

Checklist: Meeting new rules requirements for incorporated associations

Legal information for Victorian community organisations



This fact sheet covers:

- changes to rules for incorporated associations
 - items which must be included in the rules of your incorporated association
 - other changes to incorporated association rules, and
 - matters that are not required to be addressed by your rules.
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An association's rules must address certain items required by the laws that apply to incorporated associations in Victoria.

Until 26 November 2012, the *Associations Incorporation Act 1981* (Vic) (**the old Act**) applied to incorporated associations. From 26 November 2012, the *Associations Incorporation Reform Act 2012* (Vic) (**the AIR Act**) came into effect.

Summary of changes to rules for incorporated associations

The AIR Act, like the old Act, lists items in a Schedule (**Scheduled Items**) that must be included in an association's rules. The AIR Act contains more Scheduled Items than the old Act and made changes to some of the items in the old Act. There are new model rules under the AIR Act (**the new model rules**) that address all of the Scheduled Items in the AIR Act.

An association can choose to either adopt the new model rules or alternatively create their own rules. Where an association's rules do not address a Scheduled Item, the new model rules under the AIR Act are automatically included in the association's rules. The new model rules are contained in the *Associations Incorporation Reform Regulations 2012* (Vic). You can read the new model rules [here](#) (or see the Resources section below).

In this checklist we list the Scheduled Items from the AIR Act and compare them to the Scheduled Items from the old Act. We provide guidance on how to interpret the new Scheduled Items. We also note where the new model rules are likely to be automatically read into an association's own rules.

We recommend all incorporated associations, whether using the model rules, or their own rules, use the table below to review whether their rules meet the requirements of the AIR Act, and understand where model rules will automatically apply to them.

What do the laws and Scheduled Items mean for my association?

The AIR Act applies to Victorian incorporated associations and affects the rules of incorporated associations using model rules and using their own rules.

You are no longer able to use the old model rules

From 26 November 2013, the model rules in the AIR Act (new model rules) can automatically apply to all incorporated associations. The new model rules are quite different to the old model rules, so your organisation should carefully look at the new model rules and consider whether or not you wish to adopt them. If your association has adopted the old model rules, and your rules do not address a Scheduled Item in the AIR Act, the relevant new model rule that covers the Scheduled Item is deemed to apply to your association.

Your organisation can choose to adopt the new model rules by passing a special resolution at a general meeting in accordance with your association's requirements for changing rules..

Your association can also choose to write its own rules, so long as they address all the Scheduled Items. You may wish to do this if you are not comfortable with the new model rules. For more information on writing rules and the procedure for changing your rules go to the Rules page of the Information Hub.

Associations using the model rules

If your association uses its own rules, it may not have to change its rules to match the new model rules. However, your rules may not be consistent with AIR Act and may not cover all the new Scheduled Items. Where this is the case, there are two important consequences:

- if your rules are inconsistent with the AIR Act, the inconsistent rule/s will be invalid. This means that any rules inconsistent with the AIR Act should not be applied by an association. If invalid rules are followed (even inadvertently) by an association, this will be a technical breach of the law, and
- if your rules do not cover a matter required by the AIR Act, 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.

The consequences of striking out rules and reading in model rules to your rules can make them unworkable and confusing. Therefore, we recommend all incorporated associations using their own rules review and update their rules to ensure that all rules are valid, and that each of the 23 Scheduled Items is addressed.

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Scheduled Items under the AIR Act that must be included in the rules of your incorporated association

The following items must be addressed in all rules of Victorian incorporated associations. These requirements are set out in Schedule 1 of the AIR Act. Items that were not previously required by the old Act are noted as 'new' below. There are also guidance notes identifying new requirements in the AIR Act that may affect the way you should draft or apply your rules.

If any of the items listed below are not covered by your rules, you will need to update your rules accordingly. In the meantime, the new model rule addressing the item will apply to your organisation automatically.

Scheduled items in the AIR Act

The Association

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
1	Your rules must include the name of your incorporated association.	Comparison note: This is a new Scheduled Item. For new associations, Consumer Affairs Victoria (CAV) will now require the full name of the association be included in its rules.	Associations using their own rules, or the old model rules, do not need to make any changes to address this Item, but if your association changes its rules for another reason, it will, at the point it makes any changes, need to include the name of the association in its rules.

2	Your rules must include the purposes of your incorporated association.	<p>Comparison note: This is a new Scheduled Item. Associations need to outline their purposes in their rules rather than submitting them separately to CAV.</p>	<p>Associations using their own rules do not need to make any changes. Going forward associations drafting or changing their rules will need to include their purposes in their rules.</p> <p>Tip: If your rules do not currently include your purposes, make a note of your purposes in your rules. If you are not sure what your official purposes are, contact CAV to request a copy.</p>
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Membership

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and guidance notes	Rules Notes
3	If your association has qualifications limiting who can be a member, these must be outlined in your rules.	<p>Comparison note: This item is the same as in the Schedule to the old Act.</p>	An association's rules should already address this item (because it was a scheduled item under the old Act).
4	If your association requires members to pay a membership fee, a joining fee, or if other fees apply to members (such as a subscription fee), your rules must set out these fees and the circumstances in which they must be paid.	<p>Comparison note: This item is the same as in the Schedule to the old Act.</p>	An association's rules should already address this item (because it was a scheduled item under the old Act).
5	Your rules must outline the rights, obligations and liabilities of members.	<p>Comparison note: This is a new Scheduled Item. The AIR Act contains new rights of members.</p> <p>Guidance note: In addition to any members' rights provided in an association's rules, the AIR Act gives members of an incorporated association the following minimum rights:</p> <ul style="list-style-type: none"> • the association must permit a member at a reasonable time to inspect and copy the rules and 	If your rules do not outline the rights, obligations and liabilities of members, or are inconsistent with the members' rights set out in the AIR Act, Part 3 of the new model rules will apply.

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and guidance notes	Rules Notes
		<p>minutes of the general meetings of the association (section 53)</p> <ul style="list-style-type: none"> the association must permit a member at a reasonable time to inspect the register of the members (section 57), and a member has a right to attend and vote at the general meetings of the association (section 61). <p>An association's rules cannot be inconsistent with these rights.</p>	
6	Your rules must make provisions for the resignation of a member or cessation of membership.	Comparison note: This is a new Scheduled Item.	If your rules do not outline provisions for the resignation of a member or cessation of membership, new model rules 16 and 17 will automatically apply.
7	Your rules must include the procedure (if any) for the disciplining of members and the mechanism (if any) for appearances by members in respect of disciplinary action taken against them.	<p>Comparison note: This item is the same as in the Schedule to the old Act. However, note that the AIR Act sets out new requirements for disciplinary procedures (discussed below – these do not have to be included in rules, but must be followed).</p> <p>Guidance note: An association's disciplinary procedure cannot be inconsistent with section 54 of the AIR Act. Section 54 requires that when applying a disciplinary procedure:</p> <ul style="list-style-type: none"> the relevant member must be informed of the grounds for the disciplinary action your association proposes to take against him or her, and must also be given an opportunity to be heard in relation to the matter the outcome of the disciplinary procedure must be determined by an unbiased decision-maker, and the disciplinary procedure must be completed as soon as is reasonably practicable, to the extent that 	<p>An association's rules should already address this item (because it was a scheduled item under the old Act). However, associations must now comply with the additional requirements of section 54.</p> <p>An associations' own rules can provide additional details for a disciplinary procedure, so long as they are consistent with the requirements in the AIR Act.</p> <p>If an association wishes, it can provide in its rules that members will not be disciplined.</p>

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and guidance notes	Rules Notes
		<p>this is compatible with the above requirements.</p> <p>A member of an association who is the subject of a disciplinary procedure must not initiate a grievance procedure until the disciplinary procedure is complete.</p>	
8	<p>Your rules must include grievance procedures for settling disputes under the rules between the incorporated association and any of its members or between a member and any other member.</p>	<p>Comparison note: This item is the same as in the Schedule to the old Act. However, the AIR Act has new requirements for grievance procedures.</p> <p>Guidance note: Under section 55 of the AIR Act, your association's rules must set out a grievance procedure for dealing with a dispute under the rules between:</p> <ul style="list-style-type: none"> • a member and another member, or • a member and the association. <p>A member may appoint any person to act on their behalf in the grievance procedure. When your association applies its grievance procedure, it must ensure that:</p> <ul style="list-style-type: none"> • each party involved in the dispute has had an opportunity to be heard on the matter, and • an unbiased decision-maker determines the outcome of the dispute. <p>If a member initiates a grievance procedure against your association, your association cannot take disciplinary action against the following persons in relation to the matter subject of that grievance procedure until the procedure is completed:</p> <ul style="list-style-type: none"> • the member who initiated the grievance procedure (complainant member), or • a member is appointed to act on behalf of the complainant member in the grievance procedure. 	<p>An association's rules should already address this item (because it was a scheduled item under the old Act).</p> <p>The grievance procedure can have additional requirements but must not be inconsistent with section 55 of the AIR Act.</p>

Management and Record Keeping

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
9	<p>Your rules must include the name, membership and powers of the committee or (other body, for example a 'board') that manages the incorporated association. This includes providing details of:</p> <ol style="list-style-type: none"> the procedure for the election or appointment of members of the committee the terms of office of members of the committee the grounds on which, or reasons for which, the office of a member of the committee becomes vacant the filling of casual vacancies occurring within the committee, and the quorum and procedure at meetings of the committee. 	<p>Comparison note: This item is the same as in the Schedule under the old Act.</p> <p>Guidance note: Section 78 of the AIR Act provides for removal from, and vacation of, the office of a committee member. This must be done in accordance with your association's rules.</p> <p>A member of the committee vacates their office if any of the following circumstances occur:</p> <ul style="list-style-type: none"> • the committee member resigns his or her office by written notice addressed to the committee • the committee member of the committee is removed from office by special resolution of members • the committee member: <ul style="list-style-type: none"> ○ dies ○ becomes insolvent under administration ○ becomes a represented person (within the meaning of the Guardianship and Administration Act 1986) ○ is disqualified from managing corporations under Part 2D.6 of the Corporations Act ○ is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the Corporations (Aboriginal and Torres Strait Island) Act 2006, or ○ is disqualified from managing co-operatives under Division 2 of Part 3.1 of the Co-operatives National Law (Victoria). • if he or she stops living in Australia (only applies to secretary), or 	<p>An association's rules should already address this item (because it was a scheduled item under the old Act). Associations' rules can provide additional details for removal of and vacation of office, so long as they are consistent with the section 78 requirements.</p>

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
		<ul style="list-style-type: none"> a statutory manager is appointed under section 116 of the AIR Act to conduct the affairs of the association. <p>Your rules can provide additional details for removal from and vacation of office, so long as they are consistent with the requirements above.</p>	
10	Your rules must include the procedure for the appointment and removal of the secretary (formerly public officer) of the incorporated association.	<p>Comparison note: This is a new Scheduled Item.</p> <p>Guidance note: Note that the term ‘public officer’ is replaced by the term ‘secretary’ in the AIR Act and rules. The new definition of secretary under the AIR Act should not be confused with the role of “secretary” that may be provided for in associations’ rules.</p> <p>The AIR Act contains laws regarding temporary filling of the role of secretary and the grounds on which the office of secretary will become vacant. Under section 73(1) of the AIR Act, if the position of the secretary becomes vacant, the incorporated association must:</p> <ul style="list-style-type: none"> fill the vacancy within 14 days in accordance with the procedure provided in its rules, and notify CAV of that appointment (section 74). <p>If an association’s rules allow for an appointment or election of a new secretary otherwise than by the committee and 14 days is not long enough to carry out the procedure, the committee must appoint a temporary secretary within 14 days. This ‘interim’ secretary only holds the position until a permanent secretary is appointed or elected under the association’s rules.</p>	If an association’s rules do not provide for the appointment and removal of the secretary (formerly known as the “public officer”), the new model rules regarding appointment and removal of the secretary (rules 52 and 56) automatically apply.
11	You rules must address the custody of records, securities and other relevant documents of the incorporated association.	<p>Comparison note: This is substantially the same as in the Schedule to the old Act. ‘Records’ was added to the item. Section 206 of the AIR Act provides that incorporated associations will now be able to keep records in a language other than English, however, they must make</p>	An association’s rules should already address this item (because it was a scheduled item under the old Act).

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
		records available in English when asked by an association member or CAV.	
12	Your rules must address the custody and use of the common seal (if any) of the incorporated association.	<p>Comparison note: This item is the same as in Schedule to the old Act.</p> <p>Guidance note: Associations do not have to have a common seal, but if they wish to, their rules must address the custody and use of the seal.</p>	An association's rules should already address this item (because it was a scheduled item under the old Act).
13	Your rules must provide for members to have access to, and to be able to obtain copies of, the records, securities and other relevant documents of the incorporated association.	<p>Comparison note: This is a new Scheduled Item. Under the old Act, an incorporated association's rules only had to include a right of the member to inspect 'relevant documents'. Under the AIR Act, the rules must include provision for inspection of records, securities and other relevant documents.</p>	If your rules do not meet the requirements of Scheduled Item 13, new model rule 75 will automatically apply.
14	<p>Your rules must provide for the preparation and retention of accurate minutes of:</p> <p>(a) general meetings of the incorporated association, and</p> <p>(b) meetings of the committee or other body having the management of the incorporated association.</p>	<p>Comparison note: This is a new Scheduled Item.</p>	If this item is not addressed in an association's own rules, new model rules 41 and 66 will be read in to an association's rules.
15	Your rules must provide for members to have access to, and to be able to obtain copies of, minutes of general meetings of the incorporated association, including financial statements submitted at a general meeting.	<p>Comparison note: This is a new Scheduled Item.</p> <p>An incorporated association's rules must provide for members inspecting and making copies of the minutes of the general meetings of the association under section 53 of the AIR Act.</p> <p>Guidance note: Under section 53(1) of the AIR Act, if requested to do so by one of its members, an incorporated association must permit the member at a reasonable time to inspect—</p> <p>(a) the rules of the association, and</p>	If an association's rules do not already address Scheduled Item 15, new model rules 13 and 75, as they apply to minutes of general meetings, will be read into an association's rules.

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
		(b) minutes of general meetings. Under 53(2), associations must provide copies of these documents to a member who makes a written request within 14 days of the request. Associations can charge a fee for providing copies.	
16	Your rules must outline the right of access (if any) by members to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted.	Comparison note: This is a new Scheduled Item. Guidance note: An association's rules only need to provide for members' access to committee minutes if the association wishes to allow access to committee minutes.	If your association wishes to allow or already allows access to committee meeting minutes, the process for accessing the minutes should be documented in your association's rules. If your association does not want to allow access to committee meeting minutes, we recommend that the rules explicitly outline that access to committee meeting minutes is not permitted.

Meetings

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
17	Your rules must set out the intervals between general meetings of members of the incorporated association and the manner of calling general meetings.	Comparison note: This item is the same as in Schedule of the old Act.	An association's rules should already address this item (because it was a scheduled item under the old Act).
18	Your rules must set out the quorum and procedure for general meetings and whether members are entitled to vote by proxy at general meetings.	Comparison note: This item is the same in Schedule of the old Act. Guidance note: Under section 62 of the AIR Act, members can take part in general meetings using technology to facilitate their attendance (eg through video or phone conferencing).	An association's rules should already address this item (because it was a scheduled item under the old Act).

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
19	Your rules must set out the time within which, and the manner in which, notices of general meetings and notices of motion must be given, published or circulated.	Comparison note: This item is the same as in the Schedule to the old Act.	An association's rules should already address this item (because it was a scheduled item under the old Act).

Funds

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
20	You rules must address the sources from which the funds of the incorporated association are to be or may be derived.	Comparison note: This item is the same as in the Schedule of the old Act. Guidance note: The AIR Act removed the restriction on trading for incorporated associations (although the prohibition on distributing funds to members remains).	An association's rules should already address this item (because it was a scheduled item under the old Act).
21	Your rules must set out the manner in which the funds of the incorporated association must be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association.	Comparison note: This item is the same as in the Schedule of the old Act.	An association's rules should already address this item (because it was a scheduled item under the old Act).

Alteration of rules

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
22	Your rules must set out the procedures for altering and rescinding the rules of the incorporated association and of making additional rules.	<p>Comparison note: This item is the same as in the Schedule of the old Act.</p> <p>Guidance Note: Under section 50 of the AIR Act, rules may only be changed by special resolution of the members of an incorporated association.</p>	An association's rules should already address this item (because it was a scheduled item under the old Act).

Winding up and dissolution

Item no	Scheduled Item requirements in the AIR Act	Comparison with old Act Scheduled Items and Guidance Notes	Rules Notes
23	Your rules must address the disposition of any surplus assets on the winding up or dissolution of the incorporated association.	<p>Comparison note: This item is the same as in the Schedule of the old Act.</p>	An association's rules should already address this item (because it was a scheduled item under the old Act).

Act changes – beware of inconsistencies

When updating your rules, bear in mind changes to the law regarding the issues below. Your rules should not say anything that is inconsistent with the AIR Act.

Issue	Guidance notes
The register of members of the incorporated association	The AIR Act requires incorporated associations to keep a register of members and the register must be available for inspection by other members. It also allows members to apply in writing to the secretary of their association to have access to their entry and personal details on the member's register restricted where they have special circumstances. In certain circumstances, the secretary may also apply for an exemption from being required to permit a member to inspect the register.
Disciplinary and grievance procedures	The AIR Act sets out new minimum requirements for disciplinary and grievance procedures. Procedures in your rules cannot be inconsistent with these minimum requirements.
Officers or directors indemnity	The AIR act contains a statutory indemnity for directors and office holders – your rules cannot exclude this indemnity.
Duties	Directors and office holder's duties are codified in the AIR Act. If your rules say something about directors' duties you should check that they are consistent with the requirements in the AIR Act, in particular, around managing conflicts of interest.
Waiver of notice for meetings	Some associations' rules include a waiver where members can agree not to receive notice of meetings. A rule to this effect is no longer permissible, as the AIR Act makes providing notice of meetings to members a statutory requirement.
Number of members required to demand a poll	Some rules allow members to require a poll where a vote at a general meeting has been taken using another method (such as show of hands). Some rules have a particular number of members required to request a poll before the meeting Chair is required to provide a poll. Section 65(3) of the AIR Act provides that any member can request a poll (so rules should no longer contain a minimum number of members required to request a poll).

Matters that no longer need to be addressed by your rules

Items no longer listed

Old Scheduled Item requirements	Guidance notes
The register of members of the incorporated association.	This is no longer a Scheduled Item, however under section 56 of the AIR Act, an association must still keep and maintain a register of members.
The manner of altering the statement of purposes of the incorporated association.	This is no longer included as a Scheduled Item as an association's purposes must now be contained in its rules.

In addition to the items that are no longer listed, consider the following issues

Issues	Guidance notes
References to trading	There is no longer any prohibition on trading by incorporated associations (the AIR Act does not mention trading). Section 51 of the old Act had a set of requirements that, if followed, allowed certain associations to trade. Some associations' rules will contain provisions relating to these requirements (for example, an explicit rule providing that an association can trade). These rules are no longer required. In a few cases, some groups may have had particular requirements imposed on them in relation to their trading by an executive order made under section 51 of the old Act. Some groups were required by their order to notify a minister prior changing any rules about trading. Groups should consider if any extra requirements such as these may still exist. Groups that still have an order in place in relation to trading could seek to have the order revoked as the general prohibition on trading no longer exists.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

✔ 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)

✔ [Associations Incorporation Act 1981](#) (Vic)

✔ [Associations Incorporation Reform Regulations 2012](#) (Vic)

✔ [Consumer Affairs Victoria – New model rules](#)

Visit the CAV website to download a copy of the model rules for an incorporated association, extracted from Part 3 of the Associations Incorporation Reform Regulations 2012 (Vic).

Other resources

✔ [Consumer Affairs Victoria – incorporated associations](#)

Visit the incorporated associations section of the CAV website for information on how to become, manage or find an incorporated association.

✔ [Database of Victorian incorporated associations](#)

The CAV website features a tool for searching for incorporated associations in Victoria.

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