

15 July 2022

Comments on NSW Fair Trading,
Public Consultation Draft of the
Associations Incorporation Regulation 2022,
under the
Associations Incorporation Act 2009

In principle we support your assessment of Option 2 as the preferred option; being to remake the 2016 Regulation with the proposed amendments.

However, there are several issues in the draft Model Constitution that concern us:

1. **Model Constitution Clause 14 (1)** states “the committee must have **7 members**”.

Referring to the Associations Incorporation Act 2009 No 7, Division 1 Committee members – general, states at Clause 28 (2) “the committee must include **3 or more members**....”

The obvious question for us, is how and why would a small association with member numbers in the 20s possibly need or be able to find, organize and manage 7 committee members, or for that matter even for a larger community group?

If the law requires 3 or more, can we then please request that the model constitution is amended to also state 3 or more.

2. **Model Constitution Clause 34 (6)** states “A member cannot cast a vote by proxy”

Referring to the Associations Incorporation Act 2009 No 7, Schedule 1: Matters to be addressed in association’s constitution, clause (10) Procedures at general meetings, reads “.... and whether members are entitled to vote by proxy at general meetings”

We note that the new model constitution now covers postal, electronic, telephone, email etc. In my recollection, proxy voting predates most of those as a method widely used by e.g. public listed companies and apartment strata managers.

Our question is why single out proxy voting as a specific approach not allowed, where all other options appear as “An association may ... or “An association may transact ...” It would make more sense to make it an opt-out rather than an opt-in decision.

We request that this be adjusted to read “A member may cast a vote by proxy.”

3. **Model Constitution Clause 27 (1)** states “The committee may transact its business by the circulation of papers, including by electronic means, among all committee members **for the time being**.”

Unsure why the words “for the time being” are here or even necessary as I can’t imagine why associations might not be allowed to circulate papers in future if they wish to.

We suggest that these words be deleted.