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Ms Emily Philips
Deputy Secretary
Department of Government Services,
121 Exhibition St MELBOURNE VIC 3000

21 July 2023

Dear Ms Philips,

REGULATORY IMPACT ASSESSMENT FOR THE ASSOCIATIONS INCORPORATION REFORM REGULATIONS 2023

I would like to thank your staff at the Department of Government Services (the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Statement (RIS) for the Associations Incorporation Regulations 2023 (the Proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 21 July 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and Problems

The *Associations Incorporation Reform Act 2012* (the Act) and the Association Incorporation Reform Regulations 2012 (the current Regulations) enable associations (not-for-profit organisations) to incorporate, set out the process for incorporating and set out the obligations on incorporated associations. The current Regulations expire on 19 November 2023.

There are about 40,000 incorporated associations in Victoria differing significantly in terms of type and scale. They are typically charities, sport, education, or community

service clubs. Incorporation under the Act enables associations to become a legal entity distinct from any individual member of the organisation. Incorporation provides an association with specific protections (in terms of legal and financial liabilities) and provides the authority for the association (as a distinct entity) to enter directly into contracts.

While Associations are not obliged to incorporate under the Act, incorporation under the Act offers certain protections, is less costly and entails less burdensome obligations than incorporating under the *Commonwealth Corporations Act*.

The current Regulations prescribe a range of requirements for establishing, operating, and cancelling an incorporated association, as well as requirements for amalgamation. The Regulations also prescribe fees for establishing associations, submitting financial records and annual reports, and updating records (e.g. name changes).

The regulator (Consumer Affairs Victoria - CAV) is responsible for managing registration and compliance, with the Director of CAV acting as the Registrar of incorporated associations. The Registrar has the right to reject the incorporation of an association or deregister an incorporated association if they believe there is non-compliance with the Act or Regulations.

A list of prescribed documents on incorporated associations is maintained by CAV which can be made available for any member of the public to view. This promotes transparency and reduces the risk of harm to members caused by those that run these associations.

There are two options an incorporated association may choose for establishing association rules. They can either elect to adopt the model rules set out in the Regulations or they can establish their own constitution provided it complies with the Act.

The Department explains that if the current Regulations were allowed to expire there would be two key problems:

1. Incorporated associations would still be bound by the Act; however, a lack of complementary regulations would limit CAV's capacity to enforce the Act. There would also be no prescribed model rules, which would make it more difficult for some incorporated associations to design or adopt rules that meet the expectations of the community and their members and are consistent with good governance principles.
2. There would be no prescribed fees, which would mean that the costs of administering the regulations would need to be funded through another revenue source, such as consolidated revenue.

Options and Impact Analysis

In the RIS, the Department analyses options to address the problems identified above. It analyses remaking the Regulations in two steps:

1. The first step compares remaking the current Regulations (Option 1) against allowing the current regulations to expire and not making further regulations (the base case).
2. The second step then compares three modifications to the current Regulations (Option 2) against the current Regulations (Option 1).

Options are assessed using a multi-criteria analysis (MCA). The MCA has four criteria, each weighted at 25 per cent:

- Protecting the rights and interest of members
- Promoting effective government oversight
- Minimising cost to industry (incorporated associations)
- Minimising cost to government.

In the first step, the Department explains that Option 1 is preferred to the base case because it would better protect the rights and interests of members of associations and support effective government oversight. These benefits are assessed as outweighing the compliance and administration costs of the Regulations.

In the second step, the Department analyses three modifications against the current Regulations:

1. Updating the model rules to strengthen disclosure requirements and dispute resolution processes and enable greater use of technology by organisations, for example by facilitating the online lodgement of membership applications (Option 2a);
2. Increasing the thresholds for the financial reporting tiers which determine the level of detail associations are required to report to CAV (Option 2b); and
3. Increasing the asset ceiling below which associations can be voluntarily cancelled without being required to appoint a liquidator (Option 2c).

The Department explains that Option 2 is preferred in its entirety over Option 1 because the proposed changes would provide additional benefits to members of organisations and enhance government oversight. These benefits would be greater than any additional regulatory burden, given some elements of Option 2 would impose minor additional costs, while others would reduce regulatory burden.

The Department estimates that the cost to industry of complying with Option 2 (excluding fees) are expected to be less than \$100,000 per year. It estimates that the costs to CAV of

administering the regulatory framework under Option 2 would be about \$1.6 million per year. It does not quantify the benefits of the Regulations.

The RIS also analyses options for fees in the Regulations.

The current Regulations set fees in relation to:

- applications by associations to incorporate;
- lodgement of financial statements by associations; and
- inspecting documents held by CAV and minor administrative matters.

Fees vary depending on the size of an association and whether the model rules are adopted. Three fee options are analysed in the RIS:

- Option 1 — retain the existing fee structure and fee values for each fee type;
- Option 2 — retain the existing fee structure, but adjust certain fees to better reflect CAV's administrative costs; and
- Option 3 — simplify the existing fee structure and adjust certain fees to better reflect CAV's administrative costs.

The options for setting fees are also compared using an MCA. The criteria and weightings for the fees MCA are:

- Promoting efficiency by setting fees that are cost-reflective and promote financial sustainability (40 per cent)
- Considering equity by ensuring fees are lower where capacity to pay is limited and cross-subsidies between fee types are minimised (40 per cent)
- Ensuring the fee structure is simple and easy to understand (20 per cent).

The RIS identifies that Option 2 is the preferred option based on:

- Options 2 and 3 being assessed as more efficient than Option 1 due to a more cost-reflective fee structure;
- reduced cross-subsidisation resulting in Option 1 and Option 2 being assessed as more equitable than Option 3; and
- despite Option 3 offering a simpler fee structure than Options 1 and 2, the higher weightings on the efficiency and equity criteria mean that Option 2 is preferred overall.

The Department estimates that Option 2 is likely to raise \$1.9 million per year in fees and achieve full recovery of CAV's costs in administering the regulatory framework.

Implementation and Evaluation

In the RIS, the Department explains that implementing the proposed Regulations will involve remaking the current Regulations with minor amendments. It is noted that the Department and CAV will be responsible for implementing the proposed changes, with CAV responsible for ensuring compliance with the new regulations through its existing monitoring and enforcement activity. The Department explains that the proposed amendments are expected to reduce administrative burden on CAV, which will make it easier for CAV to monitor compliance and enforce the Regulations.

The Department explains that it will work closely with CAV to monitor implementation of the proposed Regulations and that the Regulations are effective in ensuring that associations are being appropriately run.

The Department notes that it will evaluate the proposed Regulations prior to the Regulations sunsetting in 2033.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Rebecca Billings

Interim Commissioner for Better Regulation