

Updating rules to reflect new incorporated association laws

Legal information for incorporated associations in Victoria

This fact sheet covers:

- ▶ changes to the laws about incorporated association rules
- ▶ how the changes affect rules that were prepared under the old laws
- ▶ how to bring your rules in line with the new laws

This fact sheet helps Victorian incorporated associations (IAs) update their rules to reflect new laws under the *Associations Incorporation Reform Act 2012 (AIR Act)*.

The *Associations Incorporation Act 1981 (Vic) (old Act)* applied to IAs until 26 November 2012.

Since 26 November 2012, the *Associations Incorporation Reform Act 2012 (AIR Act)* has applied to IAs in Victoria.



Related Not-For-Profit Law resource

When the laws changed, we prepared a [Transitional Guide](#) for Victorian IAs transitioning from the old Act to the AIR Act.

Summary of changes to laws about IA rules

Items that must be included in an IA's rules

All Victorian IAs must have a set of rules. These rules can also be called 'a constitution' or 'articles of association'.

Certain items must be included in an IA's rules. The items that must be included in an IA's rules are listed in a Schedule (**Scheduled Items**) to the AIR Act. (The old Act also listed items that must be included in a schedule).

The AIR Act has more Scheduled Items than the old Act and made changes to some of the items listed in the old Act.



Related Not-For-Profit Law resource

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

Model rules

There are [new model rules](#) (**model rules**) under the AIR Act. These are set out in The *Associations Incorporation Reform Regulations 2012* (Vic) (**Regulations**). The model rules include all the Scheduled Items.

An IA can choose whether to adopt the model rules or create their own rules. Where an association's rules don't address a Scheduled Item, the model rules are automatically included in the association's rules.

IAs should consider which rules option (model rules or own rules) best suits the association's needs.



Note

If your IA's rules are based on the old model rules and you have made any changes to the rules (except for changes to the association's name, purposes or financial year) your IA is considered to be using its own rules.

What does the change in law mean for my IA?

Your IA's rules must cover all the Scheduled Items and be consistent with AIR Act.

If your IA's rules:

- don't cover all the Scheduled Items, the relevant model rule that deals with the item not covered by your rules will apply automatically to your IA. This means that if you follow your IA's rules without considering the new Scheduled Items, your association may not be complying with the law
- are not consistent with the AIR Act, the inconsistent rules will not be valid. If an IA follows invalid rules (even inadvertently), this will be a technical breach of the law

Deleting rules from your IA's rules and applying model rules to your rules can make them unworkable and confusing. To address this, we recommend IAs review and update their rules to make sure all rules are valid, and that each of the 23 Scheduled Items is addressed.

Options to bring rules in line with the AIR Act

You can't use the old model rules.

If your IA used the old model rules – do the new model rules meet your requirements?

IAs who were using the old model rules before 26 November 2012 automatically transferred to the new model rules from this date. You should review the [new model rules](#) and consider whether they meet your IA's requirements.

If your IA uses its own rules (or made changes to the old model rules) – you may be able to continuing using these rules ...

You can continue using your own rules. But, rules which are inconsistent with the new law will not be valid and model rules will automatically apply to matters where your rules don't cover a Scheduled Item. This can become confusing and could mean that your IA's rules are unworkable.

In these circumstances, your IA has three main options to make its rules consistent with the AIR Act:

1. update the IA's rules by deleting invalid rules and adding missing Scheduled Items. The updated rules will be considered 'own rules' under the AIR Act



2. adopt the new model rules in their entirety, or
3. adopt a fresh set of rules that comply with the AIR Act (like Not-for-profit Law's [Simple Rules](#)). You can do this by adapting the new model rules to better suit the IA's needs) or by instructing a lawyer to prepare rules for your IA. The fresh set of rules will be considered 'own rules' under the AIR Act



Note

Consumer Affairs Victoria (**CAV**) charge fees for changing IA rules and you must follow the procedure (explained below) for changing IA rules



Remember

If your IA has automatically transferred to the new model rules, you must comply with the new model rules.

If your IA's own rules, (including changed old model rules), are not consistent with, or don't cover the Scheduled Items and the AIR Act, your IA may inadvertently breach the law by following these rules.

How to review and change your rules: a step-by-step guide

Step 1 - choose an option

First, decide whether your IA wants to update its own rules, adopt the model rules or write new rules (these options are explained above).

In deciding, consider the following:

- will your IA still be able to access tax concessions under your new or updated rules (ie. do you still have a not-for-profit clause and a winding up clause that meets Australian Taxation Office (**ATO**) requirements)?
- any changes to the IA's purposes, or to the winding up provisions of the rules should be approached with care. If unsure, seek legal advice
- does your IA's existing rules have special requirements for changing its rules? For example, must your IA 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:
 - members under your old rules should remain members under the new rules. There may be problems if an IA changes the categories of membership or the eligibility for membership
 - 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 office 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? You should seek legal advice if the changes to the member rights may be controversial, 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.



Note

If moving from your own rules to the new model rules, skip to Step 3.

Step 2 - update your rules or draft new rules

If your IA is updating its existing 'own rules' (including a changed version of the model rules), you can refer to Not-for-profit Law's [Rules Checklist](#) to help you work out what changes you need to make to cover all the Scheduled Items and make sure that your updated rules are consistent with requirements in the AIR Act.

If your IA wants to write new rules, you can also use these resources as a base for your new rules.



Related resources

Not-for-profit Law's [Rules Checklist](#) includes examples of where inconsistencies can arise.

You can refer to Not-for-profit Law's [Simple Rules](#) and the [new model rules](#) for examples of clauses to address a Scheduled Item

For more information on writing rules and the procedure for changing your rules, go to [our resources on rules](#).



Note

Whether you are updating existing rules or writing new ones, you should consider getting legal advice to make sure the updated or new rules meet the requirements of the AIR Act, and will not adversely impact your IA (for example, to make sure any tax concessions your IA accesses will continue to be available or any charity registration with the Australian Charities and Not-for-profits Commission (**ACNC**) will not be affected).

Step 3 - pass a special resolution to approve the rules

To change or update its rules, an IA association must pass a special resolution of members (this is a legal requirement). Remember - if your group was using the old model rules this happened automatically on 26 November 2012 (and did not require a special resolution).

So, once you have a set of rules ready to go (either an updated rules, a new set of rules or the model rules), your IA must follow the following process to change its rules:

- the IA must pass a special resolution at a general meeting of members. This can be at the annual general meeting (**AGM**) or a special general meeting. A special resolution can't be passed at a committee or board meeting, or by a resolution without a meeting
- the IA must give members at least 21 days' notice of the general meeting where the vote will take place
- the notice must specify the intention to propose the resolution as a special resolution and state the text of the proposed special resolution. Use 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

- 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 present but whose 'proxies' (see below) vote on their behalf. This excludes members who abstain from voting (for example, members who don't 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 can't attend a meeting yourself. The appointment of a proxy is usually required to be in writing using a specified form. IAs may have rules about when proxy forms need to be received (for example, at least 48 hours prior to the meeting).

Proxy voting may be excluded by an IA's rules. Your rules must address whether proxy voting is permitted at general meetings.

Your IA must also comply with any additional requirements in its rules for changing its rules. For example, the rules of a locally-based IA may require the approval of the national body before changes to the local IA's rules are effective.

Step 4 - lodge changes with CAV

The secretary (or the IA's approved delegate) must notify CAV of the changes to the rules within 28 days of the IA passing the special resolution. The IA must also lodge a copy of the special resolution stating the changes with a copy of the updated or new rules (with all paragraphs numbered clearly showing the changes) via [myCAV](#).



Tip

Your IA will need to pay a fee to CAV when it submits the changed rules.

Step 5 - implement new rules

When your IA implements its new or updated rules:

- make sure the IA provides copies of the new or updated rules to committee members so they can become familiar with them. Members may also request a copy of the rules from the IA's secretary
- consider whether the IA needs to provide copies of the new or updated rules to any other groups (for example, peak bodies, auditors, or funders). Check your IA's rules and funding agreements, and
- consider whether the IA needs to tell any other government agencies about the changed rules. This could include the ACNC if the IA is a registered charity, fundraising regulators, the Australian Tax Office, the Australian Securities and Investments Commission (if your group is a Registered Australian Body), or any government department funding your IA's activities.

Resources

Not-for-profit Law resources

- ▶ [Not-for-profit Law's resource on rules](#)
Not-for-profit Law has developed a resource on writing rules and the procedure for changing your rules
- ▶ [Not-for-profit Law's rules checklist](#)
This resource includes a checklist of new and old scheduled items, to help IAs update their rules
- ▶ [Not-for-profit Law's Simple rules](#)
Not-for-profit Law has developed a set of rules to help Victorian incorporated associations draft their own rules
- ▶ [Not-for-profit Law's Secretary Satchel](#)
The Secretary's Satchel is a comprehensive guide to the secretary's role (previously 'public officer') in running an incorporated association

Other related 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
- ▶ [myCAV](#)
CAV's online system for incorporated associations to manage their obligations, including updating contact details and lodging annual statements
- ▶ [Consumer Affairs Victoria – 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).

Legislation

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