

Updating your rules to reflect new laws for incorporated associations

Legal information for Victorian incorporated associations



This fact sheet covers:

- ▀ what are the changes to the law?
 - ▀ how do the changes affect rules drafted under the old laws?
 - ▀ what are the options to bring rules in line with the new laws? and
 - ▀ how do I review and change my rules?
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This fact sheet assists Victorian incorporated associations to update their rules to reflect new laws in the *Associations Incorporation Reform Act 2012 (Vic)* (the AIR Act).

New laws for Victorian incorporated associations came into effect on 26 November 2012. The *Associations Incorporation Act 1981* (the old Act) was replaced with the AIR Act.

For a summary of the changes, go to Not-for-profit Law's Transitional Guide on the Information Hub at www.nfplaw.org.au/newlawsincassoc.

Impact of new laws on incorporated associations' rules

All Victorian incorporated associations must have a set of rules. Some groups refer to their rules as their 'constitution' or 'articles of association'.

The Schedule to the old Act contained a list of items that had to be addressed in an association's rules. Schedule 1 to the AIR Act also contains a list of items that must be addressed in an association's rules (**Scheduled Items**). Schedule 1 of the AIR Act contains more Scheduled Items than in the Schedule to the old Act, and some items are still listed but their detail has changed.

Not-for-profit Law's [Rules Checklist](#) lists and explains the Scheduled Items in the AIR Act.

The AIR Act changed the laws that apply to incorporated associations. This means that some associations' rules may be inconsistent with a law in the AIR Act (even if they address all the new Scheduled Items).

There are model rules drafted under the AIR Act, like the old Act. The new model rules are more comprehensive than the old model rules, address all of the new or changed Scheduled Items, and comply with the new laws. Groups can use the new model rules, but do not have to.

All associations, whether using the model rules from the old Act or using their own rules, should become familiar with the impact of the new law on their rules, and decide which rules option (outlined below) best suits the needs of their group going forward.

NOTE

Even if your association based its rules on the old model rules, if it made any changes to them at all, for the purposes of this fact sheet and the AIR Act, your association is considered to be using its own rules, unless the change relates to the association's name, purposes or financial year.



How do the changes affect rules drafted under the old laws?

There are two important consequences for the rules of associations (both the model rules under the old Act, and groups' own rules):

- if your rules do not cover a newly required Scheduled Item, the relevant new model rule that deals with the item not covered by your rules will automatically apply to your organisation. This means that if you follow your own rules without considering the new Scheduled Items, your association may not be complying with the law, and
- if rules are inconsistent with the new Act, the inconsistent rule/s will be invalid, and should not be applied by an association. If invalid rules are followed (even inadvertently) by an association, this will be a breach of the law.

Because this process is confusing, and makes rules unworkable, it is highly recommended that groups take action to bring their rules in line with the AIR Act.

Options to bring rules in line with the AIR Act

You are no longer able to use the old model rules.

If your group uses the 'old model rules'

Groups who were using the old model rules on 26 November 2013 automatically transferred to the new model rules. You should review the new model rules and consider whether they meet the requirements of your group. The new model rules can be accessed [here](#).

If your group uses its own rules (this includes groups who have made changes to the 'old model rules')

You can continue using your own rules. However, the process explained above where rules which are inconsistent with the new law become invalid and where the model rules will automatically apply (because your rules do not cover a matter required by the AIR Act) can become very confusing and mean that your rules are unworkable.

Your group has three main options to make its rules consistent with the AIR Act:

- update the old rules by removing problematic rules and adding new rules to address new Scheduled Items. The updated old rules would be considered ‘own rules’ under the AIR Act,
- adopt the new model rules in their entirety, or
- adopt a fresh set of rules that comply with the AIR Act (like Not-for-profit Law’s [Simple Rules](#)) or rules that a lawyer has drafted for your organisation, or an adaption of the new model rules (to better suit the group’s needs). All of these options would be considered ‘own rules’ under the AIR Act.

Note there are fees charged by Consumer Affairs Victoria (**CAV**) for changing your rules and your group will need to follow the procedure (see below) for changing its rules.

NOTE

If your association has automatically transferred to the new model rules, you must comply with the new model rules. If your organisation is using its own rules, (including updated old model rules), where those rules differ from or do not cover items specified in the AIR Act,, then your organisation may inadvertently be in breach of the law when following those relevant sections of its rules.



Step-by-step guide to reviewing and changing rules

1 Decide which option to take to bring your rules in line with the AIR Act

Your group should decide between the options set out in the section above.

Important considerations for all groups when deciding on changing, drafting or updating their rules

Whether you update your own rules, adopt Not-for-profit Law’s [Simple Rules](#), or adopt the new model rules, your organisation should consider the following issues:

- will your organisation still be able to access tax concessions under your new or updated rules (do you still have a not-for-profit clause and a winding up clause that meet Australian Taxation Office requirements)?;
 - in particular, any changes to the purposes of an incorporated association, and to the winding up provisions of the organisation should be approached with care. If unsure, seek legal advice;
- does your organisation have special requirements in its existing rules about changing its rules? For example does your organisation need to engage with stakeholders about changing its rules or seek a Minister’s consent? Check your rules to find out;
- will there be transitional issues? For example:
 - be careful that the members under your old rules remain members under the new rules. Problems can arise when the categories of membership or the eligibility for membership change when changing rules;

- similarly, if drafting new rules, you may need to make it clear that, despite the changes to the rules, the office holders or committee or board under your old rules continue under the new rules. The officer holders may need to be specified in the new rules, with effect from a given date. If unsure, seek legal advice;
- will the changes to your rules affect the rights and liabilities of members? Unless the changes to member rights are completely uncontroversial, you should seek legal advice; and
- check that the proposed changes or contents of new rules do not conflict with anything in any funding agreements or terms and conditions of a grant.

2 Prepare updates to rules or draft new rules

If moving from your own rules to the new model rules:

Skip to Step 3.

If updating existing 'own rules' or version of model rules:

If your association wishes to update its existing rules (including by updating the old model rules to create new own rules, or updating its existing own rules), you can use Not-for-profit Law's [Rules Checklist](#) to help you identify where your base rules do not address a Scheduled Item.

You also need to make sure that your updated or adapted rules are consistent with requirements in the AIR Act (ie. make sure your rules don't include a rule that contradicts a law in the AIR Act).

Some examples of common areas where inconsistencies can arise are included in the [Rules Checklist](#).

If you are looking for examples of clauses to address a Scheduled Item that is currently missing from your rules, or you don't like the way that your rules currently address an issue, you can look at Not-for-profit Law's [Simple Rules](#) and the [new model rules](#) for some ideas.

If you make the changes to your rules yourself, you should consider getting legal advice to ensure the updated or adapted rules meet the requirements of the AIR Act, and will not adversely impact your organisation (for example, to make sure any tax concessions your organisation accesses will continue to be available).

If drafting new rules or adapting Not-for-profit Law's Simple Rules or adapting model rules:

Your association can draft entirely new rules for itself. You can get a lawyer to do this for you, or you can do this for yourself.

If you need a starting point, you can use Not-for-profit Law's [Simple Rules](#) as a base, or you could use the new model rules as a base. Use the [Rules Checklist](#) to make sure you are covering all the Scheduled Items.

If you draft or adapt rules yourself, you should consider getting legal advice to ensure the rules meet the requirements of the AIR Act, and will not adversely impact your organisation (for example, to make sure any tax concessions your organisation accesses will continue to be available or any registrations like ACNC registration or fundraising registration with CAV) will be unaffected.

3 Pass a special resolution of members approving the rules

Once you have a set of rules ready to go, your association must follow a process to change its rules.

An association must pass a special resolution of members to change or update rules (this is a requirement of the law). Remember that if your group was using the old model rules this happened automatically on 26 November 2013 (and did not require a special resolution).

The following are the statutory requirements for a valid special resolution for incorporated associations:

- a special resolution can only be passed at a general meeting of members. This can either be the annual general meeting (**AGM**) or a special general meeting. A special resolution cannot be passed at a committee or board meeting, or by a resolution without a meeting
- at least 21 days' notice of the general meeting where the vote will take place must be given to all members
- the notice must state the text of the proposed special resolution
- the notice must specify the intention to propose the resolution as a special resolution. Preferably, using words along the following lines:
 - *It is intended that the following resolution be proposed as a special resolution, or*
 - *The following resolution will be proposed as a special resolution*

Provided the notice makes it clear that the proposed resolution is a special resolution, this requirement will be met, and

- the special resolution will only be passed at the general meeting if at least 75% of those members who vote on the resolution, vote in favour. This includes members who are not actually present themselves but whose 'proxies' (see below) cast votes on their behalf. It excludes those members who abstain from voting (for example members who do not attend the meeting, or who attend but abstain from voting at the meeting).

NOTE

A proxy is a person you authorise to vote on your behalf if you cannot attend a meeting yourself. The appointment of a proxy is usually required to be in writing using a specified form. Organisations may have rules about when proxy forms need to be received (eg. at least 48 hours prior to the relevant meeting). Your rules must address whether proxy voting is permitted at general meetings. Proxy voting may be excluded by the rules of an incorporated association.



As well as complying with statutory requirements for passing a special resolution, your group also needs to comply with any extra requirements in its own rules. For example, the rules of a locally-based organisation may require the approval of the national body before changes to the local organisation's rules are effective.

4 Lodge changes with CAV

The secretary or approved delegate of the incorporated association must notify CAV of the changes to the rules within 28 days of passing the special resolution, by lodging a copy of the special resolution stating the changes via [myCAV](#). Once lodged (and the relevant fee paid), the changes will take effect.

If an incorporated association has a query about a particular amendment or rule, it can contact CAV for advice on this issue.



TIP

When submitting new rules to CAV, groups need to pay the current fee of \$174.30.

For more information on fees, call CAV on 1300 55 81 81.

5 Implement new rules

When implementing your new or updated rules, your organisation will need to consider the following issues:

- make sure copies of the updated rules are provided to committee members/directors so that they can familiarise themselves with them. Members are also entitled to request a copy of the rules from the secretary of your association;
- consider whether the new rules need to be provided to any other groups like peak bodies, auditors, or funders. Check your rules and your funding agreements; and
- consider whether other government agencies need to be notified of the changes to your rules. This could include the Australian Charities and Not-for-profits Commission and/or CAV if your group is a registered charity, fundraising regulators, the ATO, the Australian Securities and Investments Commission (if your group is a Registered Australian Body), or any government department funding your organisation's activities.

Resources

Related Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au has many resources on the following related topics:

- ✔ Rules Checklist – www.nfplaw.org.au/constitution

This resource provides a comparison checklist of new and old scheduled items, to assist organisations in transitioning to the new laws.

- ✔ Not-for-profit Law Simple Rules – www.nfplaw.org.au/constitution

Not-for-profit Law has developed a set of rules to assist Victorian incorporated associations drafting their own rules.

- ✔ Secretary's Satchel – www.nfplaw.org.au/secretaryguide

The Secretary's Satchel is a comprehensive Guide to the Secretary's role (previously "public officer") in running an incorporated association.

Legislation

- ✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

- ✔ [New Model Rules](#)

Consumer Affairs Victoria (CAV) resources

- ✔ [Database of Victorian incorporated associations](#)

This is a CAV database where you can search to find Victorian incorporated associations and co-operatives.

- ✔ [CAV's incorporated associations information](#)

This section of CAV's website has information about incorporated associations. Click on the update details link for more information about updating your organisation's rules.

- ✔ [myCAV](#)

The online system for incorporated associations system lets incorporated associations manage their obligations, such as updating contact details and their constitution and lodging annual statements.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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