

SYDNEY COASTAL COUNCILS GROUP Inc.
PO Box 999, Manly NSW 1655
Email: info@sydneycoastalcouncils.com.au
Web: www.sydneycoastalcouncils.com.au
ABN: 39 638 876 538



Reference: 028-22

Friday, 29 July 2022

Associations Incorporation Regulation 2022
Policy and Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Re: Proposed Associations Incorporation Regulation 2022

Dear Sir/Madam

Thank you for the opportunity to provide comments to inform the proposed Associations Incorporation Regulation 2022.

We note that the current Associations Incorporation Regulation 2016 is subject to repeal after 5 years, under the *Subordinate Legislation Act 1989* and are either remade with or without amendments, postponed or allowed to lapse. It is due for staged repeal on 1 September 2022. As there is no reason seen to postpone the repeal, it is proposed that it be remade. A Regulatory Impact Statement (RIS) has been prepared. Option 2 – Make the proposed regulation is the preferred option of the RIS as it 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. Updating the Regulation can be achieved without imposing significant additional costs to stakeholders.

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.



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The SCCG has reviewed the proposed changes and provides the following comments in response to the key changes in the subsequent areas.

1. Part 4 Financial reporting (RIS Section 6.4)

Changes proposed under financial reporting include removing the phrase “appropriately classified” from the requirement of tier 2 associations and referring to their individual sources of income and expenses in their financial statements instead.

This will make the section easier to read without compromising any reporting requirements, transparency and accountability measures. (Refer to section 6.4 of the RIS.)

The SCCG is a tier 1 association by definition (one that has \$250,000 in gross receipts and \$500,000 in current assets) so the change of requirements for tier 2 associations is not applicable. Therefore, the SCCG has no comments on these changes.

2. Schedule 2 Conduct of postal or electronic ballots (RIS Section 6.8)

Six changes are proposed:

1. Replace reference to voting papers with reference to ballot papers.
2. Change the need to provide a box opposite and to the left of each question to, “a space for the member to record the member’s vote”.
3. Remove the committee’s need to fix the date for forwarding ballot papers.
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.
4. Require the returning officer 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 on giving that statement to members of the association. 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, providing an improved benefit of information to committee members.
5. Change the requirement for the returning officer to give a copy of the ballot results to the Secretary rather than the Chairperson.
This change creates consistency with the current regulation which does not establish an office of chairperson and is being retained as such in the proposed Regulation. It is also in keeping with other functions of the Secretary.
6. Remove the requirement for the returning officer to include instructions on completing the ballot paper in a notice.
The instructions are already in the ballot paper itself.

The SCCG considers that the procedures for postal and electronic voting set out in the proposed Schedule 2 of the Regulation are fair and appropriate and supports these changes, noting they are administrative in nature and designed to improve efficiency of information and communication.

3. Schedule 3 Model constitution (RIS Section 6.9)

Fees and subscription (Section 5)

Changes that clarify that the entrance fee need only be paid once and is not confused with annual subscription fees.



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Election of committee members (Section 15)

Changes to make 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)

The current Regulation contains duplication of duties of the association and the committee, in terms of appointing an association member to fill a vacancy (following the removal of a committee member). Changes are proposed such that 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, will have the power to fill such a casual vacancy. Also, a committee member who has been removed from office may request the committee 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. The SCCG constitution provides for filling of vacancies, including casual vacancies by the relevant member council which reflects Local Government structures that underpin the association (cl 19).

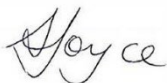
Transaction of business outside committee and general meetings (Section 27 and 36)

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 (by email). The SCCG constitution already provides flexibility for conducting meetings by electronic means (cl 22.10) and resolutions by email (cl 23.1).

The SCCG does not object to the proposed changes in Schedule 3, but notes that its own constitution varies. A review against the model constitution in the new Regulation will be undertaken, once the new Regulation is passed to determine where any inconsistencies warrant revision of the SCCG constitution.

If you have any queries, please contact me on 0407 733 075 or by email at executiveofficer@sydneycoastalcouncils.com.au

Yours sincerely,



Sarah Penny Joyce
Executive Officer



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