Regulatory Impact Statement  
Associations Incorporation Reform Regulations 2012

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Consumer Affairs Victoria

**ASSOCIATIONS INCORPORATION REFORM REGULATIONS 2012**

**Regulatory Impact Statement**

Prepared by:

Consumer Affairs Victoria

Date: 4 September 2012

**ASSOCIATIONS INCORPORATION REFORM REGULATIONS 2012**

**Regulatory Impact Statement**

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the ***Subordinate Legislation Act 1994*** and to facilitate public consultation on the proposed Associations Incorporation Reform Regulations 2012. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are invited on the proposed Regulations, in response to information provided in this RIS. All submissions will be treated as public documents. Written comments and submissions should be forwarded no later than **18 October 2012** to:

Associations Incorporation Regulations RIS Submissions

Regulation and Policy, Consumer Affairs Victoria

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Executive Summary

There are more than 38,000 incorporated associations in Victoria. They are clubs or community groups, operating not for profit, whose members have decided to give their organisation a formal legal structure.

Incorporation of an association under the *Associations Incorporation Act 1981* ("AIA") is a voluntary process. When a club or community group incorporates, it becomes a ‘legal person’ – that is, a legal entity that stays the same even if its members change. It can enter into contracts in its own name; for example, to borrow money or buy equipment. This protects the individual members of the association from legal liabilities.

Victorian incorporated associations are currently registered with Consumer Affairs Victoria (“CAV”) under the AIA. Following proclamation, the *Associations Incorporation Reform Act 2011* (“Reform Act”)will replace the AIA. The *Associations Incorporation* *Reform Regulations 2012* (“the proposed Regulations”) will be made under the Reform Act.

In Victoria, clubs and associations currently incorporate under the AIA by applying to CAV. This method is a simple and inexpensive process that is available to all unincorporated not-for-profit associations with at least five members.

Consistent with the Corporations Agreement 2002 made between the Commonwealth and the States and Territories, a for-profit business should generally incorporate as a company under the *Corporations Act 2001*.

### Reform of Incorporated Associations Sector

There has been a staged approach to reforming the AIA flowing from the 2004-05 review of that Act and the State Services Authority Review of Not for Profit Regulation and the Stronger Community Organisations Project (both 2007).

The Reform Act and the proposed Regulations represent the final stage in this amendment process.

Following its proclamation, the Reform Act will:

* repeal the AIA and re-enact its provisions in a style which reflects current best practice plain language drafting principles;
* incorporate the reforms contained in the 2009 and 2010 amendment Acts that had yet to commence, and repeal those Acts;
* revise the financial reporting provisions of the AIA to provide clearer guidance to incorporated associations on their obligations;
* provide for a register of members to be maintained by an incorporated association and regulate rights of access to the register; and
* improve the utility of the legislation for members and committees of incorporated associations by consolidating those provisions most frequently used by associations into one part of the Reform Act, with the provisions that relate to the Registrar’s powers or which are technical or administrative in nature consolidated in later parts of the Reform Act.

As a consequence of the pending repeal of the AIA, the existing regulations, the *Association Incorporation Regulations 2009* will also impliedly be repealed. It is therefore necessary to make new regulations as authorised under section 222 of the Reform Act.

The proposed regulations address:

* fees to be paid to the Registrar;
* fines that may be imposed by an incorporated association upon a member for breach of the rules of the association;
* particular information that must be supplied to CAV in support of specified applications made under the Reform Act;
* the incorporated association model rules; and
* security to be given by a liquidator.

In accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*, a Regulatory Impact Statement (RIS) is required to assess the proposed Regulations in terms of its objectives and effect. In addition, an assessment of the alternative approaches to achieving those objectives is required.

### Nature of the Problem Being Addressed

The proposed Regulations are designed to address three problems relating to the administration of the incorporated association sector. These are:

* CAV estimates that it will cost $2,890,870 per annum to administer the Reform Act, per the cost-recovery guidelines; the Government needs to recover this amount in some way.
* Unless CAV is able to efficiently and effectively administer the Reform Act, it will not be able to help protect the rights and interests of members of incorporated associations, funding bodies and members of the general community who deal with incorporated associations.
* If members of an association do not observe the association’s rules or engage in misconduct, there will be inevitable conflict between the transgressing member and other members of the association, including the committee.

### The Objectives of the Proposed Regulations

The primary objectives of the proposed Regulations are to address the identified problems, namely:

* to protect the rights and interests of members of incorporated associations, funding bodies and the general community by:
  + prescribing model rules that can be adopted by incorporated associations;
  + providing that the committee of an association has the right to impose fines against members that breach the rules of an Association; and
  + providing security against potential claims that may be made against a person appointed as the liquidator of an incorporated association;
* to provide a simple and inexpensive means of incorporation for voluntary organisations by ensuring the minimum necessary administrative obligations to enable effective regulatory oversight; and
* to recover the costs of efficiently administering the Reform Act and the proposed Regulations through cost-reflective and equitable fees.

### Assessment of Proposed Regulations

The proposed Regulations will produce several benefits. Association members and the public will ultimately derive most of the benefit, although some will flow to industry.

The benefit that can be quantified is the benefit that is derived from recovering approximately 80% of the cost of administering the association’s regulatory scheme. This is estimated to be $2,369,310 p.a.

The primary cost of the proposed Regulations will be incurred by the incorporated association sector and includes $2,369,310 per annum for fees payable under the Reform Act. Discounted over 10 years, this equates to $22,324,295.

In addition, the regulations that prescribes certain information that must be provided to the registrar is estimated to impose a burden of $24,474 p.a. on the associations sector. Discounted over 10 years, this equates to $230,608.

In total, this equates to a cost of $22,554,903 on the associations sector over a 10 year period.

In respect of the benefits of the proposed Regulations that could not be quantified, a qualitative assessment (which incorporates the quantified costs and benefits) was used to assess the proposed Regulations. The assessment demonstrates that the estimated benefit of each of the proposed regulations outweighs the estimated cost of each of the proposed regulations.

### Other Means of Achieving Objectives

In considering the most effective means to achieve the identified objectives, other viable alternatives were considered. These alternatives include:

* assessing different options for how fees would be prescribed;
* prescribing less information to be supplied to CAV in support of certain applications; and
* prescribing a smaller maximum fine that a committee can impose on a member for breaching the rules of that association.

A multi-criteria analysis was used to determine the appropriateness of each alternative. However, the alternatives to the proposed Regulations were assessed as either not being appropriate, or no better, than the proposed Regulations.

A summary of the multi-criteria for each of these options is provided below.

Table 1: Summary of MCA analysis for proposed Fees

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** 80% cost recovery with cross subsidisation | | **Option 3** 80% cost recovery without cross subsidisation | | **Option 4** Full Cost Recovery | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **Efficiency** | **33%** | 0 | 0 | 3 | **1** | 4 | **1.33** | 5 | **1.66** |
| **Vertical Equity** | **33%** | 0 | 0 | 3 | **1** | 2 | **0.66** | 1 | **.33** |
| **Effectiveness** | **33%** | 0 | 0 | 4 | **1.33** | 3 | **1** | 2 | **.66** |
| **Total:** | | 0 | 0 | 10 | **3.33** | 9 | **3** | 8 | **2.66** |

The above multi-criteria analysis identifies option 2, 80% cost recovery with cross-subsidisation as being the preferred option. Option 3 was assessed as being more efficient than option 2 because it did not involve cross subsidisation, however option 3 was assessed as being less vertically equitable and less effective because it would result in increased fees for tier 1 associations to lodge their financial statements, and increased fees to incorporate under the Reform Act. Ultimately, the increased vertical equity and effectiveness of option 2 outweighed the increased efficiency of option 3.

CAV believes that it is more important that incorporating as an association remains a viable method by which small, volunteer based, organisations can obtain corporate status than it is for the fees for larger tier 2 and tier 3 associations to be set at a level that is at or below full cost recovery.

Table 2: Summary of MCA analysis for prescribed information provisions

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** Proposed Regulations | | **Option 3** Less prescribed information | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **Promotes access to incorporation** | **50%** | 0 | 0 | -2 | **-1** | -1 | **-.5** |
| **Protects rights and liabilities** | **50%** | 0 | 0 | 4 | **2** | 2 | **1** |
| **Total:** | |  | 0 | 2 | **1** | 1 | **.5** |

Table 3: Summary of MCA analysis for right to fine provisions

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** Proposed Regulations | | **Option 3** Smaller Maximum Fine | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **Promotes access to incorporation** | **50%** | 0 | 0 | 3 | **1.5** | 2.5 | **1.25** |
| **Protects rights and liabilities** | **50%** | 0 | 0 | 2 | **1** | 2 | **1** |
| **Total:** | |  | 0 | 5 | **2.5** | 4.5 | **2.25** |

### Comparison of Current and Proposed Regulations

The proposed Regulations largely remake the existing *Associations Incorporation Regulations 2009*, however, they do contain a number of differences. Please see Appendix 2 of the RIS for a comparison of the current and the proposed Regulations.

Additionally, following a detailed review of the existing fee structure, it was determined that in order for CAV to maintain current service levels, it would be necessary to adjust fee recovery. The review of the existing fee structure identified that 40% of the cost of administering the current Act and Regulations is not being recovered by the Government through fee revenue. This is unsustainable and poses a threat to the effective regulation of the sector.

The proposed fee structure provides for some particular fees to rise, some fees to be reduced and others to remain at current levels. It seeks to minimise the impact of any fee increases on smaller associations by charging associations with in-excess of $250,000 and $1,000,000 in revenue, fees above full cost recovery to lodge annual financial statements, and then using this additional revenue to subsidise other processes commonly used by smaller associations. This approach is consistent with the objective of ensuring that incorporating under the Reform Act is a viable low-cost method for small volunteer based community organisations to obtain corporate status.

Table 4 below provides an outline of the proposed change in each fee type.

Table 4: Proposed Fees under the proposed Regulations

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Current Fee** | **Proposed Fee** | **Proposed Change (%)** |
| Application for incorporation (model rules) | 2.5 FU  $31.33 | 2.5 FU $31.33 | 0.00% |
| Application for incorporation (own rules) | 10 FU $125.30 | 14.5 FU $181.69 | + 45.00% |
| Application for incorporation by a registrable body (model rules) | 10 FU $125.30 | 4 FU $50.12 | - 60.00% |
| Application for incorporation by a registrable body (own rules) | 10 FU $125.30 | 16 FU $200.48 | + 60.00% |
| Application for amalgamation (model rules) | 10 FU $125.30 | 8 FU $100.24 | - 20.00% |
| Application for amalgamation (own rules) | 10 FU $125.30 | 14.5 FU $181.69 | + 45.00% |
| Application to change name of incorporated association | 3 FU $37.59 | 2 FU $25.06 | - 33.33% |
| Application to alter rules of an incorporated association | 6 FU $75.18 | 12.5 FU 156.63 | + 108.33% |
| Application to be declared a Tier 1 or Tier 2 association | n/a | 9 FU $112.77 | n/a |
| Lodgement of financial statements – Tier 1 | 3.5 FU $43.86 | 4 FU $50.12 | + 14.27% |
| Lodgement of financial statements – Tier 2 | 3.5 FU $43.86 | 8 FU $100.24 | + 128.55% |
| Lodgement of financial statements – Tier 3 | 3.5 FU $43.86 | 16 FU $200.48 | + 357.09% |
| Application for exemption from lodgement of financial statements – Tier 1 | n/a | 2 FU $25.06 | n/a |
| Application for exemption from lodgement of financial statements – Tier 2 | n/a | 4 FU $50.12 | n/a |
| Application for exemption from lodgement of financial statements – Tier 3 | n/a | 4 FU $50.12 | n/a |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 1 | 2 FU $25.06 | 2.5 FU $31.33 | + 25.02% |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 2 | 2 FU $25.06 | 2.5 FU $31.33 | + 25.02% |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 3 | 2 FU $25.06 | 2.5 FU $31.33 | + 25.02% |
| Application for exemption from requirements regarding the removal of an auditor under s107(2) | n/a | 3.5 FU $43.86 | n/a |
| Inspection of register or prescribed documents kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 2 FU $25.06 | - 20.00% |
| Obtaining copies of a prescribed document kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 3 FU $37.59 | + 20.00% |
| Obtaining certified copy of a prescribed document kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 4.5 FU $56.39 | + 80.00% |
| Obtaining a certified duplicate of a certificate registration of an incorporated association | 1.5 FU $18.80 | 2 FU $25.06 | + 33.30% |

### Public Consultation

In view of the nature of the proposed Regulations, and the level of consultation already undertaken, a 28-day consultation period has been set for the RIS and proposed Regulations, as required under the *Subordinate Legislation Act 1994*.

An incorporated association is defined in section 3 of the Reform Act as meaning “an association that is incorporated under this Act”. The definition is broad and therefore the Reform Act and proposed Regulations affect a wide range of associations and people including:

* members of the association;
* members of the general public that deal with the association, including clients of not-for-profit community service organisations;
* members of the public who may seek to inspect or obtain a certified copy of documents held by the Registrar;
* professional bodies such as CPA Australia, the Institute of Chartered Accountants in Australia, the Law Institute of Victoria and Australian Consumers Association;
* peak stakeholder groups such as Clubs Victoria Inc and the Victorian Council of Social Service;
* Government funding agencies;
* persons who may be appointed as a liquidator of an incorporated association; and
* The Registrar of Incorporated Associations.

It is therefore proposed to seek the views of each of these affected parties.

In developing this RIS and the proposed Regulations, stakeholders have been consulted regarding the content of the model rules and proposed Regulation 19 (this regulation provides for a committee’s right to fine members of an incorporated association for breaching the rules of that association).

When the 2009 Regulations were made, the model rules were identified as requiring a general review, incorporating stakeholder consultation. At that point, the model rules had not been comprehensively reviewed since they were first made in 1983. Stakeholder feedback indicated that the model rules required updating.

In order to ensure that stakeholders were confident that an independent process was undertaken, CAV contracted with barrister Tony Lang to review and redraft the model rules. Mr Lang’s review involved partnering with PILCHConnect to hold focus groups with representation from a range of small and large incorporated associations regarding the proposed new model rules.

A final version of the model rules is included in the attached proposed Regulations.

In relation to prescribing a right to fine, CAV conducted a survey of approximately 200 incorporated associations to seek their views on this right. A full discussion regarding the outcomes of this survey is included at section 2.2.

Stakeholders have not been specifically consulted about the development of the fees in the proposed Regulations.

No other specific consultation was carried out with stakeholders during the development of this RIS or the proposed Regulations.

1. Introduction

**Key points**

* **Following proclamation of the *Associations Incorporation Reform Act 201*2 it will be necessary to re-make the Associations Incorporation Regulations.**
* **The proposed Regulations seek to address a number of problems relating to the administration of the incorporated association scheme.**

### This chapter provides background into the history and nature of the regulation of the incorporated association sector.

* 1. **Overview**

In September 2006, the State Services Authority (SSA) was commissioned to undertake a review of Not for Profit Regulation under section 50 of the *Public Administration Act 2004*. The SSA released the final report of its review in September 2007.

In response to the SSA report, the then Government developed the Victorian Government Action Plan: Strengthening Community Organisations (the Action Plan). The Action Plan was a whole of government response to the recommendations made by the SSA. The Action Plan detailed 25 actions to be implemented by the Government to develop the capacity and sustainability of the community sector in Victoria. Actions 1-5 specifically related to the regulation of incorporated associations under the AIA.

In response to the Action Plan, a staged approach to reforming the AIA has been undertaken.

Parliament passed the *Associations Incorporation Amendment Act 2009* and the *Associations Incorporation Amendment Act 2010* in April 2009 and August 2010 respectively. These Acts contain amendments to the AIA that would:

* merge the role of public officer and secretary of an incorporated association, with the secretary to assume the responsibilities of the public officer under the AIA;
* enhance the rights of members of incorporated associations and improve governance arrangements;
* enhance the supervisory role of the Registrar;
* introduce additional provisions relating to wind up and liquidation of incorporated associations;
* revise annual reporting requirements and annual thresholds;
* repeal the limitations on trading by an incorporated association; and
* improve grievance and dispute resolution procedures for incorporated associations.

The final stage of reforming the AIA is the Reform Act, which was passed by the Victorian Parliament in April 2012. The Minister for Consumer Affairs acknowledged the importance of the Reform Act in the Second Reading Speech for the legislation by stating that:

“Notwithstanding that the act has been subject to substantial amendment, it has not, prior to this bill, been subject to a thorough consolidation, including standardisation of expression and style in accordance with contemporary best practice usage.”

The Reform Act achieves this by:

* incorporating the reforms contained in the 2009 and 2010 amendment Acts that have yet to commence, and repeals those Acts;
* re-writing the AIA provisions to reflect current best practice plain language drafting principles;
* revising the financial reporting provisions of the AIA to provide clearer guidance to incorporated associations on their obligations;
* providing for a register of members to be maintained by an incorporated association and regulates rights of access to the register; and
* improving the utility of the legislation for members and committees of incorporated associations by consolidating those provisions most commonly used by associations into one part of the Reform Act, with the provisions that relate to the Registrar’s powers or which are technical or administrative in nature consolidated in later parts of the Act.

As indicated, when the sun setting Associations Incorporation Regulations were remade in 2009, substantial changes to the Regulations were deferred in anticipation of a thorough review of the Regulations being carried out following further legislative reforms to the AIA. Transition costs for CAV and the sector would also be minimised by adopting such an approach.

The legislative reforms are approaching completion and this RIS is a key component of the comprehensive review of the Associations Incorporation Regulations.

* 1. **The Incorporated Association Sector**

There are 38,244 associations incorporated in Victoria as at 22 August 2012, with approximately 1,400 new registrations each year. Associations are wide ranging in type, nature and scale. They typically fall into the categories of charities, sport, education, or community service clubs. Figure 1 shows the number of incorporated associations in the various industry sectors. Figure 1 was prepared by CAV in 2006 as part of the report “Profile of Victorian Incorporated Associations 2004”. This information was obtained from a survey of incorporated associations conducted in 2004. Whilst the number of incorporated associations has continued to increase, it is considered that the percentage of associations in each of the categories has remained broadly consistent.

Figure : Number of Associations on Register by ANZSIC Code

**8**

**297**

**15**

**11537**

**6581**

**6113**

**8603**

**57**

**544**

**16**

**Agriculture, Forestry & fishing**

**Retail Trade**

**Education**

**Not applicable\* historical data that**

**was not collected or statistically**

**insignifant**

**Health & Community Services**

**Cultural & Recreational Services**

**Sport & Recreation**

**Personal & Other Services**

**Religious Organisations**

**Interest Groups**

Table : Number of Associations by Annual Revenue

|  |  |  |
| --- | --- | --- |
| **Revenue** | **No.** | **Percentage** |
| $500,000+ | 1,477 | 5% |
| $200,000-$499,999 | 1,414 | 5% |
| $150,000-$199,999 | 953 | 3% |
| $100,000-$149,999 | 1,454 | 5% |
| $50,000 - $99,999 | 3,033 | 10% |
| $0-$49,999 | 21,926 | 72% |

Associations are not-for-profit organisations, funded through membership fees, government grants, fundraising activities, and/or donations. The majority of associations are small organisations with turnover of less than $50,000; however, there are a number of larger associations with an annual turnover of $250,000 or more.

Table 5 shows a breakdown of the number of incorporated associations categorised by annual revenue and reveals that 72% of associations have annual turnover of less than $50,000.[[1]](#footnote-1)

* 1. **Regulation of Incorporated Associations**

The regulatory scheme for the incorporated association sector is established by the Reform Act. The proposed Regulations are being made to support the efficient operation of the provisions of the Reform Act.

For the most part, the regulatory scheme established by the Reform Act is the same as the regulatory scheme that currently exists under the AIA.

An incorporated association is defined in section 3 of the Reform Act as meaning “an association that is incorporated under this Act”.

The proposed Regulations will apply to incorporated associations only.

Incorporation is a voluntary process whereby a not-for-profit club or community group can apply to become its own 'legal person' (i.e. the association becomes a distinct legal entity that continues regardless of changes to its membership).

In Victoria, clubs and associations will incorporate under the Reform Act by applying to CAV. This method is a simple and inexpensive process available to associations with at least five members. The Director of CAV is the Registrar of Incorporated Associations under the Reform Act. CAV is required to maintain a register of Victorian incorporated associations and monitors their compliance in accordance with the Reform Act. CAV will also support the incorporation and operation of associations with advice on legislative requirements and the development of model rules under the Reform Act for the orderly conduct of association activities.

Once incorporated, the Reform Act requires associations to comply with a range of behavioural and process requirements including:

* conducting annual general meetings;
* lodging annual statements;
* notifying the Registrar of changes to any association details;
* maintaining adequate financial records;
* making copies of documents available to members on request;
* providing its registered name in documents; and
* notifying the Registrar of a proposed special resolution.

Not-for-profit organisations are not obliged to incorporate under the Reform Act. Associations may choose to operate as unincorporated bodies or may incorporate under other legislation. Alternative options for non-profit groups include incorporating as:

* a company limited by guarantee under the corporations law;
* a non-trading co-operative under the *Co-operatives Act 1996*; and
* (for Indigenous groups only) as an Indigenous corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006.

Incorporation under the current AIA is considered by many organisations to be preferable to incorporating as a company. This is primarily due to lower costs. Incorporation as an association is less expensive than as a corporation (the proposed fee under the proposed Regulations is $181.69 plus $50.12 per annum for an association against a minimum of $340 plus $41 per annum for a special purpose corporation or a minimum of $218 for a non-special purpose corporation). In addition, the ongoing regulation is less stringent and involves fewer time-consuming compliance responsibilities.

Likewise, incorporating under the AIA is also considered by many organisations to be preferable to incorporating as a co-operative. This is in part due to the greater involvement required by members of a co-operative in its running, namely, members/shareholders are required to be actively involved in the co-operative and co-operatives are required to provide ongoing co-operative education programs for members. Additionally, the one member/one vote requirement for co-operatives provides for less flexibility than the under the AIA, which allows for different classes of membership to have different voting rights.

The capacity for associations to incorporate appears to have had a positive impact on the community and is viewed as a positive option for incorporation by community groups. This is borne out by ongoing high rates of new incorporations (currently in excess of 1,400 per annum) with especially high rates of association formation among culturally and linguistically diverse groups and migrant groups. The Reform Act ensures that the rights of members of incorporated associations are protected by means of an appropriately comprehensive set of rules. The Reform Act also contains requirements aimed at ensuring the efficient and accountable management of the association’s activities.

Please see Appendix 3 for a summary of how the Reform Act interacts with the proposed regulations.

* 1. **This Regulatory Impact Statement**

In accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*, a RIS is required to assess the proposed Regulations in terms of its objectives and effect, alternative approaches to achieving those objectives, and an assessment of the costs and benefits of the regulations and the alternatives. An assessment has also been undertaken of the implications of the proposed Regulations on competition.

In assessing the most effective option to achieve the identified objectives, the RIS must determine decision criteria to assess each option. These will relate directly to the objectives of the proposed Regulations and to the Reform Act.

By virtue of the framing of the Reform Act, the 2009 Regulations and the proposed Regulations respond specifically to particular provisions of the Reform Act rather than being self-contained. Therefore, the assessment of the costs and benefits of the proposed Regulations is only on the ‘incremental’ costs and benefits arising from the proposed Regulations and not the impacts that are attributable to the provisions of the Reform Act.

This RIS looks at the impact of the proposed Regulations. For each of the proposed regulations that impose a material burden, a number of other options are assessed.

1. Nature and Extent of the Problem

**Key points**

* **There is a need for CAV to recover the costs of effectively administering the Reform Act and the proposed Regulations and to be able to accurately collect information regarding incorporated associations.**
* **There is also a need for incorporated associations to be able to enforce their rules.**

This Chapter:

* explains the rationale for Government intervention in the incorporated association sector; and
* sets out the specific problems the proposed Regulations seek to address.
  1. General Rationale for Government Intervention in the Associations’ Sector

The Second Reading Speech for the introduction of the Associations Incorporation Bill in 1981 makes it clear that the purpose of the legislation was to “provide a simple and inexpensive means by which unincorporated non profit associations may obtain corporate status”.

The “problem” that the legislation was introduced to address is identified in the Second Reading Speech as being “difficulties that flow from the fact that unincorporated associations are not entities which are recognised by the law”. These difficulties include:

* an inability to hold property in their own right;
* an inability to enter into contracts in their own name;
* an inability to dispose of property; and
* an inability for third parties to enter into legal agreements with an unincorporated entity.

The speech also noted that incorporation under the (then) *Companies Act* was not appropriate as that legislation had been developed to regulate profit making bodies and included very detailed provisions relating to the management and control of registered bodies. Companies law also included stringent requirements in relation to keeping, auditing and lodging books of account.

The current AIA commenced operation in 1983, and was introduced to address these concerns. The AIA overcomes many of the difficulties outlined above by providing a relatively inexpensive and simple means by which unincorporated non-profit associations could obtain corporate status. It also provides for:

* a framework for the good governance and operation of incorporated associations to protect the interests of the members and external stakeholders;
* limited liability of members;
* the association to perform all the functions of a body corporate (such as entering into contracts);
* the association to sue and be sued in its own name;
* perpetual succession of the association; and
* the power to acquire, hold and dispose of property.

In a general sense, the AIA provides a framework that allows for a level of organisational certainty and stability which would otherwise be missing, or which would involve much higher compliance costs if, for example, company formation was pursued as an alternative.

The Reform Act is a re-enactment of the 1981 Act, and as such, it substantially reproduces the AIA, as amended.

In Victoria, clubs, special interest groups and community groups can apply to CAV to become incorporated under the AIA. Following the commencement of the Reform Act, these applications will be made under the new Act. These groups support community needs and activities including education, health, housing, the arts and sport. They provide benefit to the community by contributing substantially to the economy and to social capital. Incorporation of an association means the creation of a legal entity, separate from the individual members.

The main reason for incorporation is the protection of the members and office holders against personal liability for debts and other legal obligations of the organisation. Other advantages include:

* the ability to buy and sell property in the name of the association;
* the ability to sue (and be sued) in the name of the association;
* the ability to accept gifts and bequests;
* eligibility to contract with government for the delivery of a range of funded services to the community;
* the ability to invest and borrow money;
* greater eligibility to apply for grants; and
* the ability to apply for taxation concessions or taxation exempt status from the Australian Taxation Office and State Revenue Office.
  1. Specific Rationale for Proposed Regulations

The proposed Regulations are intended to address a number of specific problems that relate to the administration of the Reform Act, and the incorporated association sector more generally, by CAV.

Each of these specific problems are addressed below.

* 1. Cost Recovery for Administration of Scheme

**Nature of the Problem**

The Reform Act establishes a scheme for the incorporation of associations and for the registration of incorporated associations. The rationale for establishing a scheme of incorporation is identified above at 2.1.

The registration of individual incorporated associations enables the creation of a public register of incorporated associations as required by section 39 of the Reform Act. The public register enables members of the public to have access to information about the purposes, rules, contact details and secretaries of incorporated associations in Victoria. It also enables members of the public to have access to the annual statements of incorporated associations in Victoria.

The problem to be addressed is how to best recover the costs of the activities required to be carried out as a result of these processes.

If fees are not prescribed, the costs incurred by CAV in carrying out the processes and provisions of the Reform Act will fall on the public generally, principally on taxpayers. Alternatively, the level of service provided by CAV in assisting and regulating incorporated associations would diminish.

**Extent of the Problem**

As calculated below in Appendix 1, the total effective costs (direct and indirect) of administering the Reform Act and the proposed Regulations is estimated to be $2,890.870 p.a.

* 1. Administrative Oversight of Incorporated Associations’ scheme

**Nature of the Problem**

If CAV is not able to effectively and efficiently regulate the Reform Act, and perform its statutory supervisory function, potential loss or detriment could flow to members of incorporated associations, funding bodies and members of the general community that interact with incorporated associations.

Loss or detriment could flow to these groups primarily from the risk they are dealing with an improperly managed association. For example, members of an association would suffer loss if the committee of that association was misappropriating funds from the association.

In order for CAV to be able to effectively and efficiently regulate the incorporated association sector, it requires certain information relating to incorporated associations. It is for this reason that the Reform Act requires certain applications to the Registrar of Incorporated Associations (“the Registrar”) to contain prescribed particulars.

For CAV to be able to process applications under the Reform Act, the applications must contain a sufficient level of information to enable the Registrar to fulfill her statutory function and make an informed and accurate decision.

For example, section 191 of the Reform Act provides that the Registrar must maintain a register of incorporated associations containing certain details of each association, including its name, its current registered address, its current postal address and the name and date of appointment of the current secretary.

Under section 6 of the Reform Act, an application by an unincorporated association to become incorporated must contain the prescribed particulars.

In order for the Registrar to fulfill her statutory obligations under section 191, CAV must collect sufficient information from the association to ensure the register is maintained to an appropriate standard.

If applications to the Registrar are not required to contain certain information, the register maintained by the Registrar would be inaccurate; this could result in the following problems:

* CAV could be unable to contact an association to assist in resolving a dispute;
* CAV could be unable to identify the appropriate person to prosecute in the case of breaches of the Reform Act; and
* In the event of regulatory changes, CAV could be unable to contact the association to inform them of revised rights and obligations.

Similarly, under section 13(3) of the Reform Act, the Registrar may refuse an application by a company to register as an incorporated association if the likely value or nature of the property of the company renders it inappropriate for registration under the Reform Act.

For the Registrar to be able to accurately determine whether a company is appropriate for registration, CAV must collect sufficient information to be able to ascertain the value of the property held by the company.

By prescribing certain information that must accompany applications to the Registrar, CAV is able to ensure that only appropriate organisations are registered as incorporated associations. This will protect people who deal with these organisations by ensuring that organisations that should be subject to the stricter requirements of being registered as a company are not registered as incorporated associations.

**Extent of the Problem**

It is impossible to accurately quantify the extent of this problem, as CAV has always held sufficient information about associations to properly regulate the incorporated association sector. CAV has no record of any complaints received in relation to information obligations. In fact, there are indications that collating details about incorporated associations that are centrally stored and accessible is of benefit to the sector and to the public. For instance, the public is able to inspect the register and certain other documents, as well as obtain copies of these documents. Last year there were over 3,000 such transactions, suggesting that this capability is of value to the public.

The importance of having a properly regulated incorporated association sector has been recognised by the Productivity Commission which asserts that a sound regulatory system for the incorporated association sector is important in building and maintaining trust in the sector and in facilitating the establishment and operation of incorporated associations[[2]](#endnote-1). This role is also acknowledged by the Australian Council of Social Service which argues, in a submission to the Productivity Commission, that:

“….the community values the contribution of the sector and expects State, Territory and Commonwealth governments to help non profits to flourish through appropriate regulation and concessional treatment. This is reflected in current legislation and regulations, which aim to assist non profit organisations by reducing costs, providing protection for members and directors, and by increasing the confidence of the public to make donations.”

The collection of information by CAV ensures a sound regulatory system.

**Consultation Points**

*1. What, if any, benefits do incorporated associations and other stakeholders derive from being able to access publicly available data relating to incorporated associations held by CAV?*

*2. To what extent do stakeholders benefit from having a properly regulated incorporated associations sector?*

* 1. **Enforcement of Rules of Incorporated Association**

**Nature of the Problem**

The smooth operation of an incorporated association is dependent on members observing the rules of that incorporated association. If the members of an association do not observe the association’s rules or engage in misconduct, there will be inevitable conflict between the transgressing member and other members of the association, including the committee.

Under the Reform Act, the rules of an incorporated association constitute the terms of a contract between the incorporated association and its members. Any dispute under the rules of an incorporated association is therefore a civil dispute that must by resolved directly by the parties involved.

CAV does not have any power under the Reform Act to independently enforce the rules of an incorporated association. Under the Reform Act, only the Magistrates’ Court has authority to interpret and direct compliance with an incorporated association’s rules. Additionally, the Reform Act does not allow the committee of an incorporated association to deter members form engaging in misconduct by levying fines on its members.

However, the Reform Act does provide that regulations can allow the committee of an incorporated association to impose a fine on members who have breached the rules of that association. Per the Reform Act, the regulations can prescribe a maximum fine that the committee of an incorporated association can impose on non-compliant members.

Prescribing a power to impose fines provides an incentive for members of an incorporated association to comply with the rules of their association and provides a deterrent for misconduct. Additionally, such a power provides a simple internal disciplinary mechanism for resolving disputes, eliminating the need for associations to consider other forms of legal redress such as making an application to the Magistrates’ Court.

**Extent of the Problem**

The issue of how an incorporated association can best enforce its rules is one that applies to all incorporated associations. Each and every incorporated association would find it more difficult to enforce its rules if it did not have a right to impose fines on members.

In order to gain more of an understanding of the way in which incorporated associations use fines to enforce their rules, in 2011 CAV conducted a written survey of a random sample of 200 incorporated association, to which 102 responses were received.

Based on the effective responses received, the following results have been recorded:

* **Awareness of the Right:** Half of the respondents were aware of their right, and half were not. The survey revealed that fines were used by associations for reasons such as arriving late to collect one’s child from a childcare centre, or for late payment of annual fees.
* **Desirability of the Right:** A majority of respondents supported the legislative right to fine their members (65%). A minority opposed it (30%) and a small fraction of respondents abstained from answering (5%).
* **Limitations to the Right:** The vast majority of respondents asserted that the right to fine members should be limited by prescribing a maximum amount that members can be fined in the legislation (72.5%). A small minority said that the legislation should not prescribe a maximum penalty (20%) and, again, some respondents abstained from answering the question (7.5%).
* **The Maximum Quantified:** There was significant discrepancy among those who supported the existence of a legislative maximum when it came to quantification. 35% of respondents argued that the maximum should remain $500, 30% asserted that it should be lowered, and 7.5% said it should be increased substantially. Reasons for increasing the maximum included: deterrence (especially within large incorporated associations); the need to recover losses caused by breaches, and; punishment for serious or repeated breaches.

3. Proposed Regulations

**Key points  
  
The primary objectives of the proposed regulations are to:**

* **protect the rights and interests of members of incorporated associations, funding bodies and the general community;**
* **provide a simple and inexpensive means of obtaining corporate status for voluntary organisations by ensuring the minimum necessary administrative obligations;**
* **recover the costs of efficiently administering the Reform Act and the proposed Regulations through cost-reflective and equitable fees.**

This Chapter:

* identifies the objectives of the proposed Regulations;
* sets out the content of the proposed Regulations;
* undertakes a cost-benefit analysis of the proposed Regulations; and
* identifies those proposed Regulations that do not impose a material burden.
  1. **Objectives of Proposed Regulations**

**Primary Objectives**

Linking with the problems identified in Section 2 of this RIS, the primary objectives of the proposed Regulations are:

* to protect the rights and interests of members of incorporated associations, funding bodies and the general community by:
  + prescribing model rules that can be adopted by incorporated associations;
  + providing that the committee of an association has the right to impose fines against members that breach the rules of an association; and
  + providing security against potential claims that may be made against a person appointed as the liquidator of an incorporated association;
* to provide a simple and inexpensive means of obtaining corporate status for voluntary organisations by ensuring the minimum necessary administrative obligations to enable effective regulatory oversight; and
* to recover the costs of efficiently administering the Reform Act and the proposed Regulations through cost-reflective and equitable fees.

**Broader Objectives**

The broader objective of the proposed Regulations, as provided for in regulation 1 of the proposed Regulations, is to facilitate the operation of the Reform Act by:

* prescribing particulars and forms for the purposes of the Reform Act;
* providing for model rules of incorporated associations;
* making provision for the winding up and cancellation of certain incorporated associations;
* prescribing fees payable under the Reform Act;
* prescribing maximum fines which can be imposed by an incorporated association on its members; and
* making provision for other matters that are necessary for carrying out or giving effect to the Reform Act.
  1. **Proposed Regulations**

**Part 1 – Preliminary**

**Regulations 1 to 3** deal with the objectives and authorising provisions.

**Part 2 – Particulars**

These regulations prescribe certain things that are required to be prescribed by the Reform Act.

**Regulation 4** prescribes the particulars that must accompany an application for incorporation under section 6 of the Reform Act. Per this regulation, the particulars are:

* the proposed registered address of the proposed incorporated association;
* the postal address of the proposed incorporated association;
* the name, address, contact telephone number and email address (if available) for the applicant (if applicant is not the person nominated to be the first secretary of the proposed incorporated association);
* the number of members at the time of application; and
* the estimated total revenue of the proposed incorporated association in its first financial year.

**Regulation 5** prescribes the particulars that must be contained in a certificate of registration issued under sections 8, 14 and 20 of the Reform Act. Per this regulation, the particulars are:

* the name of the incorporated association;
* the registration number of the incorporated association; and
* the date on which the association was registered as an incorporated association under the Reform Act.

**Regulation 6** prescribes the particulars that must be contained in an application for incorporation by a registrable body under section 12 of the Reform Act. Per this regulation, the particulars are:

* the name of the company, co-operative, society, association, institution or body and if applicable, the Act or regulation under which it was incorporated, formed or registered;
* if the applicant company, co-operative, society, association, institution or body has a registration number or other unique identifier, that number or identifier;
* the registered address of the proposed incorporated association;
* the number of members of the company, co-operative, society, association, institution or body at the time of application;
* the total revenue of the company, co-operative, society, association, institution or body in the preceding financial year;
* the estimated total revenue of the company, co-operative, society, association, institution or body in the current financial year; and
* the postal address of the proposed incorporated association.

**Regulation 7** prescribes the particulars that must be contained in an application for incorporation as an amalgamated incorporated association under section 18 of the Reform Act. Per this regulation, the particulars are:

* the names of the incorporated associations to be amalgamated;
* the registration numbers of the incorporated associations to be amalgamated;
* the registered addresses of the incorporated associations to be amalgamated;
* the proposed registered address of the incorporated association to be formed by the amalgamation; and
* the proposed postal address of the incorporated association to be formed by the proposed amalgamation.

**Regulation 8** prescribes the particulars that must be included in the notice of special resolution accompanying an application for amalgamation under section 18 of the Reform Act. Per this regulation, the particulars are:

* the name of the incorporated association to which the notice relates;
* the registration number of the incorporated association;
* the date and place of the meeting where the special resolutions were passed;
* details of the special resolutions passed at the meeting approving:
  + the terms of the amalgamation of the incorporated associations;
  + the purposes of the proposed amalgamated incorporated association; and
  + the proposed rules of the proposed amalgamated incorporated association;
* the name of the incorporated association to be formed by the amalgamation;
* details of the terms of the amalgamation of the incorporated associations; and
* the postal address of the association to be formed by the proposed amalgamation.

**Regulation 9** prescribes the particulars that must be included in an application for an incorporated association to change name under section 24 of the Reform Act. Per this regulation, the particulars are:

* the name of the incorporated association;
* the registration number of the incorporated association;
* the proposed new name of the incorporated association;
* the date of the general meeting of the incorporated association; and
* the name and address, contact telephone number and email address (if available) of the secretary.

**Regulation 10** prescribes the particulars that must be included in the notice of special resolution accompanying an application for an incorporated association to change name under section 24 of the Reform Act. Per this regulation, the particulars are:

* the name of the incorporated association to which the notice relates;
* the registration number of the incorporated association referred to above;
* the date and place of the meeting where the special resolutions were passed; and
* details of the special resolution passed at the meeting approving the proposed change of name of the incorporated association.

**Regulation 11** prescribes the particulars that must be included in a notice of appointment of secretary under section 74 of the Reform Act. Per this regulation, the particulars are:

* the name of the incorporated association;
* the registration number of the incorporated association;
* the telephone number of the secretary (if available);
* the email address of the secretary (if available); and
* the date of appointment of the secretary.

**Part 3 – Rules, Membership and General Meetings**

**Regulation 12** provides that the rules contained in Schedule 4 are the model for incorporated associations.

**Part 4 – Transfer of Incorporation**

**Regulation 13** provides that an Aboriginal and Torres Strait Islander Corporation within the meaning of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth is a prescribed body corporate for the purpose of section 109 of the Reform Act. The effect of this regulation is to allow an Aboriginal and Torres Strait Islander Corporation to incorporate as an incorporated association under the Reform Act.

**Part 5 – Winding up and Cancellation**

**Regulation 14** details the security to be provided by a liquidator appointed on winding up under the certificate of the Registrar. Per this regulation, a liquidator who is appointed by the Registrar to act under section 130 of the Reform Act must pay the Registrar security of $50,000 if they do not have adequate and appropriate professional indemnity insurance and fidelity insurance.

**Part 6 – Forms and Fees**

**Regulation 15** provides that the prescribed form of the certificate that must be attached to the financial statements of associations under sections 94(2)(b), 97(2)(b) and 100(2)(b) is in the form set out in Schedule 2.

**Regulation 16** prescribes the fees in the proposed Regulations as being those contained in Schedule 3. See Appendix 1 for a detailed list of fees in the proposed Regulations.

The Office of the Chief Parliamentary Counsel of Victoria has advised that these fees are within the regulation making power of the Reform Act.

**Part 7 – Miscellaneous**

**Regulation 17** prescribes which documents may be inspected under section 196(1)(b) of the Reform Act.

**Regulation 18** prescribes the provisions of the Reform Act which will be suitable for infringement notices to be issued.

**Regulation 19** provides that the committee of an incorporated association may determine to fine a member a maximum of $500 for not complying with the rules of that incorporated association.

**Regulation 20** provides that additional information can be attached to the forms prescribed in the proposed Regulations.

* 1. **Cost and Benefits of Proposed Regulations**

A cost benefit analysis is provided below for the regulations that impose a significant burden. For those regulations that do not impose a significant burden, please see Table 6 for an explanation of the purpose of that regulation.

Table : Regulations that do not impose a material burden

|  |  |
| --- | --- |
| **Regulation** | **Purpose of Regulation** |
| Part 1 – preliminary (proposed regulations 1-3) | This part is machinery in nature. |
| Part 4 – Transfer of Incorporation (proposed regulation 13) | The purpose of this part is to allow an Aboriginal and Torres Strait Islander Corporation within the meaning of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth to incorporate as an association under the Reform Act. |
| Part 5 – Winding up and cancelation (proposed regulation 14) | The purpose of this proposed regulation is to enable people who do not have appropriate insurance (such as retired accountants) to still act as liquidators by allowing them to give a security as opposed to taking out insurance. The purpose of the security is to have a source of funds available to compensate people who suffer pecuniary loss if the liquidator fails to perform his or her duties adequately and properly. |

|  |
| --- |
| **Consultation Point**  *3. Do any of the proposed regulations listed in Table 6 impose an unidentified regulatory burden?* |

**Part 2 – Particulars and Forms** **(proposed regulations 4-11)**

***Reasons for Proposed Regulations***

The Reform Act establishes a scheme for the regulation of the incorporated association sector. The purposes of this scheme are to provide a simple and inexpensive means for voluntary organisations to gain corporate status and to protect the rights and interests of members of incorporated associations, funding bodies and the general community.

As part of the regulation of this scheme, a number of applications made under the Reform Act to the Registrar must be accompanied by certain prescribed information, and other documents must also contain certain prescribed information.

The proposed Regulations set out the relevant prescribed information for these applications and documents.

The information prescribed in the proposed Regulations has been selected to impose the minimum necessary regulatory obligations required to enable CAV to appropriately discharge its responsibilities under the Reform Act as the regulator of the incorporated association sector.

For example, an application to the Registrar to establish an incorporated association under section 6 of the Reform Act must be accompanied by the name of the proposed incorporated association and the name, address and contact telephone number and email address (if available) of the person nominated to be the first secretary of the proposed incorporated association, and the prescribed particulars.

Per proposed regulation 4, the prescribed particulars for this application are:

* the proposed registered address of the proposed incorporated association;
* the postal address of the proposed incorporated association;
* the name, address, contact telephone number and email address (if available) for the applicant (if applicant is not the person nominated to be the first secretary of the proposed incorporated association);
* the number of members at the time of application; and
* the estimated total revenue of the proposed incorporated association in its first financial year.

CAV requires all of this information to enable the Registrar to appropriately discharge her statutory responsibilities. For example, it is essential that CAV knows what the estimated total revenue of the association is so that it is able to determine what ‘tier’ the association is, and thus able to determine what financial reporting obligations apply to that association. It is also essential for CAV to have on file the contact details of the proposed incorporated association so that it can communicate with the association about matters under the Reform Act.

***Benefits***

The proposed Regulations will assist in providing a simple and inexpensive means of incorporation for voluntary organisations by ensuring that associations have the minimum necessary administrative obligations to enable CAV to have effective regulatory oversight.

Additionally, the proposed Regulations will protect the rights and interests of members of incorporated associations, funding bodies and the general community by ensuring that CAV has sufficient information about each incorporated association to be able to appropriately discharge its statutory responsibilities under the Reform Act.

Individual members of incorporated associations and members of the public who interact with incorporated associations will benefit from CAV’s supervisory role. On the other hand, individual incorporated associations, and the sector more generally, will benefit from the wide range of assistance that CAV can offer to incorporated associations.

***Costs***

Five of proposed regulations require incorporated associations to provide specific information to CAV when making certain applications under the Reform Act. This prescribed information is in addition to information that is required to be provided under the Reform Act.

These applications are:

* application for incorporation;
* application for incorporation by registrable body;
* application for amalgamation;
* application to change name of association; and
* notification of change of secretary.

These regulations will impose a cost on incorporated associations in the form of the additional time taken to complete these applications. Table 7 provides a summary of the anticipated total costs of these regulations for 2012/13. Table 8 calculates that the total cost of these regulations to the associations sector over a 10-year period will be $230,608. This figure is calculated using the discount rate of 3.5% as recommended by the Department of Treasury and Finance’s Guide to Regulation.

Table 7 is calculated by estimating the time it would take an association to fill out a form containing the required prescribed information, then multiplying this by the cost incurred by an association in spending this long completing such a form[[3]](#footnote-2). The time taken to complete these forms is a CAV estimate of the time taken to locate and provide the information required by the proposed Regulations. It is anticipated that the information to be provided is information that associations can be reasonably expected to have on hand.

This number is then multiplied by the estimated total number of applications CAV expects to receive in 2012/13 to determine the total cost of these regulations.

The cost per minute of an association member filling out a form has been calculated using the hourly rate of $54.55 as recommended by the Victorian Guide to Regulation. Table 8 is calculated on the basis that CAV expects the number of incorporated associations in Victoria to grow by 3% per year. This figure is based on the average number of new associations registered, and the number of registrations cancelled over the last five years. Table 8 proceeds on the assumption that the number of these applications received will grow at the same rate as the number of incorporated associations. Table 8 then applies the above mentioned discount rate of 3.5% over the 10 year period.

Table : Estimated costs for 2012/13

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Application** | **Estimated time taken** | **Estimated number of applications 2012/13** | **Cost per minute** | **Cost per application** | **Total cost** |
| Application for incorporation | 10 mins | 1817 | $0.91 | $9.09 | $16,519.56 |
| Application for incorporation by registrable body | 10 mins | 1 | $0.91 | $9.09 | $ 9.09 |
| Application for amalgamation | 10 mins | 46 | $0.91 | $9.09 | $418.22 |
| Application to change name | 5 mins | 356 | $0.91 | $4.55 | $1,618.32 |
| Notification of appointment of secretary | 5 mins | 1300 | $0.91 | $4.55 | $5,909.58 |
| Total cost for 2012/13 | | | | | $24,474.77 |

Table : Estimate costs for 2012/13 – 2022/23

|  |  |  |
| --- | --- | --- |
| **Year** | **Cost** | **Discounted Cost** |
| 2012/13 | $24,474 | $23,647 |
| 2013/14 | $25,209 | $23,532 |
| 2014/15 | $25,965 | $23,419 |
| 2015/16 | $26,744 | $22,517 |
| 2016/17 | $27,546 | $23,193 |
| 2017/18 | $28,372 | $23,081 |
| 2018/19 | $29,224 | $22,969 |
| 2020/21 | $30,100 | $22,858 |
| 2021/22 | $31,003 | $22,748 |
| 2022/23 | $31,934 | $22,638 |
| Estimated Total cost over 10 years | | $230,608 |

CAV will incur some additional costs in administering these applications. However, these costs will be offset by the charging of fees. Appendix 1 below provides a more detailed discussion of the costs incurred by CAV in processing these applications.

**Consultation Points***4. Do the time estimates included in table 4 provide an accurate reflection of how long it takes to provide this information?  
  
5. Do stakeholders feel that providing any of the information required for these applications will impose an unreasonable regulatory burden on incorporated associations?*

**Part 3 – Model Rules (proposed Regulation 12)**

***Reason for Proposed Regulations***

The Reform Act provides that each incorporated association must have its own set of rules. Per section 46, these rules are taken to constitute the terms of a contract between the association and its members.

Section 47 of and Schedule 1 to the Reform Act provide that the rules of an association must address certain matters.

In order to save an association the time and money it would take to draft rules from scratch, the Reform Act provides that the regulations must prescribe model rules for incorporated associations.

Incorporated associations have the option of either adopting the model rules, adapting the model rules to suit the association’s requirements, or drafting their own rules that meet all the requirements of the Reform Act.

Per section 47(3), an incorporated association that adopts the model rules is taken to have met the requirements of section 47 and Schedule 1.

***Benefits***

The proposed Regulations will assist in providing a simple and inexpensive means of incorporation for voluntary organisations by saving them from the cost of:

* having to draft their own rules; and
* holding a General Meeting to pass a special resolution to update their rules if the model rules changed as the rules of an association who adopts the model rules are automatically updated when the model rules are changed.

Additionally, the proposed Regulations will afford protection to both incorporated associations and members of incorporated associations by ensuring that associations who adopt the model rules have rules that comply with the Reform Act.

***Costs***

The proposed model rules will not impose a material cost on incorporated associations.

As adoption of the model rules is voluntary, any incorporated association which believes that the model rules impose an unreasonable burden may simply make its own rules (provided they comply with the Reform Act), thus avoiding any burden that the model rules may impose.

**Consultation Point**

*6. Stakeholders are invited to provide feedback about the content of the proposed model rules.*

**Part 6 – Forms and Fees (proposed regulations 15-16)**

***Reason for Proposed Regulations***

The Reform Act establishes a scheme for the incorporation of associations and the registration of incorporated associations. The reason for the proposed Regulations is to enable CAV to recover the costs of the activities required to be carried out as a result of the Reform Act.

Per the Department of Treasury and Finance (“DTF”) Cost-Recovery Guidelines (“the Guidelines”), cost recovery may be defined as the recuperation of the costs of government-provided or funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs their actions impose. In practice, cost recovery involves setting and collecting charges to cover the costs incurred in undertaking activities such as the administration of regulation (e.g. registration, licensing, issuing of permits, monitoring compliances, investigations, enforcement activity etc). When designed and implemented appropriately, the adoption of cost recovery has the potential to advance efficiency and equity objectives.

As stated in section 3.2.13 of the Victorian Guide to Regulation, general government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost recovery represents the value of all the resources used or consumed in the provision of an output or activity.

However, section 2.3 of the Guidelines acknowledge that while general policy is for costs to be recovered on a full cost basis, there are nevertheless situations where it may be desirable to recover at less than full cost, or not to recover costs at all. Examples include situations where:

* social policy or vertical equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery; and/or; and
* full cost recovery might adversely affect the achievement of other government policy objectives.

Further, per section 7 of the Guidelines, cross-subsidisation should only be used in cost recovery where it is an explicit decision of the Government – for example, in order to pursue equity or social policy objectives. Cross-subsidies occur where one group of users pay for more than the costs of the services (or products) they receive, and the ‘surplus’ is used to offset the costs of services provided to other users.

Under the existing Regulations, government only recovers approximately 60% of costs. It has been determined that this level of cost recovery is not sustainable and poses a threat to the effective regulation of the sector. Therefore, the level of cost recovery must be increased.

However, due to the broader public benefit made by incorporated associations, it is recognised by government that it is vital that incorporating as an incorporated association remains a cost effective option for small voluntary organisations. For this reason it is proposed to only recover 80% of costs under the Reform Act and proposed Regulations. Further to this, in order to prevent some fees from being increased in an unreasonable and inequitable fashion, it is also proposed to set via a limited method of cross-subsidisation.

The objective of ensuring that incorporation is accessible to small voluntary organisations is one of the fundamental objectives of the incorporated association scheme. The second reading speech for the Reform Act identifies that the AIA (as the precursor to the Reform Act) “was established to provide a simple and inexpensive means by which unincorporated not-profit associations could obtain corporate status”. Additionally, this objective is highlighted above at Chapter 3 as being one of the primary objectives of the proposed Regulations.

Under the proposed Regulations, tier 2 and tier 3 associations will be charged above full cost recovery to lodge annual financial statements ($100.24 and $200.48 compared to a cost to CAV of $69.93 and $77.08). In turn, this additional revenue will be used to subsidise other fees to ensure that incorporating remains a viable option for smaller organisations. Tier 2 associations have an annual revenue of between $250,000 and $1,000,000, while tier 3 associations have an annual revenue of in excess of $1,000,000.

The different levels of fees that are proposed for associations lodging financial statements have been set relative to the size of the association. Tier 2 associations are approximately twice the size of tier 1 associations, and tier 3 associations are approximately twice the size of tier 2 associations. In line with this, tier 2 associations will pay twice the fee of tier 1 associations, and tier 3 associations twice the fee of tier 2 associations.

This approach will promote vertical fiscal equity, as those associations with greater means will contribute proportionately more than those associations with lesser means, with the overall goal of maximising access to the benefits of incorporating under the Reform Act.

Additionally, for policy reasons, it is not proposed to charge fees for the following processes:

* application to cancel incorporation; and
* notification of change of secretary.

For both these applications, the imposition of a fee may act as a deterrent for associations to provide CAV with the required information. It is considered, on balance, to be more beneficial for the register of incorporated associations to be accurate than for government to recover costs for these applications.

A list of all proposed fees is provided above at section 2.7.

***Benefits***

The primary benefit that will arise from these regulations will be that approximately 80% of the cost of administering the Reform Act and the Proposed Regulations will be recovered from those who directly benefit from the incorporation associations scheme. CAV estimates that it will cost $2,890,870 to administer the incorporation associations scheme. Under the proposed regulations, CAV estimates that $2,369,310 will be recovered.

This approach minimises the extent to which the scheme will have to be subsidised by taxpayers, and ensures that, for the most part, the people who derive the benefits from the regulatory scheme meet the costs of administering the scheme.

Additionally, this model provides benefits to smaller associations by not unreasonably increasing fees. If the option of full cost recovery was adopted, the fee for an association to incorporate using its own rules would increase from the current $122.20 to $238.29. Instead, under the proposed Regulations, the fee will only increase to $181.68. Similarly, the annual fee paid by a tier 1 association to lodge its financial statements would rise from the current $42.77 to $67.21 under full cost recovery. Instead, under the proposed Regulations, this fee will only increase to $50.12. This is intended to ensure that incorporating as an incorporated association remains an affordable way of obtaining corporate status.

***Costs***

The proposed fees will require the incorporated associations sector to fund 80% of the costs of administration of the Reform Act and the proposed Regulations. This will be a total cost to the associations sector of $2,369,310.

Tier 2 and tier 3 associations will incur greater costs under this option as compared to tier 1 associations as they will be required to pay above full cost recovery to lodge annual financial statements. This increase in fees above full cost recovery for tier 2 and 3 associations for lodgment of financial statements results in a subsidy of around $203,000 per annum or 8.5% of total revenue.

Over a 10 year period, the total cost to associations is $22,324,295. The figure is calculated using an estimated growth in fees of 3% per annum which is in line with current growth and applying a discount rate of 3.5%. A summary of these costs is provided below in Table 9.

Table : Total costs fees provisions

|  |  |  |
| --- | --- | --- |
| **Year** | **Cost** | **Discounted Cost** |
| 2012/13 | $ 2,369,310 | $ 2,289,188 |
| 2013/14 | $ 2,440,389 | $ 2,278,129 |
| 2014/15 | $ 2,513,601 | $ 2,267,124 |
| 2015/16 | $ 2,589,009 | $ 2,179,876 |
| 2016/17 | $ 2,666,679 | $ 2,245,272 |
| 2017/18 | $ 2,746,680 | $ 2,234,426 |
| 2018/19 | $ 2,829,080 | $ 2,223,631 |
| 2020/21 | $ 2,913,952 | $ 2,212,889 |
| 2021/22 | $ 3,001,371 | $ 2,202,199 |
| 2022/23 | $ 3,091,412 | $ 2,191,560 |
| Total | $ 27,161,483 | $ 22,324,295 |

***Consultation Points***

*7. Do stakeholders believe that incorporating as an association under this new fee structure will remain a viable option for obtaining corporate status, particularly for smaller voluntary based not for profit organisations?*

*8. Do stakeholders believe that charging proportionally higher fees for larger tier 2 and tier 3 associations to lodge annual financial statements will impose an unreasonable financial strain on these associations?*

*9. Stakeholders are invited to share any general comments they have regarding the proposed fee structure.*

**Part 7 – Miscellaneous (proposed regulations 17-20)**

**Right to Fine**

***Reasons for Proposed Regulations***

Proposed regulation 19 provides that the committee of an incorporated association may determine to impose a fine not exceeding $500 on a member of the association who has committed a breach of the rules of that association, payable to the incorporated association.

Section 222(1)(q) of the Reform Act provides that the regulations may prescribe a fine, not exceeding 5 penalty units (approximately $580) payable when a member has committed a breach of the rules and the committee has determined by resolution to impose a fine.

The reason for proposed regulation 19 is to bring this provision of the Reform Act into operation for the purpose of providing incorporated associations with an appropriate, cost-efficient mechanism by which to enforce their rules.

***Benefits***

This regulation promotes the effective management of an incorporated association by deterring members who may be inclined to breach the rules of the association from doing so. The continual breaching of the rules of an association by members disrupts the orderly and efficient operation of that association. Stakeholder feedback received by CAV indicates that incorporated associations see the right to fine as an effective way of deterring members from breaching the rules of the association.

The concept of a maximum penalty acting as a deterrent is supported by the Victorian Sentencing Advisory Council. The Council, in its preliminary issues paper, *Maximum Penalties: Principles and Purposes* (October 2010) acknowledges that one of the purposes of setting a maximum penalty for an offence (or in this case, a maximum penalty for breaching the rules of an association) is to deter potential offenders from committing offences of similar character in the future.

However, the Advisory Council also notes that maximum penalties are only part of a boarder justice system, and it is this system as a whole that deters people from offending. It concludes that in addition to the size of the maximum penalty, the other main factor that influences the level of deterrence is the offenders perception of being ‘caught’ and ‘punished’.

Therefore, for fines to be an effective deterrent, they must also be supported by appropriate internal mechanisms within the association. It is for this reason that both the Reform Act and the model rules provide for effective internal dispute resolution processes.

In addition to acting as a deterrent, this regulation protects the rights of individual members by preventing them from being exposed to excess fines by prescribing a maximum fine that the committee can levy.

Lastly, this regulation helps to keep incorporating as an incorporated association as a low cost option for voluntary organisations. By providing a simple internal dispute mechanism, there will be a reduction in the need for associations to consider other forms of legal redress such as making an application to the Magistrates’ Court, which can be expensive.

***Costs***

There are no direct costs to incorporated associations in prescribing a maximum fine.

Although it could be suggested that imposing a maximum amount an association can fine a member could result in associations having inadequate negative incentives to deter members from breaking rules, this is unlikely to be the case for incorporated associations.

Members of associations who are fined will incur the cost of paying the fine. This cost will be a maximum of $500. It should be noted that this is not a cost attributable to the proposed Regulations, but is a cost of non-compliance with an association’s rules.

**Other regulations in this part**

The other regulations in this part are machinery in nature, and do not impose a burden on the incorporated association sector.

* 1. **Affected Parties**

An incorporated association is defined in section 3 of the Reform Act as “an association that is incorporated under this Act”. The definition is broad and therefore the Reform Act and proposed Regulations affect a wide range of associations and people including:

* members of incorporated associations;
* members of the general public that deal with incorporated associations or who may seek or obtain a certified copy of documents held by the Registrar;
* businesses that deal with incorporated associations;
* professional bodies such as CPA Australia, the Institute of Chartered Accountants in Australia, the Law Institute of Victoria and the Australian Consumers Association;
* peak stakeholder grounds such as Clubs Victoria Inc and the Victorian Council of Social Service;
* Government funding agencies;
* persons who may be appointed as a liquidator of an incorporated association; and
* the Registrar of Incorporated Associations.
  1. **Consultation**

The process of reforming the AIA has been accompanied by a wide-ranging public consultation process with key stakeholders.

Stakeholders were initially engaged regarding the reform of the AIA in 2004 by way of a public consultation process led by Dianne Hadden MP, and the subsequent release of a Discussion Paper. An Interim Report was released for further public consultation in April 2005. The Interim Report outlined 18 proposals for reform of the Act. After consideration of stakeholder feedback, a revised set of recommendations for reform of the Act was developed.

During 2007, two reviews were undertaken in consultation with the not-for-profit sector to examine current regulation of community organisations and opportunities to strengthen accountability and reduce red tape. Those reviews were the State Services Authority (SSA) Review of Not-for-Profit Regulation and the Strengthening Community Organisations Project.

The scope of the SSA review included consideration of the regulatory scheme established by the Act and of the recommendations developed by the 2004-05 review. The SSA reported to Government in October 2007 and made a number of recommendations for reform of the Act.

In April 2008, the then Premier launched the *Victorian Government Action Plan: Strengthening Community Organisations* (the Action Plan). The Action Plan was the whole of Government response to the recommendations of the SSA.

In response to the Action Plan, a staged process for amending the AIA was developed, with the *Associations Incorporation Amendment Act 2009* being passed by Parliament in April 2009 and the *Associations Incorporation Amendment Act 2010* in August 2010.

This process will be completed in 2012 with the anticipated proclamation of the Reform Act which will restructure and reorganise the AIA to generally improve its operation and readability.

The reforms were developed following detailed consultation with the Regulatory Reform Reference Group (RRRG) for incorporated associations. The RRRG was established by the Office for the Community Sector in the Department of Planning and Community Development (DPCD) in accordance with the Action Plan. Membership of the RRRG includes peak non-for-profit organisations such as:

* the Victorian Council of Social Service;
* VicSport;
* Clubs Victoria Inc;

and a range of government agencies including the:

* Department of Justice;
* Department of Human Services;
* Department of Premier and Cabinet; and
* DPCD.

In preparing the *Associations Incorporation Amendment (Fees and Other Matters) Regulations 2009*, CAV advised all incorporated associations of the expiry of the 1998 Regulations and sought comments on the utility of the existing Regulations. Advice was sought particularly on the accounting standards that were incorporated into these Regulations, with which the annual accounts of prescribed incorporated associations must comply.

In late 2010 and early 2011 CAV conducted a survey of incorporated associations in order to gain a better understanding of the way in which incorporated associations use fines to sanction members for rule breaches. The survey was of 200 randomly selected incorporated associations that were drawn from CAV’s database, and was carried out via mail.

Those selected received a letter explaining the purpose of the survey, a survey form and a reply paid envelope. The survey asked incorporated associations whether they were aware that they could impose fines upon members and to describe instances when (if ever) they have used fines to sanction their members in the past and the amount of these fines.

CAV received 102 effective responses from incorporated associations. 65% of respondents indicated that they believed that there should be a maximum amount that associations can fine their members, and 95% of this group indicated that they believe that the maximum should be $500 or less, suggesting that they are happy with the current regulations.

In relation to the development of the model rules, CAV engaged barrister Tony Lang to undertake an independent review of the existing model rules, and to develop new model rules. Mr Lang has completed his review, which involved partnering with PILCHConnect to hold focus groups with representatives from a range of small and large incorporated associations regarding the proposed new model rules. The proposed new model rules have been incorporated into the proposed Regulations.

Additionally, the RRRG has been made aware about the general nature of the proposed Regulations. However, extensive consultation has not been carried out prior to the release of this RIS as the majority of the proposed regulations simply re-make existing regulations.

It should be noted that the fee components of the proposed Regulations have not been subject to specific consultation with stakeholders.

It is proposed that this RIS and the proposed Regulations will be provided to affected parties as part of the formal consultation process required for the making of the proposed Regulations.

In view of the nature of the proposed Regulations, and the level of consultation already undertaken, a 28-day consultation period has been set for the RIS and proposed Regulations, as required under the *Subordinate Legislation Act 1994*.

* 1. **Compliance and Enforcement**

CAV has powers to investigate incorporated associations. CAV’s compliance monitoring of incorporated associations is primarily conducted through its regional compliance monitoring exercises.

Compliance with the proposed Regulations is expected to be high – 90%. This is because the regulatory scheme is well established and associations are used to operating under the scheme. Further, to facilitate compliance with the regulatory scheme, CAV produces guidance notes to the Act and regulations.

In terms of the requirement for annual returns, data from the register reveals that approximately 85% of associations have submitted annual returns for each of the last three years.

CAV has not issued any infringements and does not expect a shift in compliance in the first year of the new Regulations.

1. Other Options to Achieve the Objectives

**Key points**

* **For each of the proposed regulations that impose a material burden, other options have identified to achieve the objectives of these regulations.**
* **A multi-criteria analysis has identify the proposed Regulations as the preferred option.**

This chapter:

* identifies proposed regulations that impose a material burden;
* identifies other options that could achieve the objectives of those proposed Regulations;
* conducts a cost benefit analysis on those other options; and
* provides an assessment of all options.
  1. **Overview**

The following components of the proposed Regulations have been identified in Chapter 3 as imposing a material burden on either incorporated associations or their members:

* Part 2 – Particulars (proposed regulations 4-11);
* Part 6 – Forms and Fees; and
* Regulation 19 – Imposition of fine by committee.

A cost benefit analysis of each of these proposed regulations has been undertaken in Chapter 3. For each of these above-mentioned regulations, the base case and feasible alternatives are subjected to a cost and benefit analysis. The base case is the principal legislation, that is, the Reform Act in the absence of the proposed Regulations. The feasible alternatives include the proposed Regulations with less prescribed information; differing fee options; and prescribing a lesser maximum fine.

As it is not possible to quantify the net costs and benefits due to the absence of robust cost and benefit data, the multi-criteria analysis approach as described in the *Victorian Guide to Regulation* has been adopted.

* 1. **Regulations that do not impose a material burden**

The following provisions have been identified above at 3.3 as not imposing a material burden; as such, other options are not canvassed for these proposed regulations:

* Part 1 – Preliminary (proposed regulations 1-3);
* Part 3 – Rules, Membership and General Meetings (proposed regulations 12-13);
* Part 4 – Transfer of Incorporation (proposed regulation 14);
* Part 5 – Winding Up and Cancellation (proposed regulation 15); and
* Part 7 – Miscellaneous (proposed regulations 18-21, excluding regulation 20).
  1. **Method of Assessment of Options**

In order to assess the proposed Regulations and options discussed below, a balanced scorecard approach has been undertaken. This approach is considered the best method for assessing the options considered in this RIS (as opposed to Net Present Value, benefit-to cost ratio or break-even analysis) because of the inability to quantify and assign monetary values to the costs and benefits of the proposed Regulations and the alternatives.

In assessing the most effective option to achieve the identified objectives, two sets of decision criteria were identified, one set for the regulations that set the proposed fees, and one set for the other regulations that impose a material burden.

In each instance, the base case is no regulation. The base case is a point to which the costs and benefits of the other options are compared. To facilitate this, the costs and benefits of the base case are set at zero. Options considered are then assigned scores ranging from -5 for negative outcomes to +5 for positive outcomes resulting from the option.

**Decision Criteria**

**Fees**

The following decision criteria are used to assess part 6 of the proposed Regulations.

* **Criteria 1: Efficiency** – the extent to which the option facilitates the allocation of resources in a way that maximises the next benefit to society.
* **Criteria 2: Vertical Equity** – the extent to which the option facilitates those of greater means contributing proportionately more than those of lesser means. This criterion also includes ability to pay considerations, which relates to the level of the fees.
* **Crietria 3: Effectiveness** – the extent to which the option facilities other relevant cost recovery issues such as compliance, implementation and consistency with other policy objectives.

Each of these criteria have been given an equal weighting of 33%.

**Other Regulations**

The following decision criteria outlined below are used to assess Part 2 and regulation 19 of the proposed Regulations.

* **Criteria 1:** The extent to which the option facilitates the simple and inexpensive means by which an unincorporated association may obtain corporate status and ultimately administer its association. (50% weighting)
* **Criteria 2:** The extent to which the option protects the rights and interests of members of incorporated associations, funding bodies and the general community. (50% weighting)

Each of these criteria have been given an equal weighting of 50%, reflecting the equal objectives of the proposed Regulations.

* 1. **Fees**

*Please see Appendix 1 for a more detailed analysis of the proposed fees and alternative options.*

The below section assesses four fees options:

* Option 1: The base case - no fees charged
* Option 2: Fees set at 80% cost recovery with cross-subsidisation
* Option 3: Fees set at 80% cost recovery without cross-subsidisation
* Option 4: Fees increased to full cost recovery

CAV has determined that in order to simply both the proposed Regulations and each of the other identified options all proposed fees should be rounded to the nearest half fee unit. As a consequence, the actual estimated cost recovery of each option differs marginally from the amount indicated in the option’s title.

Table 12 below provides a comparison of the estimated revenue under each of the four fee options, while Table 13 provides a comparison of the main fee types under each option.

Table : Comparison of revenue under different fee options

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Base Case** | **Option 2  80% with subsidisation** | **Option 3 80% without subsidisation** | **Option 4 Full Cost Recovery** |
| Revenue | 0 | $2,369,310 | $2,377,717 | $3,117,839 |
| Cost | $2,890,870 | $2,890,870 | $2,890,870 | $2,890,870 |
| Difference | - $2,890,870 | - $521,560 | - $513,153 | $226.969 |
| Cost Recovery % | 0% | 82% | 82% | 108% |

Table : Comparison of main fee types

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Base Case** | **Option 2  80% with subsidisation** | **Option 3 80% without subsidisation** | **Option 4 Full Cost Recovery** |
| Application for incorporation – model rules | $0 | 2.5 FU $31.33 | 3 FU $37.59 | 3.5 FU $43.86 |
| Application for incorporation – own rules | $0 | 14.5 FU $181.69 | 16 FU $200.48 | 19.5 FU $244.34 |
| Application to alter rules | $0 | 12.5 FU $156.63 | 13.5 FU $169.16 | 17 FU $213.01 |
| Lodgement of financial statement – tier 1 | $0 | 4 FU $50.12 | 4.5 FU $56.39 | 5.5 FU $68.92 |
| Lodgement of financial statement – tier 2 | $0 | 8 FU $100.24 | 4.5 FU $56.39 | 5.5 FU $68.92 |
| Lodgement of financial statement – tier 3 | $0 | 16 FU $200.48 | 5 FU $62.65 | 6.5 FU $81.45 |

The option of maintaining current fees was considered, however, it was ultimately determined that this was not a viable option, and thus was not included as one of the below options. This option would have resulted in approximately 60% of the costs of administering the Reform Act and the proposed Regulations being recovered. This would equate to a budgetary shortfall of $1,153,220.

If this option were adopted, the additional costs incurred in administering the incorporated associations sector would need to be drawn from the consolidated revenue. This would mean that taxpayers would effectively be cross-subsidising the delivery of services to and regulation of the incorporated associations sector.

Alternatively, under this option, the level of funding to CAV could be decreased in line with the budgetary shortfall. This would mean that CAV would not be able to maintain current service levels and adequately discharge its statutory responsibilities. This is likely to result in a decrease in CAV’s oversight over the incorporated associations sector. In turn, this would have the potential to expose members of incorporated associations, members of the general public who deal with associations and funding bodies to an increased risk of dealing with an inappropriately managed association.

**Option 1 – Base Case**

Under the base case, fees would not be prescribed.

***Costs***

If fees were not prescribed, the following problems would arise:

* the process of applications for incorporation and other similar processes are likely to be distorted in an inefficient way;
* CAV will not receive any fees to cover the costs in carrying out the processes and the provisions of the Act; and
* if CAV carries out processes without charging fees, additional costs will fall on the public generally, particularly taxpayers.

CAV not receiving any fees would result in an estimated shortfall of $2,890,870 p.a. This shortfall would need to be funded by government out of consolidated revenue or alternatively would result in a decrease in service levels provided by CAV to the sector.

***Benefits***

If fees were not prescribed, the incorporated associations sector would avoid the costs of compliance with the regulations ($2,369,310 p.a.)

**Option 2 – 80% Cost Recovery with cross-subsidisation**

Under option 2, the proposed fees would be implemented. As a result, the costs and benefits identified above at section 3.3 would apply.

**Option 3 – 80% Cost Recovery without cross-subsidisation**

Under this option, as with the preferred option, fees would be set so that approximately 80% of the costs of administering the proposed Regulations would be recovered. However, unlike the preferred option, there would be no cross-subsidisation within the associations sector. This would mean that the fee for most applications would be directly equal to 80% of the cost to CAV of processing that application. However, as CAV has determined to set fees to the nearest half fee unit, certain fees will vary around this number.

Please note that under this option, a number of fees are set higher than under option 2. This has been done to ensure that the total revenue collected under this option is equivalent to 80% of the costs of administering the Reform Act and the proposed Regulations. To this end, please note that the fees charged to incorporate using model rules, and for a tier 1 association to lodge their financial statements are set at half a fee unit ($6.26) above 80% cost recovery to ensure that this option recovers 80% of costs.

As compared to the preferred option, this option would result in increased fees for smaller associations.

***Costs***

If fees were set at this level, the associations sector would have to pay an estimated $2,377,717 p.a. in fees. This would result in an estimated shortfall of $510,675 p.a. that would need to funded out of consolidated revenue, or alternatively would result in a decreased level of service delivery to the sector.

Similar to the preferred option, under this option most of fees in the existing Regulations would be increased. However, under this option, the increase in fees would be greater. For example, the fee to incorporate using model rules would remain unchanged under the preferred option, but would increase by half a fee unit ($6.27) under this option. Likewise, the fee to incorporate using own rules would increase by 1.5 fee units ($18.80) under the preferred option as compared to 14.5 fee units under this option.

Under this option, differences in annual revenue between associations would not be taken into account in setting fees for lodging annual financial statements. Importantly for smaller associations, the fee to lodge the annual statement for a tier 1 association would increase from 4 fee units ($50.12) to 4.5 ($56.39) fee units, with tier 1 and tier 2 associations paying the same fee to lodge financial statements, and tier 3 associations, paying 5 fee units ($62.65) to lodge annual financial statements.

***Benefits***

The benefits of this option are similar to the benefits arising from the preferred option as approximately 80% of the cost of administering the Reform Act and the proposed Regulations will be recovered from those who directly benefit from the incorporation associations scheme.

As with the preferred option, this approach minimises the extent to which the scheme will have to be subsidised by taxpayers, and ensures that, for the most part, the people who derive the benefits from the regulatory scheme meet the costs of administering the scheme.

However, the additional benefits that flow to smaller associations as a result of the cross-subsidisation under the preferred option would not be enjoyed by those smaller associations under this option.

As discussed above, the main group that would additional benefits from this option as opposed to the preferred option would be tier 2 and tier 3 associations which, would incur significantly reduced fees to lodge annual financial statements.

***Consultation Point***

*10. Do stakeholders believe that the increased fees under option 3 will act as an impediment to small associations incorporating and running under the Reform Act?*

*11. Do stakeholders believe that it is acceptable to charge fees that are above full cost recovery for tier 2 and tier 3 associations?*

**Option 4 – Full Cost Recovery**

Under this option, fees would be calculated in accordance with the method set out in the DTF *Cost Recovery Guidelines*. This would mean that the fee for each application would be directly equal to the cost to CAV of processing that application.

This option is not recommended because it results in some fees being increased in a disproportionate and inequitable way. For example, the fee to incorporate using own rules would nearly double, increasing from $122.20 to $244.34.

On the other hand, tier 1 and tier 2 associations would both pay $68.92 to lodge annual financial statements, and tier 3 associations would only pay an additional $15 ($81.45). This is despite the fact that tier 2 associations have revenue of in excess of $250,000 and tier 3 associations have revenue in excess of $1,000,000. In contrast, tier 1 associations may have only a handful of members and produce a fraction of the revenue of these larger associations.

Moreover, under this option, fees would be charged for processes that, in the past, have not incurred a fee on policy grounds. Such fees include an application to cancel incorporation or notifying the Registrar about a change in secretary. The policy rationale for not charging fees for these processes is because the imposition of a fee could act as a disincentive for associations to provide the information, and the information required is important to maintaining the integrity of the scheme.

***Costs***

If fees were set at this level, the incorporated associations sector would have to pay an estimated $3,117,839 p.a. in fees, a significant increase from the level of fees currently paid.

This option would impose a significant cost on smaller associations, and could have the potential to no longer make incorporating as an incorporated association a viable option for small volunteer-based community organisations.

***Benefits***

The main group that would benefit from this option would be taxpayers who would not have to subsidise the cost of CAV administering the Reform Act and the proposed Regulations.

***Consultation Point***

*12. Do stakeholders believe that the increased fees under the full cost recovery option will act as an impediment to smaller associations incorporating and operating under the Reform Act?*

*13. Do stakeholders believe that having to pay a fees to cancel incorporation or notify the Registrar regarding a change in secretary will result in increased non-compliance with these requirements?*

**Assessment of Options**

**Option 1 – Base Case**

Option 1, as the base case, is assigned a score of 0 for each of the criteria.

**Option 2** **– 80% Cost Recovery with cross-subsidisation**

Option 2, the preferred option, is assessed as being more efficient that the base case because 80% of the costs of administering the Reform Act and the proposed Regulations will be met by those who derive the benefit from the scheme. However, because this option requires 20% of the cost of administering the scheme to be met from general taxpayer revenue it is only assigned a score of 3 out of 5 for this criterion.

For criterion 2, vertical equity, option 2 is assessed as being considerably better than the base case. Under option 2, larger tier 2 and tier 3 associations will pay fees that are proportionally higher than smaller tier 1 associations.

More specifically, tier 2 and tier 3 associations will pay a fee above full cost recovery to lodge annual financial statements. These fees have been set in proportion to revenue received by an incorporated association. That is, tier 1 associations which have revenue of less than $250,000 will pay a fee of 4 fee units ($50.13), tier 2 associations, which have a revenue of between $250,000 and $1,000,000, will pay 8 ($100.24) fee units and tier 3 associations which have revenue of over $1,000,000, will pay 16 fee units ($200.48).

The additional revenue CAV derives from these fees will be used to ensure that other fees remain at a level that is affordable for smaller associations, such as the fee to incorporate using own rules, or the fee to change the rules of an incorporated association.

In essence, a greater proportion of the costs of administering the scheme will be met by those with the greatest ability to meet these costs than under the base case. It should be noted that tier 2 and tier 3 associations will pay more than cost recovery as a result of the increased fees (an additional $27.83 or 140% cost recovery for tier 2 and $118.44 or 254% cost recovery for tier 3 for lodgment of financial statements). However, given the revenue produced by these associations, it is expected that additional costs will be absorbed without an overly negative impact.

For these reasons, option 2 is assigned a score of 3 for criterion 2.

Similarly, option 2 is assessed as being significantly more effective than the base case. Option 2 is consistent with the policy objective of ensuring that incorporating under the Reform Act a low cost method of obtaining corporate status. Further, by not charging fees for such processes as notifying the Registrar of a change of secretary, option 2 is promoting compliance with these provisions. For these reasons, option 2 is also assigned a score of 4 for criterion 3.

Option 2 is therefore assigned a total weighed score of 3.33.

**Option 3 – 80% cost recovery without cross subsidisation**

Under option 3, fees are assessed as being much more efficient than the base case because under this option 80 per cent of costs are recovered. This option receives a higher score than option 2 as it avoided tier 2 and 3 associations paying for some of the costs of tier 1 associations. Therefore it is assigned a higher score of 4 for criterion 1.

Under option 3, each association, regardless of its size will contribute equally to the funding of the scheme. This does not promote principle of vertical equity, in the sense that those with greater means are not contributing proportionally more than those with lesser means.

In relation of the ability of associations to pay the required fees, under this option larger tier 2 and tier 3 associations will find it easier than as compared to option 2, however, tier 1 associations and new associations seeking to incorporate will find it more difficult.

Because the size of the fees is not significantly different between options 2 and 3 (e.g. $6.26 difference for incorporation with model rules and lodgment of financial statements for tier 1), option 3 is assigned a slightly lower score of 2 for criterion 2 than option 2.

Similar to option 2, option 3 is assessed as being significantly more effective than the base case. However, by because under this option it is more expensive for small associations to incorporate and operate as an incorporated association, therefore, this option is assessed as being less effective than option 2. Higher fees for tier 1 associations may be expected to result in some level of non-compliance. This is a realistic consideration for the lodgment of financial statements since there is already approximately 15% non-compliance with the existing requirement for lodgment of annual returns which is being replaced.

For these reasons option 3 is assigned a score of 3 for criterion 3.

Option 3 is therefore assigned a total weighted score of 3.

**Option 4 – Full Cost Recovery**

Option 4, full cost recovery, is assessed as being the most efficient of the four options because under this option, all the costs associated with the incorporated association scheme are met by those who derive the benefit from the scheme, and not from general tax payer revenue. For this reason, option 4 is assigned a score of 5 for criterion 1.

On the other hand, option 4 is assessed negatively for criterion 2, vertical equity relative to the other options. As with option 3, under option 4, associations will be required to pay similar fees, regardless of the size or the capacity to pay of that association. Additionally, tier 1 associations and new associations seeking to incorporate will find it more difficult due to significantly higher fees. For this reason, option 4 is assigned a score of 1 for criterion 2.

Option 4 is assessed as being less effective than the base case. By significantly raising such fees as incorporating with own rules, option 4 does not promote the policy objective of ensuring that incorporating under the Reform Act is a viable low cost method for obtaining corporate status for smaller associations.

Similarly, this option does not promote compliance. Charging fees for processes such as notifying the Registrar of a change in secretary will serve as a disincentive for associations to comply with these provisions. However, the level of compliance is still expected to be positive relative to the base case of no fees.

For these reasons, option 4 is assigned a score of 2 for criterion 3.

Option 4 is therefore assigned a total weighted score of .33.

Table : Assessment of options for Part 6

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** 80% cost recovery with cross subsidisation | | **Option 3** 80% cost recovery without cross subsidisation | | **Option 4** Full Cost Recovery | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **1** | **33%** | 0 | 0 | 3 | **1** | 4 | **1.33** | 5 | **1.66** |
| **2** | **33%** | 0 | 0 | 3 | **1** | 2 | **0.66** | 1 | **.33** |
| **3** | **33%** | 0 | 0 | 4 | **1.33** | 3 | **1** | 2 | **.66** |
| **Total:** | | 0 | 0 | 10 | **3.33** | 9 | **3** | 8 | **2.66** |

**Preferred Option**

The above multi-criteria analysis identifies option 2, 80% cost recovery with cross-subsidisation as being the preferred option. Option 3 was assessed as being more efficient than option 2 because it did not involve cross subsidisation, however option 3 was assessed as being less vertically equitable and less effective because it would result in increased fees for tier 1 associations to lodge their financial statements, and increased fees to incorporate under the Reform Act. Ultimately, the increased vertical equity and effectiveness of option 2 outweighed the increased efficiency of option 3.

CAV believes that it is more important that incorporating as an association remains a viable method by which small, volunteer based, organisations can obtain corporate status than it is for the fees for larger tier 2 and tier 3 associations to be set at a level that is at or below full cost recovery.

***Consultation Point***

*14. Do stakeholders believe that the increased fees under the full cost recovery option will act as an impediment to smaller associations incorporating and operating under the Reform Act?*

* 1. **Particulars**

**Option 1 – Base Case**

Under the base case, the regulations would not prescribe any particulars that would be required to accompany certain applications under the Reform Act or that certain documents would be required to contain. The consequence of this would be that these applications and documents contain only the information required by the Reform Act.

***Costs***

Under option 1, CAV’s ability to protect the rights and interests of members of incorporated associations, funding bodies and the general community would be significantly diminished.

CAV would not hold sufficient information about associations to fairly and accurately make decisions relating to applications under the Reform Act. Consequently, CAV would be unable to properly exercise its supervisory functions to ensure the good management, including financial management, of incorporated associations.

This could expose both members of incorporated associations and members of the public that deal with incorporated associations to the risk that they could be dealing with improperly managed incorporated associations. Moreover, if someone who was aggrieved by the dealings of an incorporated association wished to complain to CAV about the actions of that association, CAV may not hold sufficient information about that association to properly deal with the complaint.

In addition, not prescribing particulars to accompany applications could create uncertainty for incorporated associations which would have no guidance as to the level of information required for an application to be efficiently processed. A lack of sufficient information accompanying an application may lead to the processing of an application being delayed as CAV may not have sufficient information to make a determination whether to approve the application, and may need to approach the association for additional details.

***Benefits***

Under option 1, incorporated associations would not have to supply as much information to CAV in support of various applications. This would reduce the amount of time taken to complete these applications, thereby reducing the regulatory burden on the incorporated associations sector.

However, the size of this burden reduction is not estimated to be significant. As discussed above at 3.3, the majority of information that associations must provide pursuant to Part 2 of the proposed Regulations is information that they could be reasonably expected to have available, or could be easily obtainable.

**Option 2 – Proposed Regulation**

Under option 2, the prescribed information in the proposed Regulations would apply. As a consequence, the costs and benefits identified at 3.3 would apply.

**Option 3 – Less Prescribed Particulars than Proposed Regulations**

Under option 3, particulars would still be prescribed in Part 2 of the proposed Regulations, however, incorporated associations would be required to provide less information to CAV in support of three applications made under the Reform Act; namely:

* application for incorporation;
* application to change name; and
* notification of appointment of secretary.

These three options have been selected for analysis, as they are identified at 3.3 as imposing the greatest costs on associations. Table 13 below provides a comparison of what information incorporated associations would be required to provide under options 2 and 3.

Under option 3, additional contact addresses and an estimate of total revenue would not be required for an application for incorporation. For an application to change the name of the association, the name and contact details of the secretary would not be required, while the secretary’s contact details and the date of his or her appointment would not be required for a notification of a secretary’s appointment.

The additional details that are not required under option 3 have been assessed as optional particulars rather than particulars which are integral to the application. For example, an application to change the name of an incorporated association could not proceed without details of the current name and registration number and the proposed new name of the association.

Table : Details of option 3

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Regulation 4 Application for incorporation** | | **Regulation 9 Application to change name** | | **Regulation 11 Notice of appointment of secretary** | |
| **Option 2** | **Option 3** | **Option 2** | **Option 3** | **Option 2** | **Option 3** |
| Registered address |  | Name of association | Name of association | Name of association | Name of association |
| Postal address | Postal address | Registration number of association | Registration number of association | Registration number of association | Registration number of association |
| Name of applicant | Name of applicant | Proposed new name of association | Proposed new name of association | Phone number of the Secretary |  |
| Address of applicant |  | Date of general meeting |  | Email address of the secretary |  |
| Phone no. of applicant | Phone no. of applicant | Name of secretary |  | Date of appointment of secretary |  |
| Email address of applicant |  | Phone no. of secretary |  |  |  |
| Estimated number of members | Estimated number of members | Email address of secretary |  |  |  |
| Estimated total revenue |  |  |  |  |  |

***Costs***

As with option 1 above, option 3 would diminish CAV’s ability to protect the rights and interests of members of incorporated associations, funding bodies and the general community.

In relation to regulation 4, CAV would not be able to determine what tier an association is, and therefore could not determine what financial reporting obligations that association has. This would make it difficult for CAV to enforce compliance with the financial reporting requirements of the Reform Act, and could lead to incorporated associations not being fully informed about their obligations and not fulfilling the appropriate requirements. This places people dealing with that association at a risk that they may be dealing with an inappropriately managed association.

In relation to regulation 9, associations would not provide CAV with details of the general meeting of the association in which the members of the association agreed to the change of name of the association. Consequently, CAV would not be able to verify that the association has agreed to the change of name of the association, leaving open the risk that a member could seek to change the name of the association, contrary to the wishes of that association.

Similarly, in relation to regulation 11, CAV would be unable to determine what date the new secretary was appointed. Consequently, in the case of CAV wanting to take enforcement action against the Secretary of the association, it would not know who the appropriate person was.

***Benefits***

As with option 1 above, the regulatory burden for incorporated associations would be reduced. However, this burden reduction is not expected to be significant.

Option 3 is estimated to reduce the time taken to provide the prescribed information for incorporation from 10 minutes to 8 minutes, and for applications to change the name of an association, and notification of new secretary, from 5 minutes to 4 minutes. Table 14 estimates that option 3 would only result in savings of $45,316 over a 10 year period, which based on an estimated 38,000 incorporated associations, equates to a saving of $.07 per association per year.

The 10 year costs have been calculated using the same methodology as in Table 8.

Table : Comparision of cost of option 2 and option 3

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Regulation 4** | | **Regulation 9** | | **Regulation 11** | |
|  | Option 2 | Option 3 | Option 2 | Option 3 | Option 2 | Option 3 |
| Estimated Time | 10 mins | 8 mins | 5 mins | 4 mins | 5 mins | 4 mins |
| Cost for 2011/12 | $16,519 | $13,215 | $1,618 | $1,294 | $5,909 | $4,727 |
| Cost over 10 years | $155,651 | $124,521 | $15,248 | $12,198 | $55,681 | $44,545 |
| Difference over 10 years |  | $31,130 |  | $3,049 |  | $11,136 |
| **Total Saving** | | | | | | **$45,316** |

**Consultation Points**

*15. Do stakeholders believe that the reduced information requirements in option 3 would result in a lower cost of compliance for incorporated associations?*

*16. Are there any other information requirements that stakeholders believe could be removed?*

*17. Are the time estimates used in option 3 accurate?*

**Assessment of Options**

**Option 1:**

Option 1, as the base case, is assigned a score of 0 for each of the criteria.

**Option 2:**

Option 2, the proposed regulations, is assessed as making it more costly for associations to incorporate and to be administered. However, the proposed Regulations are also assessed as providing substantially more protection to the rights and interests of members of incorporated associations, funding bodies and the general community by enabling CAV to perform its statutory functions.

The proposed regulations are therefore given a score of -2 for criterion 1 and a score of 4 for criterion 2.

Option 2 is therefore assigned a total weighed score of 1.

**Option 3**

Option 3 is assessed as imposing a regulatory burden on incorporated associations, however, this is a lesser burden than the proposed regulations. Therefore, option 3 is given a score of -1 for criterion 1.

Similarly, option 3 is assessed as affording protection to members of incorporated associations, funding bodies and the general community by enabling CAV to perform its statutory functions, however, it is assessed as being less effective than option 2. Therefore, option 3 is given a score of 2 for criterion 2.

Option 3 is therefore assigned a total weighted score of .5.

Table : Assessment of options for part 2

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** Proposed Regulations | | **Option 3** Less prescribed information | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **1** | **50%** | 0 | 0 | -2 | **-1** | -1 | **-.5** |
| **2** | **50%** | 0 | 0 | 4 | **2** | 2 | **1** |
| **Total:** | |  | 0 | 2 | **1** | 1 | **.5** |

**Comparison with other Jurisdictions**

Appendix 4 provides a comparison of the proposed regulations with equivalent requirements in the key jurisdictions of New South Wales and Queensland. Importantly, this table identifies that the information requirements of the proposed Regulations are comparable to those in other jurisdictions.

* 1. **Fines (proposed regulation 19)**

**Option 1 – Base Case**

Under the base case, the Regulations would not specify any amount that a committee could fine a member. This would mean that, under this option, a committee would have no authority to fine a member who breaches the rules of that incorporated association.

***Costs***

Not giving a committee of an incorporated association a right to fine members who breach the rules of that incorporated association would affect the ability of the committee to enforce the rules of that incorporated association.

In the event of a member not complying with the rules of an incorporated association, incorporated associations that would otherwise seek to enforce their rules by imposing fines on the non-complying members would be forced to either undertake other more costly methods of enforcing the rule or would simply have to tolerate the breach of the rules. Option options for enforcing the rules include seeking an order from the Magistrates’ Court.

If the base case were adopted, it would more difficult and more costly for associations to enforce their rules as compared to the proposed regulations.

***Benefits***

The main group that would benefit from incorporated associations being unable to fine members who fail to comply the rules of that incorporated associations are non-complying members. Under the base case, these members would benefit by not incurring a fine.

**Option 2 – Proposed Regulation**

Under option 2, the proposed maximum fine would be prescribed, allowing incorporated associations to fine members who do not comply with the rules of the incorporated association a maximum of $500. As a result, the costs and benefits identified above at section 3.3 would apply.

**Option 3 – Proposed Regulations with Smaller Maximum Fine**

Under option 3, the regulations would still allow the committee of an incorporated association to fine members who do not comply with the rules of that associations, however, the regulations would specify a smaller maximum fine of $250 that the committee could impose.

This amount has been chosen on the basis that in a survey conducted by CAV 30% of respondents believed that the maximum fine prescribed under this provision should be less than $500. Respondents were not required to suggest alternative amounts, therefore $250 has been selected as it is the midpoint between option 1 (no maximum amount) and option 2 ($500).

***Costs***

As compared to the preferred option, prescribing a smaller maximum fine would act as a lesser deterrent for members not to comply with the rules of an incorporated association. If the smaller fine is not effective in deterring members from breaching the rules of the association, the incorporated association may be forced to engage in other more expensive activities to ensure compliance with its rules, such as seeking an order from the Magistrates’ Court.

The extent to which the smaller maximum fine would act as a lesser deterrent is not entirely clear. In feedback provided to CAV, stakeholders argued in favor of the maximum fine being increased for the stated purpose of increasing the level of deterrence. From this, it follows that in the eyes of certain stakeholders, the level of deterrent provided by the provision is directly proportional to the size of the maximum fine.

In contrast, an issues paper released by the Victorian Sentencing Advisory Council (referred to above at 3.3) concludes that the size of the maximum penalty will only be one variable in determining the level of deterrence for an offence. The Council argues that the level of deterrence will also be affected by the justice system in which the penalty operates.

Therefore, it can be concluded that a lesser maximum fine would act as a lesser deterrent; however, the extent to which the deterrence is reduced may not be significant, and is dependent on other factors, such as the willingness of an association to levy fines.

***Benefits***

This option would impose a lesser burden on those members of an incorporated association that the committee seeks to impose a fine upon for breaching the rules of the incorporated association.

However, as CAV has received no reports of incorporated associations excessively fining their members, it is unclear whether these members would derive any benefit from this option as compared to the preferred option.

***Consultation Points***

*18. Do stakeholders believe that prescribing a higher maximum fine will result in an increase deterrent effect?*

*19. If stakeholders believe that a maximum fine of less than $500 should be prescribed, what maximum value would they favor?*

**Assessment of Options**

**Option 1**

Option 1, as the base case, is assigned a score of 0 for each criterion.

**Option 2**

The proposed Regulations will provide incorporated associations with a simple, inexpensive means of enforcing their rules. In the absence of this regulation, an association may otherwise need to seek a court order to enforce its rules. Therefore, the proposed Regulations are assessed as reducing the costs of administering an incorporated association as compared to the base case. For criterion 1, the proposed Regulations are therefore assigned a score of 3.

The proposed Regulations also protect the rights of members of incorporated associations in two ways. Firstly, allowing an incorporated association to fine its members will promote the good management of an association, which will in turn protect the members of the association. Secondly, prescribing a maximum fine will prevent the committee of an incorporated association from imposing excessive fines on its members. For criterion 2, the proposed Regulations are therefore assigned a score of 2 as they are assessed as affording more protection to members than the base case.

Option 2 is therefore assigned a total weighed score of 2.5.

**Option 3**

Option 3, the proposed Regulations with a maximum fine of $250, is assessed as also supporting the cost effective administration of an incorporated association. However, as compared to proposed regulations, it is assessed as being slightly less effective because a smaller maximum fine will act as a slightly lesser deterrent. For criteria 1, option 3 is therefore assigned a score of 2.5.

Option 3 is assessed as providing more protection to members of an association than option 2 because it imposes a smaller maximum fine. However, members are afforded less protection under this option as it makes it more difficult for an association to enforce its rules. Option 3 is therefore assigned a score of 2 for criterion 2, the same score assigned to option 2.

Option 3 is therefore assigned a total weighted score of 2.25.

**Table 16: Assessment of options for Regulation 20**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | **Option 1** Base Case | | **Option 2** Proposed Regulations | | **Option 3** Smaller Maximum Fine | |
| **Criteria** | **Weight** | Assigned Score | Weighed Score | Assigned Score | Weighed Score | Assigned Score | Weighed Score |
| **1** | **50%** | 0 | 0 | 3 | **1.5** | 2.5 | **1.25** |
| **2** | **50%** | 0 | 0 | 2 | **1** | 2 | **1** |
| **Total:** | |  | 0 | 5 | **2.5** | 4.5 | **2.25** |

* 1. **Non-regulatory options considered**

In accordance with the *Victorian Guide to Regulation*, the possibility of whether any non-regulatory options are viable to solve the problems identified in Chapter 2 has been considered.

Due to the nature of the proposed Regulations, that is, that they supplement certain sections of the Reform Act, non-regulatory options were not considered possible.

For example, one of the non-regulatory options considered was providing model rules in guidelines rather than prescribing them in regulations. This would have the benefit of substantially reducing the size of the regulations, and making it far easier for CAV to make changes to the model rules. However, this option was not viable as section 49 of the Reform Act provides that the regulations must prescribe model rules.

Similarly, the Reform Act sets out a number of other things that the regulations must prescribe. In these instances, it is not possible to consider non-regulatory options.

Nonetheless, in addition to the proposed Regulations, CAV is intending to deliver a significant number of non-regulatory activities that are designed to further the goals of both the Reform Act and the proposed Regulations. For example, in the lead up to the commencement of the Reform Act and the proposed Regulations, CAV will run a large information campaign aimed at helping associations understand how their rights and obligations have changed. This is following on from the 57 community information sessions CAV held in 2010-11 for incorporated associations.

Additionally, as part of standard practice, CAV runs a free information line where people can get more information about their rights and responsibilities under relevant legislation. In the last financial year, approximately 9,000 calls were answered relating to incorporated associations. The majority of these calls related to either:

* following up on applications made to CAV;
* seeking advice about compliance; or
* seeking advice regarding internal disputes.

1. Assessment of Competition Impacts and Impact on Small Business

**Key points**

* **The proposed Regulations will not have any negative competition impacts for the incorporated associations sector.**
* **The proposed Regulation will also have no negative impacts on small business.**

This chapter assesses the impact the proposed Regulations will have on competition.

* 1. **Introduction**

The National Competition Policy Agreement sets out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

* the benefits of the restriction to the community as a whole outweigh the costs; and
* the objectives of the regulation can only be achieved by restricting competition.

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).

Therefore, all RISs must provide evidence that the proposed regulations are consistent with these National Competition Policy obligations.

* 1. **Definition of Market**

The primary markets affected by the proposed Regulations are the incorporated associations sector.

* 1. **Test for Restriction on Competition**

Under the Guidelines for the application of the Competition Test to New Legislative Proposals, legislative schemes are deemed to contain restrictions on competition if they:

* allow only one company or person to supply a good or service;
* require producers to sell to a single company or person;
* limit the number of industry or individual producers; and
* limit the number of persons engaged in an occupation.
  1. **Assessment**

**Part 1 – Preliminary (Proposed regulations 1-3)**

These deal with the objectives of the Regulations and the authorising provisions.

These are administrative and procedural regulations that do not restrict competition.

**Part 2 – Particulars (Proposed regulations 4-11)**

### These provisions prescribe certain particulars that incorporation associations must provide to the Registrar when making certain types of applications such as an application for incorporation or an application to amalgamate multiple incorporated associations.

The prescribed particulars consist of basic information such as the name and the registration number of the incorporated association. These particulars apply equally to all incorporated associations and it is not expected that they will act as a barrier to group making an application under the relevant provisions.

These regulations will not restrict competition.

**Part 3 – Model Rules**

This regulation prescribes model rules that incorporated associations may elect to use.

As the adoption of these model rules is voluntary this places no restrictions on competition.

**Part 4 – Transfer of Incorporated (proposed regulation 13)**

This regulation allows an Aboriginal or Torres Strait Islander Corporation to incorporate as an incorporated association under the Reform Act.

By allowing another form of organisation to incorporate under the Reform Act, this proposed regulation increases competition in the incorporated association sector.

**Part 5 – Winding up and Cancelation (proposed regulation 14)**

This regulation sets the amount of security a liquidator must give as $50,000.

This is an administrative regulation that does not restrict competition.

**Part 6 – Forms and Fees (proposed regulations 15-16)**

This regulation prescribes fees required under the Reform Act and the particulars to be contained in the public register.

The proposed fees are applicable to all regulated parties and are applied on a cost recovery basis. Accordingly, there are no restrictions on competition. Moreover, while the proposed regulations impose costs of compliance they are applicable to all regulated parties and therefore do not act to restrict competition.

**Part 7 – Miscellaneous**

Primarily, this part prescribes that the maximum fine a committee of an incorporated association may levy on a member is $500.

There are no restrictions on competition as a result of prescribing a maximum fine.

***Consultation Point***

*20. Do stakeholders believe that any of the proposed Regulations will have a negative effect on competition?*

* 1. **Impact on Small Business**

For this section of the RIS, the Australian Bureau of Statistics’ definition of a small business is used, namely that small business is a business employing fewer than 20 people. Categories of small business include:

* non-employing businesses – sole proprietorships and partnerships without employees;
* micro businesses – businesses employing fewer than 5 people, including non-employing businesses; and
* other small businesses – businesses employing 5 or more people, but fewer than 20 people.

The Reform Act and proposed Regulations provide the ability for associations to be registered, which gives those registered the legal status of a body corporate.

Being incorporated, an association has the legal capacity or power:

* to trade;
* to form or participate in the formation of a body corporate or unit trust;
* to acquire interests in and sell or otherwise dispose of interests in bodies corporate, unit trusts or joint ventures; and
* to form or enter into a partnership, joint venture or other association with other persons or bodies.

The Reform Act and proposed Regulations do not appear to disadvantage small businesses compared to large businesses.

1. Consultation

In view of the nature of the proposed Regulations, and the level of consultation already undertaken, a 28-day consultation period has been set for the RIS and proposed Regulations, as required under the *Subordinate Legislation Act 1994*.

An incorporated association is defined in section 3 of the Act as meaning “an association that is incorporated under this Act”. The definition is broad and therefore the Act and proposed Regulations affect a wide range of associations and people including:

* Members of the association;
* Members of the general public that deal with the association, including clients of not-for-profit community service organisations;
* Members of the public who may seek to inspect or obtain a certified copy of documents held by the Registrar;
* Professional bodies such as CPA Australia, the Institute of Chartered Accountants in Australia, the Law Institute of Victoria and Australian Consumers Association;
* Peak stakeholder groups such as Clubs Victoria Inc and the Victorian Council of Social Service;
* Government funding agencies;
* Persons who may be appointed as a liquidator of an incorporated association;
* The Registrar of Incorporated Associations.

It is therefore proposed to seek the views of each of these affected parties.

In developing this RIS and the proposed Regulations, stakeholders have been consulted regarding the content of the model rules and proposed regulation 19 (which provides for a committee’s right to fine members of an incorporated association for breaching the rules of that association).

When the 2009 Regulations were made, the model rules were identified as requiring a general review, incorporating stakeholder consultation. At that point, the model rules had not been comprehensively reviewed since they were made in 1983. Stakeholder feedback indicated that the model rules required updating.

In order to ensure that stakeholders were confident that an independent process was undertaken, CAV contracted with barrister Tony Lang to review and redraft the model rules. Mr Lang’s review involved partnering with PILCHConnect to hold focus groups with representation from a range of small and large incorporated associations regarding the proposed new model rules.

A final version of the model rules is included in the attached proposed Regulation.

In relation to prescribing a right to fine, CAV conducted a survey of approximately 200 incorporated associations to seek their views on this right. A full discussion regarding the outcomes of this survey is included above at section 2.2.

It should be noted that stakeholders have not been specifically consulted about the development of the fees in the proposed Regulations.

No other specific consultation was carried out with stakeholders during the development of this RIS or the proposed Regulations.

Appendix 1: Analysis of Proposed Fees and Alternatives

**The Problem**

The Reform Act requires fees to be determined and applied for applications and other processes required by the Bill.

If fees are not prescribed for the processes, the following problems arise:

* it is likely to distort the process of applications for incorporation of an association and other processes in an inefficient way;
* CAV will not receive any fees to cover the costs incurred in carrying out the processes. This conflicts with the provisions of the Bill that provide that fees should be prescribed; and
* If CAV carries out the application and other processes without charging fees, the cost will fall on the public generally, principally taxpayers.

**Objectives**

The desired outcome is to facilitate efficient administration of the Bill by providing for a significant user contribution to the costs of administration. In accordance with section 222 of the Reform Act, charges are to be applied by prescribing fees.

The objectives of prescribing fees are to:

* recover the costs of administering the Act and provide CAV with sufficient resources to administer the Act;
* equitably distribute the costs incurred by CAV in carrying out the administrative procedures of the Act.

**Policy Considerations**

The *Victorian Guide to Regulation* and the Department of Treasury and Finance’s *Cost Recovery Guidelines* (“the Guidelines”) outline the primary policy instruments for the setting of fees and charges. The latter document identifies regulatory fees and user-charges as different approaches to fee setting.

**Government Cost Recovery Policy**

As stated in the *Victorian Guide to Regulation* and the Guidelines, general government policy is that regulatory fees and other user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost represents the value of the resources used or consumed in the provision of an output or activity.

**Proposed Fee Types**

There are 25 fee types proposed in the proposed Regulations. The legislative backing for the proposed fee types is discussed below:

**Application for incorporation Fees**

For the purposes of section 6 of the Reform Act, the proposed fee that must accompany an application for incorporation is 2.5 fee units if the association adopts the model rules and 14.5 fee units if the association adopts rules other than the model rules.

For the purposes of section 12 of the Reform Act, the proposed fee that must accompany an application for incorporation by a registrable body is 2.5 fee units if the body adopts the model rules and 14.5 fee units if the body adopts rules other than the model rules.

**Application for amalgamation Fee**

For the purposes of section 18 of the Reform Act, the proposed fee that must accompany an application for the registration of an amalgamated association is 8 fee units if the amalgamated association adopts the model rules and 14.5 fee units if the amalgamated association adopts rules other than the model rules.

**Application for approval of change of name Fee**

For the purposes of section 24 of the Reform Act, the proposed fee that must accompany an application by an association to change its name is 2 fee units.

**Application for approval to change rules Fee**

For the purposes of section 50 of the Reform Act, the proposed fee that must accompany an application to change the rules of an association is 12.5 fee units.

**Application to be declare a tier one or tier two association Fee**

For the purposes of section 91 of the Reform Act, the proposed fee that must accompany an application by an association to be declared a tier 1 or tier 2 association is 9 fee units.

This fee relates to applications made by associations who want to be subjected to the lesser reporting requirements of either a tier 2 or a tier 1 association. There is no provision for an application to be declared a tier 3 association as there is no reason why an association would apply to the Registrar to be subjected to increased fees and increased reporting obligations.

**Lodgement of financial statement Fees**

For the purposes of section 102 of the Reform Act, the proposed fee for the lodgement of financial statement for a tier 1 association is 4 fee units.

For the purposes of section 102 of the Reform Act, the proposed fee for the lodgement of financial statement for a tier 2 association is 8 fee units.

For the purposes of section 102 of the Reform Act, the proposed fee for the lodgement of financial statement for a tier 3 association is 16 fee units.

**Application for exemption from financial reporting requirements Fees**

For the purposes of section 103 of the Reform Act, the proposed fee that must accompany an application to be exempted from the requirement to lodge financial statements for a tier 1 association is 2 fee units.

For the purposes of section 103 of the Reform Act, the proposed fee that must accompany an application to be exempted from the requirement to lodge financial statements for a tier 2 association is 4 fee units.

For the purposes of section 103 of the Reform Act, the proposed fee that must accompany an application to be exempted from the requirement to lodge financial statements for a tier 3 association is 4 fee units.

**Application for extension of time Fees**

For the purposes of section 104 of the Reform Act, the proposed fee that must accompany an application for an extension of time to hold annual general meeting or to lodge financial statements for a tier 1 association is 2.5 fee units.

For the purposes of section 104 of the Reform Act, the proposed fee that must accompany an application for an extension of time to hold annual general meeting or to lodge financial statements for a tier 2 association is 2.5 fee units.

For the purposes of section 104 of the Reform Act, the proposed fee that must accompany an application for an extension of time to hold annual general meeting or to lodge financial statements for a tier 3 association is 2.5 fee units.

**Application for exemption of requirements under section 107 Fee**

For the purposes of section 108 of the Reform Act, the proposed fee that must accompany an application for exemption from the requirements of section 107 relating to the removal of an auditor is 3.5 fee units.

**Inspection Fees**

Under the existing regulations, the fee for a number of these processes was calculated by the number of pages the applicant wanted to inspect or obtain a copy of. Given improvements in CAV’s archiving and retrieval of documents, this fee structure is no longer relevant as the cost to CAV for processing an application concerning 1, 5 or 50 pages is essentially the same.

For the purposes of section 196 of the Reform Act, the proposed fee to inspect the register or to inspect prescribed documents held by the Registrar is 2 fee units.

For the purposes of section 196 of the Reform Act, the proposed fee to obtain copies of a prescribed document kept by the Registrar is 3 fee units.

For the purposes of section 196 of the Reform Act, the proposed fee to obtain certified copies of a prescribed document kept by the Registrar is 4.5 fee units.

For the purposes of section 197 of the Reform Act, the proposed fee for obtaining certified duplicate of a certificate or registration of an incorporated association is 2 fee units.

| **Fee Type** | **Expected No. of Apps** | **Total Cost per App** | **Base Case** | **Option 2 - 80% Cost Recovery (Recommended Option)** | | **Option 3 – 80% Cost Recovery (without subsidisation)** | | **Option 4 - Full Cost Recovery** | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Fee Unit** | **Fee$** |  |  | **Fee Unit** | **Fee $** |
| Application for incorporation - model rules adopted | 1313 | $39.04 | $0.00 | 2.5 | $31.33 | 3 | $37.59 | 3.5 | $43.86 |
| Application for incorporation - own rules adopted | 504 | $235.84 | $0.00 | 14.5 | $181.69 | 16 | $200.48 | 19.5 | $244.34 |
| Application for incorporation by a registrable body - model rules adopted | 0 | $65.37 | $0.00 | 4 | $50.12 | 4 | $50.12 | 5.5 | $68.92 |
| Application for incorporation by a registrable body - own rules adopted | 1 | $262.17 | $0.00 | 16 | $200.48 | 17 | $213.01 | 21.5 | $269.40 |
| Application for amalgamation - model rules adopted | 6 | $129.56 | $0.00 | 8 | $100.24 | 9 | $112.77 | 11 | $137.83 |
| Application for amalgamation - own rules adopted | 40 | $239.27 | $0.00 | 14.5 | $181.69 | 16 | $200.48 | 20 | $250.60 |
| Application to change name of incorporated association | 356 | $34.28 | $0.00 | 2 | $25.06 | 2.5 | $31.33 | 3 | $37.59 |
| Application to alter rules of an incorporated association | 1682 | $203.84 | $0.00 | 12.5 | $156.63 | 13.5 | $169.16 | 17 | $213.01 |
| Application to be declared a Tier 1 or Tier 2 association | 20 | $143.65 | $0.00 | 9 | $112.77 | 10 | $125.30 | 12 | $150.36 |
| Lodgement of financial statements - Tier 1 | 29507 | $62.77 | $0.00 | 4 | $50.12 | 4.5 | $56.39 | 5.5 | $68.92 |
| Lodgement of financial statements - Tier 2 | 1604 | $69.93 | $0.00 | 8 | $100.24 | 4.5 | $56.39 | 5.5 | $68.92 |
| Lodgement of financial statements - Tier 3 | 962 | $77.08 | $0.00 | 16 | $200.48 | 5 | $62.65 | 6.5 | $81.45 |
| Application for exemption from lodgement of financial statements - Tier 1 | 500 | $28.54 | $0.00 | 2 | $25.06 | 2 | $25.06 | 2.5 | $31.33 |
| Application for exemption from lodgement of financial statements - Tier 2 | 0 | $50.39 | $0.00 | 4 | $50.12 | 3.5 | $43.86 | 4.5 | $56.39 |
| Application for exemption from lodgement of financial statements - Tier 3 | 0 | $50.39 | $0.00 | 4 | $50.12 | 3.5 | $43.86 | 4.5 | $56.39 |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 1 | 529 | $40.21 | $0.00 | 2.5 | $31.33 | 3 | $37.59 | 3.5 | $43.86 |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 2 | 29 | $40.21 | $0.00 | 2.5 | $31.33 | 3 | $37.59 | 3.5 | $43.86 |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 3 | 17 | $40.21 | $0.00 | 2.5 | $31.33 | 3 | $37.59 | 3.5 | $43.86 |
| Application for exemption from requirements regarding the removal of an auditor under s. 107(2) | 3 | $60.58 | $0.00 | 3.5 | $43.90 | 4 | $50.12 | 5 | $62.65 |
| Inspection of register or prescribed documents kept by the Registrar | 3190 | $23.45 | $0.00 | 2 | $25.06 | 1.5 | $18.80 | 2 | $25.06 |
| Obtaining copies of a prescribed document kept by the Registrar | 120 | $52.34 | $0.00 | 3 | $37.59 | 3.5 | $43.86 | 4.5 | $56.39 |
| Obtaining certified copies of a prescribed document kept by the Registrar | 15 | $72.71 | $0.00 | 4.5 | $56.39 | 4.5 | $56.39 | 6 | $75.18 |
| Obtaining a certified duplicate of a certificate of registration of an incorporated association | 216 | $28.54 | $0.00 | 2 | $25.06 | 2 | $25.06 | 2.5 | $31.33 |
| Written notice to the Registrar of appointment of a secretary | 1300 | $23.45 | $0.00 | 0 | $0.00 | 0 | $0.00 | 2 | $25.06 |
| Application for cancellation of incorporation | 201 | $81.28 | $0.00 | 0 | $0.00 | 0 | $0.00 | 7 | $87.71 |
| Lodgement of special resolution relating to distribution of assets on voluntary winding up | 601 | $230.50 | $0.00 | 0 | $0.00 | 0 | $0.00 | 19 | $238.07 |
| **Expected Revenue** | 42740 |  | $0.00 | $2,369,310 | | $2,377,717.86 | | $3,117,839 | |
| **Expected Cost** |  |  |  | $2,890,870 | | $2,890,870.31 | | $2,890,870 | |
| **Difference** |  |  |  | **-$521,560** | | **-$513,153** | | **$226,969** | |

**Costing Methodology**

The Guidelines outline two broad methodologies for determining the appropriate cost base – the ‘fully distributed cost’ method and the ‘incremental cost’ method.

The fully distributed cost method is described as the “most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency’s activities”. The incremental cost method recognises that it maybe inappropriate to attempt to recover overhead and capital costs If these would be incurred anyway, even it a particular activity were not undertaken.

The fully distributed cost method was adopted for determining the fee levels outlined in this RIS. As noted, the Guidelines outline that this methodology should be used where cost-recovery activities account for a large proportion of an agency’s activities. Operating business licensing schemes is not incidental to CAV’s activities but is in fact a core consumer protection function. On this basis, the fully distributed cost method was adopted.

**Cost Types**

According to the Guidelines, direct costs are those “that can be readily and unequivocally traced to a product or activity because they are incurred exclusively for that particular product/service”. On the other hand, indirect costs are not incurred exclusively for a particular product or activity. Fixed costs are unaffected by product or service delivery levels. Variable costs are directly related to the levels of production and service delivery.

For the purpose of determining the full costs incurred by CAV in administering the associations’ regulatory scheme, CAV’s costs have been categorised as follows:

* *Variable Direct Costs* – These costs represent the salary costs (including on costs) associated with processing a particular type of application.
* *Fixed Direct Costs (Salary and Operating)* – These costs represent the ongoing costs of the different braches of CAV in administering the incorporated associations’ regulatory scheme, such as compliance and enforcement costs and policy costs. These costs are considered fixed.
* *Indirect Costs* – These costs represent the corporate services costs, such as salary of the Director of CAV, financial services and human resources.

The following hourly rates were used for the salary costs

* VPS Grade 1 $37.29
* VPS Grade 2 $43.33
* VPS Grade 3 $52.66
* VPS Grade 4 $61.11
* VPS Grade 5 $71.15
* VPS Grade 6 $89.45
* STS $119.03
* EO 3 $116.56
* EO 2 $154.36

The hourly rates were calculated as follows.

Table : Calculation of Hourly Rates

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Grade** | **Mid Point Salary** | **On costs** | **Operating Costs** | **Total Salary & Other Costs** | **Cost / Week** | **Cost / Day** | **Cost / Hour** |
| **VPS 1** | $40,293 | $6,933 | $15,116 | $62,342 | $1,416.86 | $283.37 | **$37.29** |
| **VPS 2** | $48,921 | $8,418 | $15,116 | $72,455 | $1,646.70 | $329.34 | **$43.33** |
| **VPS 3** | $62,231 | $10,708 | $15,116 | $88,055 | $2,001.25 | $400.25 | **$52.66** |
| **VPS 4** | $74,272 | $12,781 | $15,116 | $102,169 | $2,322.02 | $464.40 | **$61.11** |
| **VPS 5** | $88,721 | $15,129 | $15,116 | $118,966 | $2,703.77 | $540.75 | **$71.15** |
| **VPS 6** | $115,140 | $19,303 | $15,116 | $149,559 | $3,399.07 | $679.81 | **$89.45** |
| **STS** | $157,847 | $26,051 | $15,116 | $199,014 | $4,523.05 | $904.61 | **$119.03** |
| **EO 3** | $169,210 | $10,555 | $15,116 | $194,881 | $4,429.11 | $885.82 | **$116.56** |
| **EO 2** | $228,712 | $14,267 | $15,116 | $258,095 | $5,865.80 | $1,173.16 | **$154.36** |
| **Assumptions:**  - Salary and other costs based on DTF costing guidelines for 2012-2013  - Oncosts equal 17.21% (VPS1-VPS4), 17.05% (VPS5), 16.77% (VPS6), 6.24% (EO3)  - 44 week working year to take account of public holidays, annual and sick leave  - Operating cost per FTE equals $15,116  - 7.6 hours per business days | | | | | | | |

**Variable Direct Costs**

To determine the variable direct cost for each fee, a step-by-step identification of the tasks undertaken by CAV to process an application for which a fee is proposed to be set is required. Additionally, the same analysis is undertaken for 3 processes for which CAV only proposes to charge a fee for other alternative fee models assessed.

Under this analysis, each task is assigned a time in minutes, a VPS salary grade of the person(s) undertaking the task and the resulting cost of each task. These costs are totalled, giving an overall variable direct cost of processing one application.

**Application for incorporation (model rules)**

The variable direct cost of processing an application for incorporation using model rules is $19.20.

This application for incorporation, on average, takes 24 minutes to process and involves officers at grade 2 and 3 levels.

**Application for incorporation (own rules)**

The variable direct cost of processing an application for incorporation using own rules is $216.00.

This application for incorporation, on average, takes 270 minutes, and involves officers at grade 2 and 3 level.

An application using own rules is estimated to take substantially longer for CAV to process than an application using model rules, as CAV will be required to assess the compliance of the rules with the Reform Act, and potentially assist the association in altering its rules so that it complies with the requirements of the Reform Act.

This application involves the following processes:

* receiving the application, entering the information into a database, processing payment and sending an acknowledgement letter (20 minutes);
* conducting the eligibility checks (10 minutes);
* conducting a number of internal checks (10 minutes);
* assessing the application and following up with applicant where further information is required (180 minutes);
* making a decision on the eligibility of the applicant (40 minutes); and
* recording the decision and informing the applicant of decision (10 minutes).

Assessing the application involves CAV staff ensuring that the proposed own rules address the 17 matters required by the Reform Act, and are in keeping with the spirit of the Act. Associations often submit rules that do not meet these requirements. This requires detailed analysis, responses and follow-up by CAV.

For most applications, CAV staff members are required to make contact with the applicant on a minimum of two occasions, where the staff member must explain to the applicant the specific reasons why the proposed rules are not suitable, and what needs to be done to remedy the defects in the rules.

Where the association proposes to use an adapted version of the model rules, often the amendments proposed either conflict with the model rules, or are difficult to decipher. In this instance, the application needs to be escalated to more senior officers, who also have the check the rules in their entirety to ensure assessments are made in context.

**Application for incorporation by a registrable body (model rules)**

The variable direct cost of processing an application for incorporation by a registrable body using model rules is $45.53.

This application for incorporation, on average, takes 54 minutes to process and involves officers at grade 2 and 3 level.

**Application for incorporation by a registrable body (own rules)**

The variable direct cost of processing an application for incorporation by a registrable body using own rules is $242.33.

This application for incorporation, on average, takes 270 minutes, and involves officers at grade 2 and 3 levels.

An application using own rules is estimated to take substantially longer for CAV to process than an application using model rules as CAV will be required to assesses the compliance of the rules with the Reform Act, and potentially assist the registrable body in altering its proposed rules so that they comply with the requirements of the Reform Act.

**Application for amalgamation (model rules)**

The variable direct cost for processing an application for amalgamation using model rules is $109.72.

This application for amalgamation, on average, takes 125 minutes, and involves officers at grade 3 level.

**Application for amalgamation (own rules)**

The variable direct cost for processing an application for amalgamation using own rules is $219.44.

This application for amalgamation, on average, takes 250 minutes, and involves officers at grade 3 level.

An application using own rules is estimated to take substantially longer for CAV to process than an application using model rules as CAV will be required to assesses the compliance of the rules with the Reform Act, and potentially assist the amalgamating associations in altering their proposed rules so that they comply with the requirements of the Reform Act.

**Application to change name of incorporated association**

The variable direct cost for processing an application to change the name of an incorporated association is $14.44.

This application, on average, takes 20 minutes, and involves officers at the grade 2 level.

**Application to alter rules of an incorporated association**

The variable direct cost for processing an application to alter the rules of an incorporated association is $184.00.

This application, on average, takes 230 minutes, and involves officers at grade 2 and 3 levels.

This application involves similar internal processes to an application to incorporate using own rules, namely:

* receiving the application, entering the information into a database and sending an acknowledgement letter (20 minutes);
* conducting the eligibility checks (10 minutes);
* conducting a number of internal checks (10 minutes);
* assessing the application and following up with applicant where further information is required (160 minutes);
* making a decision on the eligibility of the applicant (20 minutes); and
* recording the decision and informing the applicant of decision (10 minutes).

Assessing the application involves ensuring that the amended own rules still meet the requirements of the Reform Act, and remain suitable for use by the association. When an association submits proposed amendments, these are often either incompatible with legislative requirements or are difficult to decipher. CAV officers must check the rules of the association in their entirety to ensure that assessments are made in context. Where proposed rules do not meet legislative requirements, CAV officers will work with the association to ensure legislative compliance.

In practice, assessing an application to change the rules of an association involves similar internal processes to processing an application for incorporation involving own rules.

The above time estimates are based on the median time taken to process these applications. More complex applications with take longer to process, while less complex applications will be quicker to process.

**Application to be declared a tier 1 or tier 2 association**

The variable direct cost for processing an application to be declared a tier 1 or tier 2 association is $123.82.

This application is a new process and, on average, is estimated take 120 minutes, and involves officers at grade 3 and 5 level.

**Lodgement of financial statements – tier 1**

The variable direct cost for processing the financial statements of a tier 1 incorporated association is $42.93.

This is a new process and, on average, is estimated to take 45 minutes, and involves officers at grade 2 and 5 level.

Processing the financial statements of a tier 1 association involves the following internal processes

* receiving the application, entering the information into a database, taking payment and sending an acknowledgement letter (15 minutes);
* conducting a number of internal checks (10 minutes);
* assessing the application and following up with applicant where further information is required (5 minutes)
* making a decision on the eligibility of the applicant (5 minutes); and
* recording the decision and informing the applicant of decision (10 minutes).

**Lodgement of financial statements – tier 2**

The variable direct cost for processing the financial statements of a tier 2 incorporated association is $50.09.

This is a new process and, on average, is estimated to take 52.5 minutes, and involves officers at grade 2 and 5 level.

Processing the financial statements of a tier 2 association involves the following internal processes

* receiving the application, entering the information into a database, taking payment and sending an acknowledgement letter (15 minutes);
* conducting a number of internal checks (10 minutes);
* assessing the application and following up with applicant where further information is required (12.5 minutes)
* making a decision on the eligibility of the applicant (5 minutes); and
* recording the decision and informing the applicant of decision (10 minutes).

**Lodgement of financial statements – tier 3**

The variable direct cost for processing the financial statements of a tier 3 incorporated association is $57.24.

This is a new process and, on average, is estimated to take 60 minutes, and involves officers at grade 2 and 5 level.

Processing the financial statements of a tier 1 association involves the following internal processes

* receiving the application, entering the information into a database, taking payment and sending an acknowledgement letter (15 minutes);
* conducting a number of internal checks (10 minutes);
* assessing the application and following up with applicant where further information is required (20 minutes)
* making a decision on the eligibility of the applicant (5 minutes); and
* recording the decision and informing the applicant of decision (10 minutes).

Collection of this information lodged in financial statements by associations of all tiers provides CAV with an opportunity to scrutinise the financial operations of associations. Additionally, it allows for greater transparency in the administration of associations as information provided is placed on the public record and documents are made available to the public for purchase.

The collection of this information also supports self-regulation. If an association is required to report annually to CAV, it is more likely to follow due process and maintain good dialogue with its members.

Owing to the greater risk of detriment to members of larger associations, CAV applies a greater degree of scrutiny to the financial returns of tier 2 and tier 3 which results in a longer processing time.

**Application for exemption from lodgement of financial statements – tier 1**

The variable direct cost for processing an application for exemption from lodgement of financial statements of a tier 1 incorporated association is $8.70.

This is a new process and, on average, is estimated to take 10 minutes, and involves officers at grade 2 and 4 level.

**Application for exemption from lodgement of financial statements – tier 2**

The variable direct cost for processing an application for exemption from lodgement of financial statements of a tier 2 incorporated association is $30.55.

This is a new process and, on average, is estimated to take 30 minutes, and involves officers at grade 4 level.

**Application for exemption from lodgement of financial statements – tier 3**

The variable direct cost for processing an application for exemption from lodgement of financial statements of a tier 3 incorporated association is $30.55.

This is a new process and, on average, is estimated to take 30 minutes, and involves officers at grade 4 level.

**Application for extension of time to hold annual general meeting or lodge financial statements**

The variable direct cost of processing an application for an extension of time to hold an annual general meeting or lodge financial statements for an incorporated association is $20.37.

This application, on average, takes 20 minutes and involves officers at grade 4 level.

It takes the same amount of time to process this application regardless of the size of the incorporated association.

**Application for exemption from requirements regarding the removal of an auditor under s107(2)**

The variable direct cost of processing an application for an exemption from requirements regarding the removal of an auditor is $40.74.

This application, on average, takes 40 minutes and involves officers at grade 4 level.

**Inspection of register or prescribed documents kept by the Registrar**

The variable direct cost of processing an application to inspect the register or prescribed documents kept by the Registrar is $3.61.

This application, on average, takes 5 minutes and involves officers at grade 2 level.

**Obtaining copies of a prescribed document kept by the Registrar**

The variable direct cost of processing an application to obtain copies of prescribed documents kept by the Registrar is $32.50.

This application, on average, takes 45 minutes and involves officers at grade 2 level.

**Obtaining certified copy of a prescribed document kept by the Registrar**

The variable direct cost of processing an application to obtain certified copies of prescribed documents kept by the Registrar is $52.87.

This application, on average, takes 65 minutes and involves officers at grade 2 and 4 level.

**Obtaining a certified duplicate of a certificate registration of an incorporated association**

The variable direct cost of processing an application to obtain a certified duplicate certificate of registration of an incorporated association is $8.70.

This application, on average, takes 10 minutes and involves officers at grade 2 and 4 level.

**Applications not incurring a fee**

It is not proposed to charge a fee for the following applications under the preferred option for policy reasons; however, under other fee options assessed in this RIS a fee is proposed for these applications.

Each of these processes essentially involves associations providing information to CAV. It is important for CAV to have this information so that the register of incorporated associations is current and accurate. If a fee was to be imposed for these processes, it would act as a disincentive for associations to provide this information to CAV, which could result in the register being inaccurate.

**Written notice to the Registrar of a change of secretary**

The variable direct cost of processing notice of a change of secretary is $3.61.

This process, on average, takes 5 minutes and involves officers at grade 5 level.

**Application to cancel incorporation**

The variable direct cost of processing an application to cancel the incorporation of an association is $61.44.

This process, on average, takes 70 minutes and involves officers at grade 3 level.

**Lodgement of special resolution relating to distribution of assets on voluntary winding up.**

The variable direct cost of processing aspecial resolution relating to distribution of assets on voluntary winding up is $210.66.

This process, on average, takes 240 minutes and involves officers at grade 3 level.

**Summary of Variable Direct Costs**

The individual variable direct costs involved in processing each of the proposed fee types are summarised in Table 18. The table outlines the expected number of applications (based on existing numbers of applications), the variable direct cost per application, the total variable direct cost for each fee type and the proportion of total variable direct cost each fee type accounts for.

Included in this table of variable direct costs are three processes for which no fee is proposed to be charged:

* written notice to the Registrar of a change of secretary;
* application to cancel incorporation;
* lodgement of special resolution relating to distribution of assets on voluntary winding up.

These have been included as variable direct costs as they are the costs associated with processing certain applications. For policy reasons, CAV is not proposing to charge a fee for these applications.

Based on the expected number of applications, the variable direct costs to CAV for processing the different applications that CAV processes is $2,042,925.14.

In the table, the number of applications for the following fee types is anticipated as being zero:

* application for incorporation by a registrable body using model rules;
* provision of an electronic copy of document held by the Registrar containing a report of all associations incorporated in a 12-month period greater than 12 months ago;
* provision of an electronic copy of document held by the Registrar containing a report of all associations incorporated in the previous 12 months;
* application for exemption from requirements to lodge financial statements for a tier one or a tier three association.

In relation to the first three dot points, this estimate is based on the number of applications received by CAV in recent years.

In relation to the final dot point, CAV anticipates that tier 2 and tier 3 associations will be of such a size that they will prepare financial statements as part of their standard operating processes, and thus will have no reason to seek an exemption.

Table : Summary of Vairable Direct Costs

| **Process name** | **Estimated no. of applications (pa)** | **Variable direct cost per application** | | **Total variable direct cost** |
| --- | --- | --- | --- | --- |
| Application for incorporation - model rules adopted | 1313 | $19.20 | $25,209.60 | |
| Application for incorporation - own rules adopted | 504 | $216.00 | $108,864.00 | |
| Application for incorporation by a registrable body - model rules adopted | 0 | $45.53 | $0.00 | |
| Application for incorporation by a registrable body - own rules adopted | 1 | $242.33 | $242.33 | |
| Application for amalgamation - model rules adopted | 6 | $109.72 | $658.32 | |
| Application for amalgamation - own rules adopted | 40 | $219.44 | $8,777.60 | |
| Application to change name of incorporated association | 356 | $14.44 | $5,140.64 | |
| Application to alter the rules of an incorporated association | 1682 | $184.00 | $309,488.00 | |
| Application to be declared a Tier 1 or Tier 2 association | 20 | $123.82 | $2,476.40 | |
| Lodgment of financial statements - Tier 1 | 29507 | $42.93 | $1,266,735.51 | |
| Lodgment of financial statements - Tier 2 | 1604 | $50.09 | $80,344.36 | |
| Lodgment of financial statements - Tier 3 | 962 | $57.24 | $55,064.88 | |
| Application for exemption from requirement to lodge financial statements - Tier 1 | 500 | $8.70 | $4,350.00 | |
| Application for exemption from requirement to lodge financial statements - Tier 2 | 0 | $30.55 | $0.00 | |
| Application for exemption from requirement to lodge financial statements - Tier 3 | 0 | $30.55 | $0.00 | |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 1 | 529 | $20.37 | $10,775.73 | |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 2 | 29 | $20.37 | $590.73 | |
| Application for extension of time to hold annual general meeting or lodge financial statements - Tier 3 | 17 | $20.37 | $346.29 | |
| Application for exemption from requirements regarding the removal of an auditor under s. 107(2) | 3 | $40.74 | $122.22 | |
| Inspection of register or prescribed documents kept by the Registrar | 3190 | $3.61 | $11,515.90 | |
| Obtaining copies of a prescribed document kept by the Registrar | 120 | $32.50 | $3,900.00 | |
| Obtaining certified copies of a prescribed document kept by the Registrar | 15 | $52.87 | $793.05 | |
| Obtaining a certified duplicate of a certificate of registration of an incorporated association | 216 | $8.70 | $1,879.20 | |
| Written notice to the Registrar of appointment of a secretary | 1300 | $3.61 | $4,693.00 | |
| Application for cancellation of incorporation | 201 | $61.44 | $12,349.44 | |
| Lodgement of special resolution relating to distribution of assets on voluntary winding up | 601 | $210.66 | $126,606.66 | |
| TOTAL: | 42716 |  | $2,042,925.14 | |

**Fixed Direct Costs**

CAV incurs a number of ongoing costs in administering the incorporated associations’ regulatory scheme. These costs arise from the work of staff in the following areas of the organisations:

* Victorian Consumer and Business Centre
* Enquiries Branch
* Policy and Legislation Branch
* State-wide Service Delivery (Community Engagement) – Market Engagement Division
* Enforcement – Market Engagement Division
* Legal Services – Market Engagement Division
* Dispute Resolution and Reduction – Market Engagement Division
* Service Delivery Division
* Marketing and Education Branch
* Registrations Branch.

Guidance on what costs should be accounted for and recovered are set out in the Guidelines. As identified in the Purpose and Structure Section of the Guidelines, they do not provide definitive advice on what should and should not be included. Rather, they establish a central framework and guidance on how to undertake sound analysis on what should and should not be included.

The Guidelines identify that costs that are not integral to the regulatory scheme should not be recovered. However, the Guidelines are not at all definitive on what types of costs should be excluded. The Guidelines identify that certain costs may be more appropriately funded from general taxation, for example, the review of regulatory functions, advising Parliament and financial reporting.

The Policy and Legislation Branch of CAV undertakes a range of day-to-day activities in relation to incorporated associations. For example, providing advice to other parts of CAV, such as the Market Engagement Division and the Registrations Branch, reviewing education and information material and drafting correspondence about the regulatory regime.

As with many of the other business licensing regimes, the incorporated associations’ regulatory scheme is based around a particular business model. An integral part of the role of the Policy and Legislation Branch is to ensure that the regulatory scheme is up-to-date with current business practices and is as effective and efficient as possible. The Guidelines are not definitive on what policy costs should be recovered. Having undertaken several RISs regarding fees in recent years, CAV has reviewed this issue a number of times and has arrived at the position that substantive and comprehensive policy reviews considering new areas of regulation are of a more general public benefit and should therefore be funded from general taxation.

However, more limited and focused policy work on existing regulatory schemes, such as development of these proposed Regulations, should be recovered. This work is more of the nature of maintenance of the current regulatory scheme. It involves ensuring it is up to date with current business practices and is still effective and efficient (both for consumers and businesses). The benefits of this activity especially relate to the regulated entity and its consumers. Therefore, these costs should be recovered through the fees and consequently CAV’s activity in this area has been included in this RIS.

The fixed direct costs are summarised in Table 19. The Table identifies the costs of the different branches of CAV in administering the associations’ regulatory scheme. The costs have been split into salary and operating costs. The fixed direct salary costs come from costing the time staff in a particular branch work on issues to do with regulation of associations. Given the proportion of a branch’s total FTE that works on incorporated associations, the fixed direct operating costs reflect the proportion of the branch’s total operating costs that can be attributed to the regulation of incorporated associations. The cost of resources devoted to registering incorporated associations has been included in the estimates of variable costs outlined above. They have therefore not been included here.

Table : Summary of Fixed Direct Costs

|  |  |  |
| --- | --- | --- |
| **Branch** | **Role** | **Total Fixed Direct Costs ($)** |
| Victorian Consumer and Business Centre | Provision of ‘over the counter’ advice | $92,031.90 |
| Enquiries Branch | Provision of ‘over the phone’ advice | $182.249.10 |
| Policy and Legislation Branch[[4]](#footnote-3) | Provision of legal advice to Registrations Branch regarding specific applications | $131,087.83 |
| State-wide Service Delivery (Community Engagement) – Market Engagement Division | Provision of community education | $11,896.60 |
| Enforcement – Market Engagement Division | To conduct investigations and enforcement actions | $9,752.78 |
| Legal Services – Market Engagement Division | Provision of legal advice to ‘Registrations Branch’ | $12,586.40 |
| Dispute Resolution and Reduction – Market Engagement Division | Dispute resolution between associations | $3,091.90 |
| Service Delivery Division | Oversight over incorporated associations program | $7,477.95 |
| Marketing and Education Branch | Education action | $13,208.08 |
| Registration Branch | Administration of associations scheme[[5]](#footnote-4) | $273,899.81 |
| TOTAL |  | $737,282.35 |

**Fixed Indirect Costs**

In addition to the ongoing costs outlined in the section above, CAV also incurs corporate services costs. These costs include the salary and operating costs of the Director of CAV and the Corporate Resources Branch. It has been assumed that Corporate Resources costs, which includes financial services and human resource costs, is 10% of total fixed direct costs ($73,728.23) and the Director’s Office’s costs are 5% of the total fixed direct costs ($36,864.12). Therefore, the total indirect cost of administering the associations’ regulatory scheme is $110,593.35 per annum.

**Total Costs**

Direct Variable Costs $2,042,995.62

Fixed Direct Costs $737,282.35

Fixed Indirect Costs $110,592.35

Total Costs $2,890,870.31

**Fee Level Options**

Per the Reform Act, fees for actions under the Reform Act should be prescribed. In this context, this RIS accepts the principle that fees for administration of the Reform Act should be prescribed and does not explore other strategic alternatives to the fees schema.

For example, in some Australian jurisdictions associations are required to report every three years. While this option would present a cost saving to associations and CAV, the requirement to lodge an annual statement is set by the Reform Act. Therefore, this is not a feasible option in this context and has not been explored in this RIS.

However, there remains alternatives for how, and how much of, the costs of administering the associations regulatory scheme (total $) should be recovered. The following options were considered.

* Option 1 – Base Case – no fees would be charged
* Option 2 – Proposed Regulations
* Option 3 – Current Fees
* Option 4 – Full Cost Recovery

**Proposed Fee Levels**

Table 20 provides a summary of the existing fee unit levels compared with the proposed fee unit levels, outlining the expected annual revenue for each fee under the proposed Regulations. Attachment 1 provides a summation of fees in other jurisdictions.

Table : Proposed Fees under the proposed Regulations

| **Category** | **Current Fee** | **Proposed Fee** | **Proposed Change (%)** |
| --- | --- | --- | --- |
| Application for incorporation (model rules) | 2.5 FU  $30.55 | 2.5 FU $31.33 | 0.00% |
| Application for incorporation (own rules) | 10 FU $122.20 | 14.5 FU $181.69 | + 45.00% |
| Application for incorporation by a registrable body (model rules) | 10 FU $122.20 | 4 FU $50.12 | - 60.00% |
| Application for incorporation by a registrable body (own rules) | 10 FU $122.20 | 16 FU $200.48 | + 60.00% |
| Application for amalgamation (model rules) | 10 FU $122.20 | 8 FU $100.24 | - 20.00% |
| Application for amalgamation (own rules) | 10 FU $122.20 | 14.5 FU $181.69 | + 45.00% |
| Application to change name of incorporated association | 3 FU $36.66 | 2 FU $25.06 | - 33.33% |
| Application to alter rules of an incorporated association | 6 FU $73.32 | 12.5 FU 156.63 | + 108.33% |
| Application to be declared a Tier 1 or Tier 2 association | n/a | 9 FU $112.77 | n/a |
| Lodgement of financial statements – Tier 1 | 3.5 FU $42.77 | 4 FU $50.12 | + 14.29% |
| Lodgement of financial statements – Tier 2 | 3.5 FU $42.77 | 8 FU $100.24 | + 128.57% |
| Lodgement of financial statements – Tier 3 | 3.5 FU $42.77 | 16 FU $200.48 | + 357.14% |
| Application for exemption from lodgement of financial statements – Tier 1 | n/a | 2 FU $25.06 | n/a |
| Application for exemption from lodgement of financial statements – Tier 2 | n/a | 4 FU $50.12 | n/a |
| Application for exemption from lodgement of financial statements – Tier 3 | n/a | 4 FU $50.12 | n/a |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 1 | 2 FU $24.44 | 2.5 FU $31.33 | + 25.00% |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 2 | 2 FU $24.44 | 2.5 FU $31.33 | + 25.00% |
| Application for extension of time to hold annual general meeting or lodge financial statements – Tier 3 | 2 FU $24.44 | 2.5 FU $31.33 | + 25.00% |
| Application for exemption from requirements regarding the removal of an auditor under s107(2) | n/a | 3.5 FU $43.86 | n/a |
| Inspection of register or prescribed documents kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 2 FU $25.06 | - 20.00% |
| Obtaining copies of a prescribed document kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 3 FU $37.59 | + 20.00% |
| Obtaining certified copy of a prescribed document kept by the Registrar | 1 FU for first page, $2 per subsequent page to a max of 5 FU | 4.5 FU $56.39 | + 80.00% |
| Obtaining a certified duplicate of a certificate registration of an incorporated association | 1.5 FU $18.33 | 2 FU $25.06 | + 33.33% |

## Attachment 1: Fees in Other Australian Jurisdictions

A list of all the fees levied by Regulations in each mainland State is provided herein. Due to the differences in the description and application of these fees, it is difficult to present a direct comparison of all the fees with the proposed fees in the Associations Incorporation Regulations. However, the following table provides a comparison of the four primary fee types.

Table : Comparision of primary fees

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Fee Type** | **NSW ($)** | **QLD ($)** | **WA ($)** | **SA ($)** | **VIC ($)** |
| Application for registration | $111 | $90.60 | $126 | $161 | $31.33 (model rules) $181.69 (own rules) |
| Lodgement of annual report | $48 | $42.20 | n/a | $76.50 | $50.12 (tier 1) $100.24 (tier 2) $200.48 (tier 3) |
| Application for change of name | $54 | $29.85 | $42 | $54.50 | $25.06 |
| Application to amalgamate | n/a | $90.60 | n/a | $161.00 | $100.24 (model rules) $181.69 (own rules) |

Table : New South Wales: Associations Incorporation Regulation 2010

|  |  |
| --- | --- |
| **Fee Type** | **Fee** |
| Application for registration of an association | $111 |
| Application for approval of change of association's name | $54 |
| Application for approval of change of association's objects or constitution | $41 |
| Application for reservation of name | $43 |
| Issue of replacement certificate of incorporation where Director General is satisfied that the original was lost or destroyed | $36 |
| Maximum fee for inspection by any member of an association of the book recording disclosure of interest by a committee member | $5 |
| Application for further time within which to hold AGM | $26 |
| Application for specification by Director General as to the manner in which a special resolution may be passed | $36 |
| Application for further time in which to lodge an annual statement | $26 |
| Lodgement of summary of Tier 1 association's financial affairs for the previous financial year, financial statements, auditor's report and a copy of any resolution passed at the association's AGM in connection with those documents | $48 |
| Additional fee for late payment of prescribed fee for lodgement of documents:   * if the documents are lodged more than one month after the due date for lodgement, but less than 2 months after the due date * if the documents are lodged 2 or more months after the due date | $22  $29 |
| Application for further time in which to lodge a financial summary | $26 |
| Lodgement of summary of Tier 2 association's financial affairs for the previous financial year | $48 |
| Additional fee for late payment of prescribed fee for lodgement of summary of the association's financial affairs:   * if the summary is lodged more than one month after the due date for lodgement, but less than 2 months after the due date * if the summary is lodged 2 or more months after the due date | $22  $29 |
| Approval for person who is otherwise not qualified to carry out audit | $26 |
| Approval for an exemption from requirement to prepare or audit financial statements | $36 |
| Application for transfer of registration declaration in relation to an association's proposed registration under a corresponding law | $54 |
| Inspection of any document that has been lodged with the Director General under the Act, not being a document that has been destroyed or otherwise disposed of | $17 |
| Issue of uncertified copy of, or extract from, document lodged with the Director General  if a fee has been paid for inspection of the document:   * for the first page * for each additional page   if a fee has not been paid for inspection of the document:   * for the first page * for each additional page | Nil  $1  $17  $1 |
| Issue of certified copy of, or extract from, document lodged with the Director General   * for the first page * for each additional page | $18  $2 |
| Issue of extract from computerised record forming part of the register | $17 |
| Issue of certificate by Director General stating registration status, registered name, official address and terms of constitution | $36 |
| Issue of certificate by Director General specifying compliance with certain provisions of the Act | $72 |
| Application for approval to serve documents on association in such other manner as the Director General may direct (section 101 of the Act) | $26 |
| Additional fees payable for late payment of any prescribed fee not otherwise specified | $22 |
| Issue of certificate by Director General to the effect that an association or other body is a former association of an incorporated association | $36 |

Table : South Australia: Associations Incorporation Regulations 2008

|  |  |
| --- | --- |
| **Fee Type** | **Fee** |
| Incorporation | $161 |
| Amalgamation | $161 |
| Change to constitution / lodging new constitution | $54.5 |
| Change to name | $54.5 |
| Lodging new constitution | $54.5 |
| Periodic return | $76.5 |
| Winding up report – affairs of the association | Nil |
| Declaration of solvency | Nil |
| Deregistration | $113 |
| Reservation of name | $113 |
| Change of public officer or change of public officer’s address | Nil |
| Variation or revocation of a trust affecting rules | Nil |
| Supplementary document | Nil |
| Ministerial consent | $54 |
| Late fees   * If lodged within one month after the prescribed time * If lodged more than one month after the prescribed time * If lodged more than three months after the prescribed time | $30   $61.50   $130 |
| Association search fees   * Replacement certificate * Inspection of a document | $44.60  $22.30 |
| Copy of periodic return   * Uncertified * Certified | $27.15 or $44.60 for first page / 1.25 per page thereafter |

Table : Queensland: Associations Incorporation Regulation 1999

|  |  |
| --- | --- |
| **Fee Type** | **Fee** |
| Application for incorporation of an association | $90.60 |
| Application for exemption from using the word ´incorporated´ | $29.85 |
| Application for approval to use an unsuitable name | $29.85 |
| Application for registration of change of name | $29.85 |
| Application for amalgamation of incorporated associations | $90.60 |
| Application to register an amendment of rules | $15.95 |
| Lodgement of annual return and audited financial statement | $42.20 |
| Certified copy of a certificate of incorporation | $18.50 |
| Computer extract from the register | $18.50 |
| Inspection of the incorporated association register | $5.75 |
| Certified copy of a document | $4.20 / page |
| Uncertified copy of a document | $2.75 / page |

Table : Western Australia: Associations Incorporation Regulations 1988

|  |  |
| --- | --- |
| **Fee Type** | **Fee** |
| Application for incorporation of an association | $126.00 |
| Application for approval of purpose under section | $37.75 |
| Change the rules (constitution) only | $21.00 |
| Change the association’s name **OR** objects | $42.00 |
| Change the association’s name AND objects | $63.00 |
| Lodgement of a distribution plan | $37.75 |
| Application for approval to vary the rules of an association  relating to the distribution of surplus property | $35.00 |
| Application for extension of period for holding an AGM. | $37.75 |
| Replacement Certificate of Incorporation | $11.60 |
| Copy of the current rules (constitution) | $29.50 |
| Copy of document lodged (uncertified)(first page) | $7.90 |
| Additional pages | $1.60 |
| Copy of document lodged (certified) (first page) | $11.60 |
| Additional pages | $1.50 |

Appendix 2: Comparison between Associations Incorporation Regulations 2009 and the proposed Regulations

Table : Comparison between 2009 Regulations and proposed Regulations

| **2009 Regulation** | **Content** | **Proposed Regulation** | **Change** |
| --- | --- | --- | --- |
| 1 | Objectives | 1 | Deleted objective of “prescribing accounting requirement” as no longer relevant |
| 2 | Authorising Provision | 2 | Updated to reflect new authorising legislation |
| 3 | Revocation | n/a | Deleted |
| 4 | Definitions | 3 | No material change |
| 5 | Particulars for application for incorporation | 4 | No material change |
| 6 | Particulars for certificate of incorporation | 5 | No material change |
| 7 | Particulars for application for incorporation by company, co-operative, society etc | 6 | Language simplified to refer to ‘registrable body’ |
| 8 | Particulars for application for change of name | 9 | No material change |
| 9 | Verification of application | 10 | Regulation now prescribes what must be contained in the statement verifying the association has approved the change of name |
| 10 | Particulars for appointment of public officer | 11 | Updated to refer to ‘secretary’ |
| 11 | Particulars for annual statement by public officer | n/a | Deleted |
| 12 | Particulars for notice of special resolution approving amalgamation of incorporation associations | 10 | No material change |
| 13 | Particulars for application for incorporation as an amalgamated incorporated association | 7 | No material change |
| 13A | Perpetration of financial reports by prescribed associations | n/a | Deleted |
| 14 | Transfer of incorporation - Prescribed body corporate | 13 | No material change |
| 14A | Security to be given to the liquidator | 14 | No material change |
| 15 | Forms | 15 | No material change |
| 15A | Fees | 16 | Fees updated, see Table 4 |
| 16 | Inspection of prescribed documents | 17 | No material change |
| 17 | Infringement notices for prescribed offences | 18 | No material change |
| 18 | Model rules | 12 | Model rules have been updated |
| 18A | Fines | 19 | No material change |
| 19 | Attachments | 20 | No material change |

Appendix 3: Interaction between the authorising legislation and the proposed Regulations

Table : Interaction between the Reform Act and the proposed Regulations

| **Section** | **Section Heading** | **Matter** | **Mandatory**  **/ Optional** |
| --- | --- | --- | --- |
| 3 | Definitions | Prescribe modifications to the following standards *- “auditing standards on review engagements” - “Australian accounting standards” - “Australian auditing standards”* | O |
| 6(2)(c) | Application for Incorporation | Prescribed particulars | M |
| 6(3)(c) | Application for Incorporation | Prescribed fee | M |
| 7(3)(b) | Registration of proposed IA | Registrar may refuse incorporation for “any other prescribed reason” | O |
| 8(3) | Incorporation & Certificate of Registration | Certificate to contain prescribed particulars | M |
| 12(2)(c) | Application for incorporation – registrable body | Application to include prescribed particulars | M |
| 12(3)(d) | Application for incorporation – registrable body | Application to be accompanied by prescribed fee | M |
| 13(3)(b) | Registration of registrable body | Registrar may refuse registration for “any other prescribed reason” | O |
| 14(3) | Incorporation & certificate of registration (registrable body) | Certificate to contain prescribed particulars | M |
| 18(2)(c) | Application for amalgamation | Application to include prescribed particulars | M |
| 18(3)(a) | Application for amalgamation | Application to be accompanied by notice of special resolution containing the prescribed particulars | M |
| 18(3)(c) | Application for amalgamation | Application to be accompanied by prescribed fee | M |
| 20(3) | Amalgamation & certificate of registration | Certificate to contain prescribed particulars | M |
| 23(3)(d) | Name to appear on business documents | “business documents” includes documents of a class prescribed as ‘business documents’ | O |
| 24(3)(b) | Application to change name | Application to include prescribed particulars | M |
| 24(3)(c) | Application to change name | Application to be accompanied by a notice containing the prescribed particulars of passing of special resolution | M |
| 24(3)(d) | Application to change name | Application to be accompanied by prescribed fee | M |
| 47(2)(b) | Requirements for rules | Rules to make provision for any other prescribed matter | O |
| 49(1) | Model Rules | MR’s are prescribed by regulation | M |
| 49(2) | Model Rules | MR’s to make provision for any other prescribed matter | O |
| 50(4) | Alteration of rules | Application to be accompanied by prescribed fee | M |
| 53(2)(b) | Inspection of rules & minutes | Member to pay prescribed fee (if any) | O |
| 74(2)(b) | Notice of appointment of secretary | Notice to include prescribed particulars | M |
| 74(3) | Notice of appointment of secretary | Notice to be accompanied by prescribed fee (if any) | O |
| 90(2)(a) | Tier 1, 2 & 3 associations | Tier 1 association has revenue less than the prescribed amount | M |
| 90(4) | Tier 1, 2 & 3 associations | Tier 3 association has revenue more than the prescribed amount | M |
| 92(2)(b) | Obligation to prepare financial statements – Tier 1 | Financial statements to deal with … any matters prescribed by Reg | O |
| 94(2)(b) | Submission of financial statement to AGM (Tier 1) | Fin Statements to have attached a certificate in the prescribed form | M |
| 95(2)(b) | Obligation to prepare financial statements – Tier 2 | Financial statements to deal with any matter prescribed by regulation | O |
| 97(2)(b) | Submission of financial statements to AGM (Tier 2) | Fin Statements to have attached a certificate in the prescribed form | M |
| 98(2)(b) | Obligation to prepare financial statements – Tier 3 | Financial statements to deal with any matter prescribed by regulation | O |
| 100(2)(b) | Submission of financial statements to AGM (Tier 3) | Fin Statements to have attached a certificate in the prescribed form | M |
| 102(3)(c) | Lodgement of financial statements with registrar | Financial statements to be accompanied by prescribed fee (if any) | O |
| 103(2)(c) | Exemption from requirement to lodge financial statements | Application to be accompanied by prescribed fee | M |
| 104(2)(c) | Extension of time to hold AGM/lodge financial statements | Application to be accompanied by prescribed fee | M |
| 108(2)(c) | Exemption from requirements regarding auditor under s107 | Application to be accompanied by prescribed fee | M |
| 109 | Definition of “prescribed body corporate” | Application to be accompanied by prescribed fee | M |
| 111(4)(b) | Direction to transfer incorporation | Registrar may give a direction … for any other prescribed reason | O |
| 130(5)(b) | Procedure for winding up on certificate | Liquidator to give registrar prescribed security | O |
| 136(1)(a) | Application for cancellation of incorporation | IA has assets less than $10K or prescribed amount | O |
| 136(3)(b) | Application for cancellation of incorporation | Application to be accompanied by prescribed fee | M |
| 146(2)(e) | Civil penalties – office holders | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 147(c) | Receivers | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 148(c) | Voluntary Administration | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 149(c) | Voluntary winding up | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 150(c) | Winding up by the court | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 151(c) | Winding up generally | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 152(1)(f) | Insolvency | Applied CA provision subject to any other modifications prescribed by the Regs (part 5.7B) | O |
| 152(2)(d) | Insolvency | Applied CA provision subject to any other modifications prescribed by the Regs (Part 9.4B) | O |
| 153(c) | General | Applied CA provision subject to any other modifications prescribed by the Regs | O |
| 191(4)(r) | Register | Register is to contain any other information prescribed in the Regs | O |
| 196(1) | Inspection of register | On payment of prescribed fee, person may inspect the register or prescribed documents | O |
| 196(1)(b) | Inspection of register | Prescribed documents or documents of a prescribed class | O |
| 196(2) | Inspection of register | On payment of prescribed fee, person may get copy of document | M |
| 197 | Duplicate certificate of registration | On payment of prescribed fee person may get duplicate certificate | M |
| 212(1) | Infringement notices | Authorised officer may serve infringement notice for prescribed offence | M |

Appendix 4 – Comparison of information provisions in other jurisdictions

The following tables provide a comparison of what information is required to be provided with four applications made under the relevant incorporated associations legislation of NSW and QLD. These applications are:

* Application to incorporate
* Application to change name of association
* Notification of change of secretary

This table identifies that the requirements of the proposed regulations are no more onerous than equivalent requirements in NSW and Queensland. It should be noted that additional information is required to be provided in Victoria under the Reform Act in support of these applications.

Table : Comparision of information requirements - Application to incorporate

|  |  |  |
| --- | --- | --- |
| **Regulation 4 – Application for Incorporation** | | |
| **Victoria** | **NSW** | **QLD** |
| Registered address | Reservation number | Details of person appointment to make application |
| Postal address | Type of authorization | Name of association |
| Name of applicant | Name of association | Number of members of association |
| Address of applicant | Official address of association | Date when association commenced |
| Phone no. of applicant | Details of first public officer | Financial status of association |
| Email address of applicant | Constitution and objects of association | Association with other associations |
| Estimated number of members | Principal activity of association | Land holdings of association |
| Estimated total revenue | Name and address of applicant | Date of resolution to incorporate |
|  | Financial year the association will end on | Proposed name of incorporated association |
|  | Major source of income | Postal address |
|  |  | Address for service |
|  |  | Bank details |
|  |  | Name of office holders |
|  |  | Contact details of office holders |

Table : Comparision of infomation requirements - Application to change name

|  |  |  |
| --- | --- | --- |
| **Regulation 9 - Application to change name** | | |
| **Victoria** | **NSW** | **QLD** |
| Name of association | Incorporation number | Incorporated association number |
| Registration number of association | Name of association | Name of incorporated association |
| Proposed new name of association | Reservation number | Date of general meeting approving name change |
| Date of general meeting | New name | New name |
| Name of secretary | Details of special resolution | Attachment certificate of incorporation or statutory declaration declaring certificate lost |
| Phone no. of secretary | Contact details of application |  |
| Email address of secretary | Name and address of person with authority to sign application |  |

Table : Comparison of information requirements - Notice of appointment of secretary

|  |  |  |
| --- | --- | --- |
| **Regulation 11 – Notice of appointment of secretary** | | |
| **Victoria** | **NSW** | **QLD** |
| Name of association | Incorporation number | Incorporated association number |
| Registration number of association | Name of association | Name of association |
| Phone number of the Secretary | Date in which position became vacant | Name of existing secretary |
| Email address of the secretary | Reason for vacancy | Address of existing secretary |
| Date of appointment of secretary | Date of appoint | Name of new secretary |
|  | Details of new public officer | Address of new secretary |
|  | Address of new public officer | Date on which new secretary appointed |
|  |  | Declaration by secretary that details are accurate |

Appendix 5 – The proposed Regulations

1. This table is compiled from statistics for associations on CAV’s Register as at 1 June 2011 [↑](#footnote-ref-1)
2. [↑](#endnote-ref-1)
3. [↑](#footnote-ref-2)
4. [↑](#footnote-ref-3)
5. This time excludes the time spent by Registrations Branch processing individual applications, which is captured as a variable cost. [↑](#footnote-ref-4)