

Submission on Associations Incorporation Act 2009 Regulation Changes Proposal

Introduction

Friends of Fernhill and Mulgoa Valley Inc (FFMV) is a community-based, not for profit organisation dedicated to safeguarding Fernhill Estate and Mulgoa Valley, located south of Penrith, NSW. As co-drafter of our constitution, I am making this submission on behalf of FFMV in consultation with other members of its management committee.

Terms of Reference

Our comments in this submission will be limited in part to the Objectives outlined in RIS Section 3.2 and our experience in registering and conducting business of FFMV under the *Associations Incorporation Act 2009*. Where Criteria used to assess the regulatory options (Section 3.5) and Impact assessment of options (Section 4) impact on these Objectives, comments are also included.

Key issues

Apparent inconsistencies between the Objectives and Criteria and Impact Assessment
Assessment of Option 2 - Benefits

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

While we agree with the overall assessment of the proposed Regulation, we draw your attention to *"Benefits"* for Option 2. With the initial Regulation, costs for established and large associations are minimal; however, the costs for new/emerging associations, ie registration/annual financial reporting costs, can be substantial and financially limiting.

EXAMPLE

FFMV was incorporated in early 2020, pre-COVID, with a total of fifteen members. Without the generosity of one member and the groups concern about liability without incorporation, we would not have been able to register our organisation. Even so, the cost of filing Tier 2 annual financial declarations can be challenging financially for small or emerging organisations even though \$50.

Recommendation: *Further consideration needs to be given to new and emerging associations that rely on unpaid, voluntary inputs (financial and administrative), while trying to "do the right thing".*

It is misleading to state *"that associations would not be required to update any systems or procedures"* as the proposal regarding electronic ballots require knowledge, skill or training to implement if members are unfamiliar with online procedures. **Effort is made to create accessible documents for physically challenged people while ignoring people (association members) who may be technically challenged.**

Summary of Options

RE: Table 1: Summary of costs and benefits of each option, for Option 2 *"Make Proposed Regulation"*

QUESTION

Do changes in the Regulations affecting the Constitution require changes to existing Constitutions, i.e. filing a revised Constitution and expenditure of required fees?

Financial Reporting (6.4 Part 4)

"1. Do you support or oppose removing the phrase "appropriately classified"?"

No. **The proposal confers no further clarification.** The new wording (replacing "*appropriately classified*" with "*individual sources of income and expenses*" lacks clarity and could imply enhanced specificity rather than categories (e.g. membership fees, donations, insurance, fees, etc.) of income and expenses.

Conduct of postal or electronic ballots (6.8 Schedule 2)

"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?"

With qualification, yes. Further to our statement under overall cost impact of Option 2, the comment made in the fourth proposed amendment under this section (Page 20) accumulatively impacts emerging, small associations unfairly, cf "*This may incur additional costs on associations, but every member stands to benefit from receiving a copy of the statement (Sections 4 and 5),*" and is at odds with the last point in Section 5 Criteria used to assess the regulatory options for small associations.

6.9 Schedule 3 Model constitution

Election of Committee members (Section 15) "*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.*"

In small associations whose membership may vary from time to time, and be highly limited in numbers, this proposal would be pointless as the only way to seek further nominations is to increase membership, in which case such a proposal is pedantic and meaningless except if membership can miraculously be increased. Again, this exemplifies the disparity between large associations and others.

Vacancies in office (Section 17)

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

Yes.

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

We heartily support this change. During COVID and with several members being technologically challenged, we had no option for conducting meetings than by conference telephone calls, which were awkward and cumbersome but addressed the requisite business issues.

Adjourned meetings (Section 32)

This change highlights an interesting dilemma that may only apply to smaller, community-based associations. If, during a meeting, a verbal (or even physical) unruly disruption occurs, the presiding person would have no choice but to adjourn the meeting until the disruptors are either calmed or ejected. In such a case, a 1 day notice is impractical.

Another dilemma is having to postpone (adjourn) a meeting at short notice because of suddenly arising circumstances, eg heavy rainfall and localised flooding, beyond the presiding person's control. While this may not greatly affect local members it would create a hardship for members travelling a substantial distance to attend the meeting.

We are at a loss as to how to quantify a prior period of notice for adjournment.

“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?”

Qualified yes (see comments made under Adjourned meetings above).

Recommendation: For *“Transaction of business outside committee and general meetings or by telephone or other means (Sections 27 and 36),”* **circulated papers and accompanying notification for their consideration should be documented.**

6.10 Schedule 4 Fees

Why aren't scheduled fees adjusted to the CPI thus obviating the need for periodic change in the Regulations?

Recommendations

In this submission we have made two recommendations under *“Assessment of Option 2 – Benefits”* and *“Adjourned meetings”*.

FFMV queries the following:

- a) Will the change in Regulations require filing a revised Constitution and attract the associated fees?
- b) the method of adjusting scheduled fees instead of annual adjustment according to the Consumer Price Index and re-adjustment per periodic reconsideration of Regulations. Presumably this apparent government-wide policy is based on certain considerations.
- c) Does question Part 5 38 (3) (b) of the Regulation: **Where are “receipt” requirements defined or specified?** For example, does a bank account record of direct deposits or a financial institution's email at time of direct deposit constitute a receipt? Is it a substitute for an association having to issue individual receipts for every income?

Sincerely yours,

29th July 2022