27 and 36)**

Proposed changes to the transaction of business outside committee and general meetings are made to replace the relevant outdated sections of the current Regulation. The proposed Regulation reflects more recent trends that allow for meetings to be conducted by telephone or other electronic means and for business to be conducted outside meetings by circulating papers (for example by email). These proposed changes give associations the flexibility that is required in current times while retaining the important element of accountability.

## **Adjourned meetings (Section 32)**

The proposed amendment under this section requires the secretary to give notice, oral or written – to each member at least 1 day before the adjourned meeting. This change is made consistent with the requirement of the presiding member under the section that deals with quorum for general meetings.

**4. Are there any reasons why flexibility to transact business outside committee and general meetings or by telephone or other means not supported? If so, what are they?**

## **6.10 Schedule 4 Fees**

### **Part 2 Adjustment of fees for inflation**

The fees associated with this part has been updated for inflation. The updated fee unit for the financial year 2022–23 is \$111.14.

## **6.11 Schedule 5 Penalty Notice Offences**

No amendments are proposed under this Schedule in the proposed Regulation.

## Appendix 1

### Summary of the proposed changes to the Regulation

The following table sets out the main changes in the proposed Regulation.

	Section in current Regulation 2016	Section in proposed Regulation 2022	Change
<b>Application of Corporations legislation to associations</b>	–	5(c)(iii)	Prescribes “proceedings at the meeting” is to be read as including a reference to the vote conducted by a postal or electronic ballot as a matter relating to an association to be an applied Corporations legislation matter
<b>Financial statements for Tier 1 associations</b>	9 (1)(b)	13 (1)(b)	Changes language to improve clarity of the condition imposed on a Tier 1 association
<b>Financial statements for Tier 2 associations</b>	10 (a)	14 (a)(i)	The phrase “appropriately classified” has been removed from the requirement of Tier 2 associations to include their individual sources of income and expenses in their financial statements
<b>Conduct of postal or electronic ballots</b>	Schedule 3 1 (1)(a)	Schedule 2 4(2)(a) and 5(3)(a)	Requires the returning officer to give to members a copy of the statement prepared by the committee setting out details of the matter to be determined by a ballot
	Schedule 3 1 (1)(b)(i)	Schedule 2 1(1)	Removes the requirement for the committee to fix a date for forwarding of ballot papers. The returning officer is required to give the ballot papers which must be either 14 or 21 days before the date fixed for closing of the ballot. This function negates the need to fix a date for forwarding of ballot papers
	Schedule 3 5(2)(a)	Schedule 2 4(2)(b)	Replaces the reference to voting paper with ballot paper for consistency of language

	Schedule 3 5(2)(c)	Schedule 2 4 (2)(b)(iii)	Replaces the reference to a box with a space for members to record their vote thus enhancing the flexibility of associations for conducting postal ballots
	Schedule 3 4(5)(b)(i) and 5(3)(b)(i)	Schedule 2 5(3)(b)(i) and 4(2)(b)(i)	Removes the requirement of the returning officer to include instructions on completing the ballot paper in a notice as the instructions are already mentioned on the ballot paper itself. This amendment thus prevents a duplication of work for the returning officer
	Schedule 3 8(3)	Schedule 2 7(2)(b) and 7(4)	Requires the returning officer to prepare and sign a statement of the result of a ballot and to give a copy of the statement to the secretary of the committee, instead of the chairperson of the committee. This change is done considering the current Regulation does not define a chairperson. The amendment also requires the presiding member, instead of a chairperson, to announce the result of the ballot
<b>Model constitution</b>  <b>Fees and subscription</b>	Schedule 1 8 and 3	Schedule 3 5(2)	Clarifies that an entrance fee must be paid just once by a successful applicant and not again on becoming a member. This amendment has been done for a clear and better reading of the Regulation
<b>Resolution of disputes</b>	Schedule 1 10	Schedule 3 9(1)	Changes the reference of 2 members to 2 or more members
<b>Election of members</b>	Schedule 1 15(1)(a)	Schedule 3 15 (2)(b)	Changes the reference of 2 members to at least 2 members other than the candidate nominated for the election. This amendment also removes the reference to the phrase “which may be endorsed on the form of the nomination”



	Schedule 1 15(2)	Schedule 3 15(4)	Clarifies that further nominations are to be made in a way directed by the presiding member
<b>Vacancies in office</b>	Schedule 1 18 and 19	Schedule 3 17(2)(b) and (5)	Allows only the association to appoint a member to fill a casual vacancy arising from the removal of a committee member
	Schedule 1 19(2)	Schedule 3 17(3)(b)	Allows a committee member who has been removed to request that the committee send a copy of the statement at least 7 days before the general meeting at which the proposed resolution will be considered
<b>Delegation to subcommittees</b>	Schedule 1 23	Schedule 3 20(2)	Refers to the section 49 of the <i>Interpretation Act 1987</i> for consistency in language
<b>Use of technology at general and committee meetings</b>	Schedule 1 37	Schedule 3 27 and 36	Allows for conducting committee and general meetings and transaction of business outside meetings by telephone or other electronic means
<b>Adjournment</b>	Schedule 1 31	Schedule 3 32(3)	Requires the secretary to give oral or written notice, to each member of the association, at least 1 day before the adjourned meeting
<b>Special Resolution</b>	Schedule 1 33	–	Removed for redundancy
<b>Insurance</b>	Schedule 1 38	Schedule 3 39	Clarifies that the insurance may be appropriate to the association's assets and liabilities
<b>Fees</b>	Schedule 5 Part 2 2	Schedule 4 Part 2 2	Adjusts the fee unit for inflation

## Appendix 2

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### List of targeted stakeholders

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

- Associations Forum
- Justice Connect
- Council of Social Service 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
- Chartered Accountants Australia and New Zealand
- CPA Australia
- Public Fundraising Regulatory Association
- Institute of Public Accountants