

## Fact Sheet 1

# Adapting to the new incorporated associations laws

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On 26 November 2012, the *Associations Incorporation Reform Act 2012* replaces the *Associations Incorporation Act 1981* (and its associated regulations).

The new Act includes 'transitional arrangements' to help associations adjust to the new laws.

### **Status of the incorporated association**

Any association incorporated under the old Act remains so under the new Act. The incorporation date is not affected and the certificate of incorporation remains valid.

### **Public officer replaced with secretary**

Under the new laws, the term 'public officer' is replaced with the term 'secretary'.

Any documents authenticated by the public officer under the old Act are not affected.

The secretary may continue or complete any task started by the public officer. Consumer Affairs Victoria will assume this is the same person unless informed otherwise.

### **Role of the secretary**

In an incorporated association, the role of secretary (formerly the 'public officer') includes:

- Lodging an annual statement within a month after the annual general meeting
- Applying to change the association's name or rules
- Notifying Consumer Affairs Victoria of:
  - A change to the association's registered address
  - Their appointment as secretary or any changes to their details
  - A special resolution to wind up the association or distribute its assets
- Dealing with requests to restrict access to information in the association's register of members.

The secretary's role may differ according to the association's rules. The rules may allow the secretary to hold any other office within the association. The secretary must:

- Agree to be named or appointed secretary
- Be at least 18 years old
- Live in Australia.

### **Ongoing processes**

If your association has made any applications under the old Act that have not been finalised before the new Act commences, these will be considered to have been made under the corresponding provisions of the new Act.

Consumer Affairs Victoria will be able to process the majority of applications lodged under the old Act without requiring any additional information, however will advise an association if more information is required.

Any resolution, appointment or notice made under the old Act is deemed valid under the new Act. Any actions taken under the old Act are deemed to have been taken under the new Act.

## Fact Sheet 2

# Annual financial reporting provisions

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A new three-tiered reporting framework will replace the current 'prescribed' and 'non-prescribed' reporting requirements. The tiers are based on an association's total revenue:

- Tier one: less than \$250,000
- Tier two: \$250,000 - \$1,000,000
- Tier three: more than \$1,000,000.

Under the new reporting arrangements, only tier-three associations will be required to have their financial statements **audited**.

Tier-two associations will be required to have their financial statements **reviewed** by an independent accountant – a process that typically costs about one third of a formal audit.

Tier-one associations do not need to have their financial statements reviewed. However, a majority of members present at a general meeting may vote to do so.

### **New format for submitting financial statements**

Consumer Affairs Victoria will send the annual statement in a new form to associations with financial year end dates on or after 26 November 2012.

The secretary (formerly public officer) will be responsible for lodging the annual statement.

Instead of sending the annual statement form one month before the association's financial year end date Consumer Affairs Victoria will now send it **one month** after. Your association will have **five months** from its financial year end date to hold its annual general meeting, and then must submit the annual statement one month following this.

### **Options for submitting statements**

Any association incorporated under the old Act can choose to prepare and submit financial statements in accordance with the old Act, but only for financial year end dates **before** 30 June 2013.

For example, an association with a financial year from 1 January 2012 to 31 December 2012 can choose to submit financial statements under the new tier system or the old 'prescribed/non-prescribed' system.

An association with a financial year end date on or after 30 June 2013 must submit financial statements under the new tier system.

If an association chooses to submit its financial statements using the 'prescribed/non-prescribed' system, it cannot use the new annual statement form. The secretary must contact Consumer Affairs Victoria for a lodgement form, stating whether the association will be reporting as prescribed or non-prescribed for the 2012-2013 reporting year.

## **Auditing requirements**

Your association may have further financial reporting requirements depending on its total revenue and rules. The law sets out a three-tiered reporting framework, based on your association's total revenue in its financial year:

- **Tier one:** less than \$250,000
- **Tier two:** \$250,000 - \$1,000,000
- **Tier three:** more than \$1,000,000.

Total revenue refers to an association's total income from all its activities during the last financial year, before any expenses are deducted.

Tier one associations do not have any additional reporting requirements. They do not need to have their financial statements externally reviewed or audited unless:

- Its rules state otherwise
- A majority of members vote to do so at a general meeting, or
- Consumer Affairs Victoria directs them to do so.

Tier two associations must have their accounts reviewed by an independent accountant. The accountant's report of the review must be presented to members at the annual general meeting. Tier two associations do not have to audit their accounts unless its rules require an audit.

Tier three associations must have their accounts audited by an independent auditor. The audit report must be presented to members at the annual general meeting.

## **Appointing an auditor**

Your association's financial audit must be done by:

- A registered company auditor or firm
- A member of CPA Australia or the Institute of Chartered Accountants in Australia, or
- Someone approved by the Registrar of Incorporated Associations for this purpose; for example, a member of the Institute of Public Accountants who holds Professional National Accountant status.

The auditor must not be:

- A member of the association's committee
- An employer or an employee of a member of the committee
- A member of the same partnership as a member of the committee
- An employee of the association.

## **Removing or changing an auditor**

Your association can only remove its auditor by a resolution passed at a general meeting. Advance notice of at least two months of the proposed resolution must be given to all members, the auditor and Consumer Affairs Victoria.

## Fact Sheet 3

# New Model Rules

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### Reasons for having rules

Every incorporated association must have rules. The rules:

- Are a written document
- Guide how your association operates
- Are a contract between the association and its members
- Set out your association's purposes
- List the rights and responsibilities of members and office holders.

Members should know the rules. They have the right to inspect the rules and obtain a copy on request.

The topics an incorporated association's rules must address have been expanded to include:

- An association's name and purposes
- Members' rights and obligations
- Procedures for resignation and cessation of membership
- The process for appointment and termination of the secretary
- Preparing and keeping minutes of general meetings
- Provision for members to access minutes of general meetings, including financial statements submitted at a general meeting
- Right of access (if any) by members to minutes of committee meetings.

The new Model Rules can be found here

<http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/running-an-incorporated-association/rules>

### Statement of purposes

The purposes of an incorporated association will now be part of its rules, and not set out as a separate statement, as is currently the case

### Model rules versus own rules

Your association may use the model rules, or create its own rules. Either way, the rules must address every item listed in Schedule 1 of the Associations Incorporation Reform Act 2012.

(See Additional Fact Sheet. "Matters to be Provided for in the Model Rules")

### Model rules

Using the model rules can save an association the time and expense of drafting its own rules.

There are three items that can be specified to suit an association's particular circumstances:

- The association's name
- Its purposes and
- Its financial year.

If an association changes any other items in the model rules, then the association has made its own rules.

## Own rules

Your association may develop its own rules to suit its particular circumstances. It may wish to use the model rules as a guide when drafting its own rules.

Even if your association has its own rules, these must still address all the items in Schedule 1 of the Associations Incorporation Reform Act 2012. (See Additional Fact Sheet. "Matters to be Provided for in the Model Rules")

An association must have its own rules approved by Consumer Affairs Victoria when it first registers.

## Changing the rules

To change its rules, your association can:

- Notify Consumer Affairs Victoria that it has passed a special resolution to approve adopting the model rules, or
- Apply for approval to change its rules (after passing a special resolution) and we approve the request.

Your association can take the following steps to change the rules:

1. It proposes the change and notifies members at least 21 days before a general meeting. The rules should specify how this notice must be given (for example, by letter or verbally).
2. At the meeting, your association approves the change by voting through a special resolution.
3. The secretary lodges the application for association change of details within 28 days of the special resolution being passed. Lodgment details are on the form.  
<http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/fees-and-forms>
4. The following must be attached with the form:
  - A copy of the notice of the special resolution stating the changes
  - A declaration signed by at least two committee members stating that the special resolution was passed in accordance with the law and the rules
  - A copy of the rules that clearly shows the changes, and
  - The fee.

## Approving rule changes

Consumer Affairs Victoria will approve or refuse proposed rule changes based on whether they meet the requirements of the Associations Incorporation Reform Act 2012 (the Act).

If an association requests multiple rule changes and some changes do not comply with the Act, Consumer Affairs Victoria may approve some changes and not others.

## Fact Sheet 4

# New Duties of Office Holders

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The term 'office holder' has been revised and refers to:

- A member of the committee
- The secretary
- A person, including an employee of the association, who makes or helps make decisions that affect the association's operations (in large associations, this may be the CEO or a senior manager)
- A person with the capacity to significantly affect the association's financial standing
- A person whose instructions or wishes the committee is used to following; this does not include a person giving professional advice.

An office holder must:

- Act in the association's interests and in accordance with its purposes
- Act with due care and diligence
- Act in good faith and for a proper purpose
- Ensure the association does not trade while insolvent. This means it must not incur debts it cannot repay.

An office holder must not:

- Improperly use their position or information obtained through their position
- Participate in voting on matters where they have an interest.

### **Protection for office holders (indemnity)**

Under the new Act, an incorporated association must indemnify its office holders. This will protect these people from liability for activities they undertake in good faith on behalf of the association. For example, if an office holder is sued for something they have done on the association's behalf in good faith and must pay damages, the association must reimburse the office holder.

The association must provide the indemnity from its assets – the government does not fund this indemnity. If an association does not have insurance cover, the indemnity is only available to the extent of its assets.

### **Meetings**

Associations will be able to use technology (for example, computers or teleconference) to hold general or committee meetings in two or more venues at the same time.

### **Record keeping**

Incorporated associations will now be able to keep records in a language other than English. However, they must make records available in English when asked by an association member or Consumer Affairs Victoria.

## **Rights of Members, Disciplinary Proceedings and Grievance Procedures**

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### **Minimum rights of members**

The new laws clarify the minimum rights of members. Members have the right:

- To inspect and obtain a copy of the rules
- To inspect and obtain copies of minutes of general meetings (including the financial statements tendered at the annual general meeting)
- If the member has voting rights, to be notified of the date, time and place of all general meetings and to be provided with a proxy form (if the association uses a standard proxy form)
- To attend and, if entitled under the association's rules, vote at general meetings
- To inspect the register of members of their association
- To a fair and reasonable grievance procedure.

### **Register of members and personal information**

An association will be required to maintain a register of members, which must include:

- Each member's name and address
- The date they became a member
- The member's class of membership (if applicable)
- The date they stopped being a member (if applicable).

There may be circumstances when a member may have a legitimate reason for not wanting their personal information to be generally available - for example, in an association for people with serious health issues or victims of violence.

To address these concerns, the new laws will provide that:

- When special circumstances exist, a member may ask the secretary to restrict access to their personal information on the register of members
- When the member is a child, their parent/guardian may exercise this right on their behalf
- If the secretary is satisfied that there are special circumstances that justify doing so, they must agree to the request
- When the secretary declines to restrict access as requested, they must notify the member in writing of the reasons for their decision
- The member may seek review by the Victorian Civil and Administrative Tribunal (VCAT) of the secretary's decision to decline to restrict access within 28 days of receiving notification
- If the secretary has declined to restrict access, they must not give access to that member's information until after the 28 days or if VCAT has made a decision (if the member has sought a review of the secretary's decision)
- If a member has had this information restricted, the secretary must still ensure the member receives notices of all association meetings and business.

### **Contracts and other documents**

The new laws simplify the process for executing contracts or documents. However, if the association's rules provide for more restrictive arrangements, those rules take precedence over the process outlined in the legislation.

For example, if an association's rules specify that the secretary, treasurer and two committee members must sign any contract, this rule overrides the legislation.

### **Disciplinary proceedings and grievance procedures**

The new laws clarify:

- What an association must do to ensure that parties to a grievance are treated fairly
- That when an association has a disciplinary procedure in its rules, it must be applied fairly.

In applying a grievance procedure, the association must ensure that each party to a dispute has a chance to be heard and that the dispute must be resolved by unbiased decision making.

If a member is facing disciplinary action, they must be told why, and be given an opportunity to be heard.

### **Disciplinary action against a member**

An incorporated association may take disciplinary action against a member for breaches relating to that person's status as a member of the association.

The association must take action in accordance with the procedures (if any) outlined in its rules.

In applying the disciplinary procedure, the association must ensure the:

- Member who is facing the disciplinary procedure:
  - Is informed why the action is being taken, and
  - Has been given an opportunity to be heard
- Outcome is determined by an unbiased decision-maker (from within or outside the association)
- Disciplinary procedure is completed in a timely manner.

A member facing a disciplinary procedure must not initiate a grievance procedure related to the same matter until the disciplinary procedure is completed.

### **Disputes within an association**

Disputes may occur over issues such as:

- A proposed name or rule change
- The appointment of a new secretary or committee member
- Distribution of funds
- The association's purposes.

Your association's rules must set out a grievance procedure for resolving disputes between:

- Members
- The association and any of its members.

In applying the grievance procedure:

- A member may appoint somebody to act on their behalf
- The association must give each party to the dispute an opportunity to be heard
- The outcome must be determined by an unbiased decision-maker.

If your association's rules do not include a grievance procedure, the grievance procedure set out in the model rules automatically applies.

<http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/running-an-incorporated-association/rules>



### **Steps to dealing with issues**

1. If the association uses the model rules, members can ask the committee to call a special general meeting to consider any issues they wish to raise.
2. Under the model rules, the committee must call a special general meeting if at least 10 per cent of members entitled to vote make a written request. If the committee does not arrange for this meeting to be held within six weeks of the request, the members may hold the meeting themselves.
3. If the dispute cannot be solved through the internal grievance procedure, the relevant parties may contact the Dispute Settlement Centre of Victoria (DSCV). The DSCV offers free mediation services to help the parties involved reach a solution.
4. If all efforts to settle a dispute have failed and the dispute relates to the rules or rights of members, an association member may apply to the Magistrates' Court for an order to enforce those rules and rights.

## Fact Sheet 6

# Role of the committee and committee members

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The committee (sometimes referred to as the 'management committee' or 'board') looks after the association's affairs and has legal duties under the *Associations Incorporation Reform Act 2012* (the Act).

Committee members are appointed according to your association's rules. Depending on the rules, their duties may include:

- Maintaining the association's financial viability
- Ensuring the association's purposes are being achieved
- Keeping up to date with legal requirements
- Signing contracts on the association's behalf.

Specifically, committee members' functions under the Act include:

- Ensuring an annual general meeting is held within five months of the end of the association's financial year
- Submitting a financial statement that covers the full financial year, which gives a 'true and fair' view of the association's financial affairs, to members at the annual general meeting
- Overseeing the association's financial affairs. This includes making sure the association does not continue to operate if it is insolvent
- Appointing a new secretary within 14 days, if the position becomes vacant
- Returning all documents that belong to the association within 28 days of ceasing to be a committee member.

### **Material personal interest**

A committee member must disclose any 'material personal interest' to the committee as soon as they are aware of this interest. A material personal interest is something that can have a significant impact on a matter the association is discussing.

All members must be advised of the nature and extent of this interest at the next general meeting. The details of the interest must be recorded in the committee meeting minutes. The committee member cannot:

- Be present while the matter is discussed at the committee meeting, and
- Vote on this matter.

The above does not apply if the:

- Interest exists only because the person is employed by the association, or
- Association was established to benefit members in the same membership class, or
- Person shares this interest with all, or most, of the association's members.

### **Insolvent trading**

The committee is responsible for overseeing the financial affairs (and financial health) of the association.

If an association is trading while insolvent, it means it is continuing to operate and enter into contracts or incur debts it cannot repay.

A committee member must ensure the association does not trade if it is insolvent

## Role of office holders

An office holder of an incorporated association refers to:

- A committee member
- The secretary
- A person, including an association employee, who takes part in making decisions that affect all or a large part of the association's operations (generally, this will only be senior employees, for example, where an association has a chief executive officer or chief financial officer)
- A person involved in the association's management, who can significantly affect the association's financial standing
- A person whose instructions or wishes the committee is used to following; this does not include a person giving professional advice (for example, a religious order may have an incorporated association, but the members, who all belong to the order, follow the direction of the head of the order).

Office holders have certain legal duties. An office holder must:

- Carry out their duties with care and diligence
- Carry out their duties in good faith in the best interests of the association, and for a proper purpose (not, for example, their own profit)
- Not use information acquired through their position for personal advantage, the advantage of others, or to the detriment of the association.

If an office holder makes a business decision relating to the operation of the association, they must, among other things:

- Make that decision in the best interests of the association
- Not have a personal interest in the decision.

## Protection for office holders

Your association must indemnify its office holders from liability for activities they undertake on behalf of the association in good faith. This will protect these individuals (although not where they have deliberately broken the law).

For example, if an office holder is sued for something they have done on behalf of the association and must pay damages, the association must indemnify the office holder. That is, the association will be responsible for paying damages.

The association must provide the indemnity from its assets – the government does not fund this indemnity. Large associations that handle contracts or agreements of significant value may consider taking out officers' indemnity insurance.

## If an office holder does the wrong thing

An office holder may face:

- **Criminal action** if they:
  - Misuse their position for personal advantage
  - Deliberately allow the association to trade if it is insolvent
- **Civil action** of up to \$20,000 if they:
  - Misuse information or their position
  - Breach their duties of:
    - Care and diligence
    - Good faith and proper purpose.

## Fact Sheet 7

### More information

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You can find more information about the new Act from November 2012 from Consumer Affairs Victoria.

All incorporated associations will be notified in writing before the laws come into effect. Please ensure we have your association's current details - including those of your public officer (secretary) - so that Consumer Affairs Victoria can keep you informed. To update your details <http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/update-details>

If you are a representative body and wish to arrange an information session for your members, email [communityed@justice.vic.gov.au](mailto:communityed@justice.vic.gov.au).

Consumer Affairs Victoria can also provide information about the changes for newsletters or email updates distributed to associations. For further details, email [cav.communications@justice.vic.gov.au](mailto:cav.communications@justice.vic.gov.au).

Pilch Connect have a good range of online resources to assist. They can also provide training sessions at reasonable cost. [http://www.pilch.org.au/AIA\\_Bill2010/](http://www.pilch.org.au/AIA_Bill2010/)