



VicSport

**GUIDE FOR INCORPORATION
OF ASSOCIATIONS**

March 2008

FOREWORD

The “Associations Incorporation Guide” was first produced in 1983 by the Sports Federation of Victoria following the introduction of the “Associations Incorporation Act 1981 (Vic)”.

Amendments to the Act led to a review in 1995 and a revised edition being produced at that time. Further amendments which came into effect on 1st July 1998, and 8 November 2000, have been included in this document.

In March 2004, a Discussion Paper was released as part of the review of the Associations Incorporation Act 1981. The Discussion Paper covered a diversity of issues, including financial reporting requirements, winding up provisions, dispute resolution, corporate governance and the role of the Public Officer. It also raised issues about the consistency of legislation across Australia and about the type and size of entities that should be incorporated under the Act. In all, the Discussion Paper posed 27 questions and the community was asked for their thoughts and opinions on these questions.

Significant changes are proposed. In particular, it is considered that the Act should be returned to its original purpose. It should serve small, voluntary, non-trading membership based organisations. The Act has a role to play in the government’s community building objectives.

However, for many of the very large trading associations currently registered under the Act, the Corporations Act is a better regulatory option. Under the proposal, a program of migration from coverage by the Act to the Corporations Act would occur, and registration under the Act would be refused to organisations that do not fit strictly defined criteria.

With regard to the migration program a transition period of five years is proposed. In addition to these significant changes, the interim report proposed a range of measures that should ease the administrative burden on associations and limit the cost of compliance with the Act. Under the proposals for example, it would no longer be necessary for small (non prescribed associations) to lodge annual financial returns.

As part of our commitment to representing the best interests of the sport and active recreation sector, VicSport submitted a response to the Review on behalf of the sector as a number of the issues raised impact on our membership. A copy of the Interim Report to the Review and VicSport’s Review Submission document can be found on the VicSport website at www.vicsport.asn.au

To date changes recommended as part of the Review are yet to be enacted. As such this guide provides a comprehensive overview of the Act to date. VicSport will continue to keep members advised of any changes as they come to hand.

On behalf of VicSport I would like to acknowledge the assistance provided by Consumer Affairs Victoria in enabling us to reproduce certain material contained in this guide. I would also like to acknowledge Deacons for their legal advice and support in originally developing this publication. We particularly place on record our thanks to Lisa Comben for her work in revising and compiling the guide.

We trust that this guide will continue to be a valuable resource for those involved in the management of sport.

Kate

Kate Roffey

Chief Executive Officer – VicSport

DISCLAIMER

Associations Incorporation Guide

This Associations Incorporation Guide has been compiled and issued to provide a general guide in relation to the incorporation of associations. The information contained in the Guide is current to March 2008. The Guide is not intended to be and should not be treated as an exhaustive statement of the law. It does not render legal and professional advice unnecessary.

While the Sports Federation of Victoria Incorporated ("VicSport") and its legal advisers believe that the Guide should be of assistance to sporting bodies, clubs and associations generally, VicSport and its legal advisers HEREBY EXPRESSLY DISCLAIM all liability for errors or omissions of any kind whatsoever whether negligent or otherwise or for any loss, damage or other consequence which may arise from any person relying on this Kit.

This Guide is issued on the understanding that the readers and users of it will take independent steps to verify the accuracy of any representations made therein and will not rely on such representations without receiving prior independent legal advice.

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GUIDE FOR INCORPORATION OF ASSOCIATIONS

PART 1 - INTRODUCTION

The *Associations Incorporation Act 1981 (Vic)* was amended by the *Associations Incorporation (Amendment) Act 1997 (Vic)* ("**1997 Act**") (effective from 1 July 1998), and the *Associations Incorporation (Amendment) Act 2000* ("**2000 Act**") with effect from 8 November 2000. In this Guide, the consolidated legislation (including amendments to 8 November 2000) is referred to as the "Act".

Since coming into effect in 1981, the Act has provided for the simple and inexpensive incorporation of clubs, societies and associations. The 1997 Act:

- introduced changes to the administration of associations by the Associations Incorporation Office of the Office of Fair Trading and Business Affairs;
- more closely defined duties of committee members; and
- increased the accountability of the associations in respect of financial reporting and disclosure.

The 2000 Act amended the Act in relation to the distribution of assets on voluntary winding up and of an incorporated association.

There is a significant focus on ensuring associations incorporated under the Act have or retain a non-profit focus.

This Guide sets out information regarding the incorporation procedure, ongoing compliance requirements and other obligations under the Act. The Guide is not intended to cover all issues, and should not be used as a substitute for professional advice.

UNINCORPORATED ASSOCIATIONS

In our legal system, only natural persons and artificial legal persons are capable of holding property, suing and being sued. In the context of sporting, political, social and other clubs, only individuals, members, companies or other entities incorporated under existing legislation have legal status. These "legal persons" can hold property, sue and be sued.

An unincorporated association does not amount to a legal entity separate from its members and committee members. This has resulted in a number of difficulties, identified below:

- *Devise of property to unincorporated associations* - An unincorporated association, not being a legal entity, is incapable of holding property and accepting gifts. Therefore, many gifts made to unincorporated associations have failed.

- *Ability to contract and hold property* -The issue of enforceability arises where unincorporated associations purport to enter into contracts. Two approaches have been taken by the courts, based on the principle that no member (in their capacity as a member) becomes liable to pay to any other person more than his or her membership fee as required by the rules of the organisation.

In some cases, the courts have found that the committee members of the unincorporated body were intended to be personally bound by the contract (and consequently were personally liable for breach of any of the terms of the contract). In other cases the courts have found that the intention was to enter into a binding legal relationship with the association itself. In these cases, the contract was held to be unenforceable because the association was not a legal entity.

- *Liability for Torts* - Similarly, committee members have been exposed to the risk of being held personally liable for harm caused to others by persons acting on behalf of the unincorporated association.

So, in many instances, rather than the court imposing liability on the association, the liability was attributed to the committee members. This has been seen as unjust, given the voluntary nature of their involvement in leisure activities. The legislature has therefore attempted to eliminate these areas of exposure for committee members by providing for the incorporation of associations.

INCORPORATED ASSOCIATIONS

The Act was passed to provide a simple, inexpensive system for incorporation of such organisations. The benefits of incorporation are:

- the incorporated association may sue and be sued in its own name;
- the incorporated association can hold property in its corporate name without having to appoint trustees;
- the incorporated association may enter into contracts in its own name; and
- liabilities of the incorporated association are enforceable against the organisation itself, rather than the committee members personally.

The 1997 Act and 2000 Act were passed to “fine tune” the applicable legislation in a number of areas in which that legislation was considered deficient.

PART 2 - INCORPORATION UNDER THE ACT

WHO MAY INCORPORATE?

Associations and other bodies

The Act provides for the incorporation of two different types of entities, “associations” and other bodies. This Guide deals generally with the incorporation of associations, whilst the incorporation of the other bodies (such as companies) is dealt with specifically in **Part 3** below.

An association may be incorporated under the Act. An association is defined as an association, society, club, institution or body:

- formed or carried on for any lawful purpose; and
- with at least 5 members (definition of “association”, **section 3**).

Prohibition against trading or securing pecuniary profit for members

Under the Act, an association which becomes incorporated is not entitled to trade or secure a pecuniary profit for members. This is often described as the “trading prohibition”.

The concept of trading or securing pecuniary profit for members is not clearly defined by the Act. Rather, the Act provides that an association will not, by virtue of the performance of certain activities alone, be deemed to trade or secure a pecuniary profit for its members in contravention of the Act (**section 3(2)**). The association does not contravene the trading prohibition merely because it does any one or more of the following:

- make a profit, provided the profit is not divided amongst or received by its members;
- buy, sell, deal in or provide goods and services as long as those activities are ancillary to the principal purposes of the association. If the activities are with the public, the transactions:
 - should not be substantial in number or value in relation to the other activities of the association; or
 - may consist of the collection of admission fees to contests, sporting fixtures or other occasions organized for the promotion of the purposes of the association.

Sporting associations may charge fees for events, operate bars and restaurants at their club houses and engage in merchandising opportunities, provided that such operations are ancillary to the principal purposes of the association;

- entitle members to a distribution of the assets of the association upon winding up or dissolution (but it should be noted that this may have adverse implications on the tax exempt status of the association);
- remunerate a member who performs services or provide a profit to a member which he or she would have been entitled if not a member;
- allow members to compete for trophies or prizes in contests that relate to the purposes of the association. Sporting associations may conduct sporting competitions for prize money provided that such activities relate to the purposes of the association;
- be established for the protection or regulation of trade as long as the association itself does not engage in such trade;
- make a profit from enjoyment of facilities or services provided by the association for social, recreational, educational or similar services; or
- make a payment of profit to another member incorporated association with identical or similar purpose to the donor association.

Before an entity seeks to incorporate, it is important to examine the nature and extent of its activities to determine whether the association trades or secures a pecuniary profit for its members, and so cannot be incorporated under the Act. The trading prohibition should be considered by the association at all times, as its activities change and develop (see also the heading "The trading prohibition" under **Part 8** below).

Importance of the purposes of the association

The purposes for which an entity is set up are important in determining the entity's eligibility for incorporation under the Act. An entity which states it exists to secure profits for its members or for other similar purposes will not be eligible for incorporation under the Act. The eligibility of an association to be incorporated does not depend solely on the statement of its purposes. The purposes and activities that it actually pursues are the relevant criteria to be considered.

Although the Associations Incorporation Office does not generally observe the activities of entities that apply for incorporation, an association incorporated under the Act faces onerous penalties if it is subsequently found to have traded or secured a pecuniary profit for its members.

PROCEDURE FOR INCORPORATION

Name of the Association

An association must avoid choosing certain names. The Act provides that, except with the Minister's consent, an association shall not be incorporated under a name which is:

- in the Registrar's opinion, undesirable; or
- of a kind that the minister has directed the Registrar not to accept for registration (**section 12**).

Further guidance on unacceptable names may be obtained by contacting Consumer & Business Affairs Victoria General Enquiries and Information Helpline on 1300 55 8181. The name that the association adopts on its incorporation must have the word "Incorporated" or "Inc." after it (**section 12**).

Statement of Purposes

The association must define a statement of purposes that outlines the purposes and activities that it has been established to, and in fact proposes to, pursue.

The principal purposes must be "non-trading" purposes, and should be drafted in the widest possible terms so that all activities that the association is likely to pursue are covered in the statement. Transactions entered into by the association that are unrelated to the purposes stated in the statement of purposes may be restrained or set aside by the Court and damages awarded (**section 17**).

Unless otherwise provided in the statement of purposes or rules, the association may:

- invest and deal with moneys of the association not immediately required;
- raise and borrow money on terms that it thinks fit;
- secure the repayment of loans or the payment of any debt or liability of the incorporated association by way of mortgage, charge or security over all or any of the property of the association;
- act as trustee in accordance with the purposes of the association and the Act;
- accept and hold real and personal property on trust in accordance with the Act; and
- do all such other things that are incidental or conducive to the attainment of the purposes and the exercise of the powers of the incorporated association (**section 16**).

Rules

An incorporated association may either:

- prepare a unique set of rules approved by the association; or

- adopt the model rules, either in part or in their entirety (see **Schedule 1** to this Guide).

If an existing unincorporated association elects to prepare an entirely new set of rules, tailored to best suit its unique requirements, it may do so. However, all rules must deal with the following topics set out in the schedule to the Act:

- the qualifications (if any) for membership of the incorporated association;
- the register of members of the incorporated association;
- the entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association;
- the name, constitution, membership and powers of the committee or other body having the management of the incorporated association (referred to as "the committee");
 - 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 shall become vacant;
 - the filling of casual vacancies occurring on the committee; and
 - the quorum and procedure at meetings of the committee;
- the quorum and procedure at general meetings of members of the incorporated association, and whether members are entitled to vote by proxy at general meetings.
- the time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated;
- the sources from which the funds of the incorporated association are to be or may be derived;
- the manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association;
- the intervals between general meetings of members of the incorporated association and the manner of calling general meetings;
- the manner of altering the statement of purposes of the incorporated association;
- the manner of altering and rescinding the rules and of making additional rules of the incorporated association;
- provisions for the custody and use of the common seal (if any) of the incorporated association;

- the custody of relevant documents and securities of the incorporated association;
- the inspection by members of the incorporated association of relevant documents of the incorporated association;
- the disposition of any surplus assets on the winding up or dissolution of the incorporated association;
- 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; and
- (as a new requirement) the grievance procedures for settling disputes under the rules between the association and any of its members or between members.

Importantly, if the rules do not provide for these matters, the relevant provisions of the model rules will be deemed to be included in the association's rules and to have effect (**section 21(3)**).

The incorporation procedure for associations adopting the model rules may be slightly quicker than for associations that adopt their own formulation of rules. However, associations should critically examine the model rules to determine whether they sufficiently protect their interests and reflect their intended activities and procedures before simply adopting the model rules.

Application for Incorporation

An application for incorporation may be made where a majority of the members of the association authorise a person who is 18 years of age and is a Victorian resident to:

- apply to the Registrar for incorporation and to do all things necessary to secure its incorporation;
- approve the statement of purposes; and
- approve the rules (**sections 4 and 5**).

The following steps should be followed in order to obtain approval of a majority of members to the incorporation of the association:

- the unincorporated association should convene a meeting of members in accordance with the provisions of its present constitution;
- the notice of meeting should contain a copy of the proposed Statement of Purposes and Rules, and information regarding the proposed applicant to incorporate the association;
- the required notice period should be given under the current constitution (which, having regard to the deeming provision below, should not be less than 21 days);

- the majority of members voting in accordance with the current constitution must approve the proposed Rules, Statement of Purposes, and the appointment of the applicant to proceed with incorporation;
- there must be a minimum of 5 members who vote and at least 3 of the 5 must approve the application.

The Act includes a provision which deems a majority of members to have given authority and approval for the application for incorporation in certain circumstances (**section 4(2)**). This deeming provision requires a meeting of the association:

- of which not less than 21 days notice has been given to all members; and
- majority of votes cast at the meeting, whether personally or where proxies are allowed, by proxy, are votes in favour of the motion to give the authority and approval.

If these requirements are satisfied, the application for incorporation may be pursued. This is not withstanding any other irregularity in the meeting and approval process, such as if the association does not currently have a constitution to follow in calling a meeting.

Meeting to Incorporate

At the properly convened meeting, the majority of the members should:

- discuss and resolve to adopt the proposed name of the incorporated association which has the word "Incorporated" or "Inc." after it;
- discuss and resolve to adopt the statement of rules and statement of purposes;
- discuss and resolve the place where the incorporated association proposes to carry on its activities (and establish where the association's "registered address" will be); and
- produce, discuss and consider the documents relating to any trusts that may exist. (These documents will probably show that an individual or company holds property for and on behalf of the members of the unincorporated association from time to time. All instruments and deeds that relate to the creation of such trusts must be obtained and copies lodged with the *Form 1* Application for Incorporation/Declaration.)

A minute of meeting should be prepared. It is important that the proceedings of the meeting are recorded and those present are named. A sample minute is included for reference at **schedule 2** of this Guide.

Completion and Lodgment of Documents

The person elected to make the application to the Registrar for incorporation must complete the **Form 1** Application for Incorporation/Declaration. The following information is required:

- full name and address of applicant;
- the proposed name of the incorporated association;
- the place in which the association was formed; and
- the full address (including suite numbers and floor) of the place where the affairs of the association are and will be carried on.

The applicant also states that he or she is authorized to apply for incorporation under the Act. The application must be signed and dated by the applicant.

The *Form 1* also incorporates a Statutory Declaration which must be completed by the applicant. The applicant declares that:

- he or she is authorised to apply for the incorporation;
- the particulars in the application are true and correct; and
- the statement of purposes, rules, trusts and other documents accompanying the application are true copies of the original documents.

This declaration must be signed by the applicant in the presence of a Justice of the Peace or a person authorised to take such declarations. All courts, most town halls and solicitors offices will have such qualified persons. All documents accompanying the *Form 1* must be signed by the applicant for the purpose of identification. The completed documents (and fee) must then be lodged with:

*Consumer Affairs Victoria
113 Exhibition Street Melbourne 3000
GPO Box 4567 Melbourne 3001*

*Telephone: 1300 36 16 73
Fax: (03) 8684 6210
www.consumer.vic.gov.au*

Note also that documents may be lodged by facsimile or electronic transmission (refer to the heading "Forms of Lodgment" in **Part 8** below). The fee for an application for incorporation and other relevant fees are set out in **schedule 5** to this Guide.

The Registrar's discretion to refuse incorporation

Under the Act the Registrar has a discretion to refuse to grant an application for incorporation on certain grounds. The Registrar may refuse to incorporate an association if incorporation would be inappropriate or inconvenient based on the Registrar's assessment of:

- the likely scale or nature of the activities of the association;
- the likely value or nature of the property of the association; or

- the extent or nature of the dealings the association is likely to have with the public, or for any other prescribed reason (**section 7**).

The Registrar must notify the applicant of a refusal to grant a certificate of incorporation, and reasons for that refusal (**section 7(3)**). An applicant refused incorporation may appeal to the Administrative Appeals Tribunal within 28 days of receipt of notice (**section 7(4)**).

If the Registrar is satisfied that the above reasons for refusal do not apply and the provisions of the Act have been complied with, the Registrar will grant a *Form 2* Certificate of Incorporation of the association (**section 7(1)**).

PART 3 – INCORPORATION OF OTHER BODIES UNDER THE ACT

INCORPORATION UNDER THE ACT

It is also possible for a company (limited by guarantee or otherwise) pursuant to the provisions of the Corporations Act (or prior companies legislation) as well as co-operatives, societies, associations, institutions or bodies formed, incorporated or registered under other legislation, to make an application for incorporation under the Act.

The Act allows for such bodies to apply for incorporation under the Act if:

- the body has passed a resolution in accordance with the provisions of its rules, or in the case of a company a special resolution, that an application for incorporation under the Act be made;
- the purposes of the body are purposes for which an incorporated association may lawfully be carried on (including that the body does not trade or secure a pecuniary benefit for members); and
- the body has, or will on incorporation have, rules which comply with the Act.

The effect of incorporation under the Act is that the body then becomes registered as an association under the Act and only the provisions of the Act apply to that body. The legislation under which it was formerly incorporated, formed or registered has no further effect after the change of incorporation (**section 11**).

Some advantages of changing to incorporation under the Act are:

- the simplicity of the transfer procedure;
- the relatively lenient continuing obligations of the incorporated association; and

- the relative flexibility with which the association is able to conduct its affairs under the Act.

APPLICATION PROCEDURE

Meeting and form

As a first step, the body seeking to apply for incorporation under the Act must hold a meeting and pass a resolution (in the manner noted above) in any other case, resolved in accordance with its rules that the application for incorporation under the Act be made. In addition, the meeting should approve the proposed name, the registered address, the new statement of purposes and rules and a public officer.

Once this is completed, the body must complete *Form 6*, setting out:

- the proposed name of the body once incorporated as an association under the Act;
- the registered address and postal address of the association;
- the name and address and contact number (if available) within Victoria of the person nominated as the first public officer of the association,
- The number of members at the time of application;
- The estimated gross annual revenue of the association in its first financial year;
- The value of the assets of the proposed incorporated association at the time of application.
- A signed statement by the director or secretary declaring that the application has been approved or resolved in accordance with section 10(1)(a) of the Act and the particulars contained in the application and accompanying documents are true.

and accompanied by:

- a certificate or other documentary evidence of the body's incorporation, formation or registration;
- a copy of the proposed statement of purposes and rules (approved by the body's members);
- details of any relevant trusts and copies of documents evidencing any such trusts;
- the name, address and occupation of each director or similar of the body's governing body; and
- the prescribed fee (**section 10(3)**).

The *Form 6* must be signed and dated by a duly authorised person. Each accompanying document must be signed by the person signing the Form 6 for the purposes of identification.

Registrar's discretion to reject application

As in the case of the incorporation of a previously unincorporated association, the Registrar does have a discretion to reject an application to bring such a company, co-operative, society, association, institution or a body under the Act if the Registrar is satisfied:

- that the body is carried on for the purpose of trading or securing pecuniary profit for its members; or
- that the incorporation would be inappropriate or inconvenient by reason of the Registrar's assessment of:
 - the likely scale or nature of the activities of the association;
 - the likely value or nature of the property of the association; or
 - the extent or nature of the dealings the association is likely to have with the public; or
- for any other prescribed reason (**section 10(4A)**).

The Registrar must notify the applicant of a refusal to grant a certificate of incorporation, and reasons for that refusal (**section 10(4B)**). An applicant refused incorporation may appeal to the Administrative Appeals Tribunal within 28 days of receipt of notice (**section 10(4C)**).

If the Registrar is satisfied that the above reasons for refusal do not apply and the provisions of the Act have been complied with, the Registrar will grant a *Form 2* Certificate of Incorporation of the Association. In addition, the Registrar must notify the relevant regulatory body of the change of incorporation or regulation and cause a notice of the grant of incorporation to be published in the Government Gazette (**section 10(4)**).

PART 4 - EFFECTS OF INCORPORATION

From the date specified in the Certificate of Incorporation, the incorporated association becomes:

- an entity separate from its members and committee members;
- which has perpetual succession (i.e. exists until it is wound up or deregistered in accordance with the provisions of the Act);
- which must have a common seal; and

- which has the power to acquire, hold and dispose of property and of suing and being sued (**section 14(2)**).

The powers of the association are those set out in its statement of purposes and rules (refer to heading “Statement of Purposes” in **Part 2** above).

PROPERTY

All property held on trust for and on behalf of the association prior to its incorporation becomes the property of the incorporated association (**section 8**). A receipt by the public officer is sufficient to discharge the trustee (**section 8(3)**). The property is then owned by the incorporated association on the same terms and conditions as it was held prior to incorporation.

Some additional procedural requirements to ensure the proper recording of the vesting of the property may be necessary, such as in the case of land (**section 9**). An individual member has no rights in the property of the association unless specifically provided by the Act or the rules of the association (**section 15(2)**).

Where property is held by an incorporated association upon trust, and the trust has come to an end, the public officer, with the authority of the committee, may apply to the Minister for authority to dispose of the whole or part of the property. (**section 18(1)**).

COMMON SEAL

An incorporated association may have a common seal (**section 14(2)**). The rules must include provisions relating to the custody and use of the common seal (see for example model rule 33 in **schedule 1** to this Guide).

The incorporated association may appoint an agent or attorney to execute deeds on its behalf. This document empowering the agent or attorney to act may be limited as to time and/or extent. The document must be executed with the common seal of the incorporated association. However the documents signed by such agent or attorney on behalf of the association need not have the association’s common seal affixed (**section 19(7)**). The authority of the agent or attorney continues until the time stated in the authorising document, or if no time is mentioned, until revoked or terminated by notice to the agent or attorney (**section 19(8)**).

MEMBERSHIP

The members of the association immediately prior to its incorporation are its members after incorporation (unless otherwise provided for in the Act or the rules), together with any other persons admitted to membership under the rules (**section 14(1)**).

In respect of membership, the rules must deal with:

- qualifications for membership to the incorporated association (see for example model rule 4 in **schedule 1** to this Guide);
- a register of members (see model rule 5);
- entrance fees, subscriptions or other amounts payable by members (see model rule 4);
- a grievance procedure for handling disputes between members or a member and the association (**section 14B**, see model rule 8); and
- the procedure (if any) for disciplining members and for related appearances by members (if any) (see model rule 7).

It is important to note that the rules of an incorporated association constitute the terms of a contract between the association and its members (as they change from time to time). That is, the parties are bound by the contractual arrangements set out in the rules. The members of the association may seek to enforce their respective rights and obligations in the Magistrates' Court (**section 14A**).

Unless otherwise provided for in the Act or in the rules of the association, a member does not by reason of his or her membership of the incorporated association alone become liable to contribute towards the payment of the debts and liabilities of the incorporated association. Similarly, unless otherwise provided, the committee members and the public officer of the association do not by reason of their respective positions alone become liable to contribute towards the payment of the debts and liabilities of the incorporated association (**section 15**).

MANAGEMENT

Unless the rules of the incorporated association provide otherwise, the first members of the committee of the incorporated association are the persons who were the members of the committee of the association immediately prior to its incorporation (**section 23**).

The rules of the association must include provision for:

- powers of the committee of management;
- the name, constitution and membership of the committee, including election procedures, terms of office, the grounds for appointment and dismissal of committee members from office and the filling of casual vacancies on committee; and
- meeting procedure, including quorum,

(see for example model rules 20 to 30 in **schedule 1** in this Guide).

The committee members owe duties to the association and its members. These are discussed further in **Part 7** below.

PRE-INCORPORATION CONTRACTS

Where a person has entered into a contract for and on behalf of an association that is proposed to be incorporated and the association is subsequently incorporated within a reasonable time after the contract is purported to be entered into, the incorporated association may, within a reasonable time after incorporation, ratify the contract (**section 20(2)**). That is, the association is bound by and entitled to the benefit of the contract.

Ratification of any such contracts should be done at a general meeting of the incorporated association after its incorporation, as follows:

- the chairman presents the pre-incorporation contract to the members present;
- the contract is discussed in detail, including the rights and obligations imposed by the contract; and
- the incorporated association resolves to ratify the contract, by a majority of the members present at the meeting duly convened.

It is very important that this procedure is followed. Failure to ratify the contract within a reasonable time after incorporation could expose the person who executed the contract to personal liability for the performance of the obligations under the contract, and in some circumstances, damages. The Court may, however, if it considers it is just and equitable to do so, order the incorporated association to make certain payments or to pay damages in lieu of the person who executed the contract.

Section 20 of the Act is extremely complex, and it would be appropriate to seek legal advice to minimize the risk of exposure to liability of the person who executes any pre-incorporation contract.

PART 5 - AFTER INCORPORATION

There are numerous compliance requirements on an association once it is incorporated. It is appropriate for the committee of the association to become familiar with the Act to ensure the association complies, as required. Below are some of the significant compliance obligations.

NAME OF ASSOCIATION

Where name must appear

The name of the association must appear legibly on the association's common seal (if any), in all notices, advertisements and other official publications of the association and all "business documents". Business documents include business letters, accounts, invoices, orders, cheques, receipts, letters of credit and other documents prescribed by the Regulations to the Act (**section 12A(1)**). Failure to comply with this requirement renders the association guilty of an offence and liable to a penalty not exceeding 5 penalty units (currently, \$500).

Change of Name

An incorporated association may change its name by special resolution (discussed further below under the heading "Alteration to statement of purposes or rules") and with the approval of the Registrar (**section 13(1)**). The new name must be one that will be acceptable for registration as described in **Part 2** above.

A meeting of members must be convened in accordance with the provisions of the association's rules. If a special resolution is passed by the members the public officer may make an application to the Registrar for his or her approval to the change of name.

This *Form 7* Application for Change of Name must be made within one month after the date of the general meeting, and accompanied by the prescribed fee. The change of name does not have any effect on the identity, rights, obligations or any other matters affecting the incorporated association (**section 13(6)**).

REGISTRATION NUMBER

The New Act requires that the registration number of the association appears legibly in all notices, advertisements and other official publications of the association and in all business documents (**section 12A(2)**). For those associations already incorporated, the registration number is the number recorded on the association's certificate of incorporation. Again, failure to comply with this requirement renders the association guilty of an offence and liable to a penalty not exceeding 5 penalty units (currently, \$500).

PUBLIC OFFICER

Every incorporated association must elect a public officer. Unless otherwise provided for in the rules, the first public officer of the incorporated association is the person who is authorized to apply for the incorporation of the association (**section 24**).

The public officer must be a resident in Victoria and must have attained the age of 18 years (**section 25**). The public officer is entitled to hold any other office in the incorporated association, unless the rules otherwise provide (**section 26**).

The office of public officer becomes vacant if that person:

- dies;

- resigns from office by notice in writing to the committee of the incorporated association;
- is removed from that office by a resolution of the members of the incorporated association;
- becomes bankrupt or enters into similar arrangements with his or her creditors (as defined in **section 27(2)(d)**);
- becomes of unsound mind or a person who or whose estate is liable to be dealt with under the law relating to mental health; or
- ceases to be a resident in Victoria.

A *Form 8* Appointment of Public Officer must be lodged with the Associations Incorporation Office within 14 days of any appointment of a public officer. If the office of public officer becomes vacant, such vacancy must be filled within 14 days and a *Form 8* must be lodged in respect of that appointment within a further 14 days (**sections 25 and 28**).

There is no longer any requirement for the public officer to notify a change of his or her address within Victoria, given the requirement under the New Act to notify the Registrar of the association's "registered address".

REGISTERED ADDRESS

An association is now required to:

- have a registered address, which may be the address of the public officer; and
- provide written notice to the Registrar of any change of the registered address within 14 days (**section 13A**).

Each committee member and the association itself will be liable for a penalty of up to \$500 if this section related to the registered address is contravened.

GENERAL MEETINGS

An association must, at least once in each calendar year, convene an annual general meeting of its members (**section 30(1)**). The first annual general meeting of the incorporated association must be held within 18 months after its incorporation (**section 30(2)**). The second and any subsequent annual general meeting must be held within 5 months after the end of the association's financial year (**section 30(2A)**).

Provision must be made in the rules for notices, quorum, proxy and other general meeting procedures (see for example model rules 9 to 19 in **schedule 1** to this Guide).

At the annual general meeting the association must submit to its members a statement containing the following particulars:

- financial statements showing the income and expenditure of the incorporated association during the last financial year;
- assets and liabilities of the incorporated association at the end of the last financial year;
- details of mortgages, charges and securities affecting property of the incorporated association;
- similar details regarding each trust for which the incorporated association acts as trustee at the end of the last financial year; and
- details of any trusts held on behalf of the association by any other person, in which funds or assets of the association are placed (**section 30(3)**).

The statement must give a fair view of the financial position of the association during and at the end of its last financial year (**section 30(3A)**).

In addition, in the case of “prescribed associations”, the statement must be accompanied by the accounts audited in accordance with **section 30B** of the Act. This requirement is applicable only to those associations which are defined as “prescribed associations” under the Act. This concept is examined further under the heading “Accounting Requirements”, below.

Within one month of the annual general meeting, the public officer must complete a *Form 9* Annual Statement by Public Officer. The *Form 9* must include the details set out above, and in addition must contain the following particulars:

- the date of the annual general meeting;
- the date of the end of the last financial year; and
- a certificate signed by a committee member who attended the annual general meeting, to the effect that the above documents and details had been presented to the members at the annual general meeting.

The *Form 9* must be signed by the public officer, certified by a committee member, and lodged with the Registrar at the Associations Incorporation Office within one month after the date of the general meeting together with the prescribed fee.

It is possible to apply for an extension of the period prescribed for lodging the annual general meeting or lodging the *Form 9*. The public officer may make an application for extension of time, stating reasons for requiring the extension and including the prescribed fee (**section 30(5)**).

ACCOUNTING REQUIREMENTS

Before the 1997 Act was passed, there was no prescription of the precise details required to be disclosed in the annual financial statements that must be presented at the annual general

meeting and lodged with the Registrar. This position has changed markedly, and the accounting requirements are dealt with further below.

General requirements

As noted under the heading “General Meetings” above, the statement submitted to the annual general meeting must give a fair view of the financial position of the incorporated association during and at the end of its last financial year (**section 30(3A)**).

An association must maintain adequate and accurate accounting records of the financial transactions of the association (**section 30A**).

In addition, there is provision in the Act for the Governor in Council to make regulations which:

- provide for the accounts to be kept and the financial statements to be prepared by associations; and
- make additional provision for the audit of accounts of an association (**section 54(2)**).

At the time of writing, the only relevant regulation relates to prescribed associations only, and is discussed further below.

The association’s rules must deal with matters relating to the custody of relevant documents and securities of the incorporated association as well as with the inspection by its members of books and relevant documents (see model rule 36 in **schedule 1** to this Guide).

Prescribed associations

Greater accounting requirements are placed on prescribed associations. A prescribed association is currently defined as an incorporated association that:

- has gross receipts in the previous financial year in excess of \$200,000;
- has gross assets in excess of \$500,000; or
- is prescribed by regulation.

Prescribed associations must have their accounts audited after the end of each financial year, by a registered company auditor, a person who is a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia or any other person who is approved by the Registrar. The penalty for contravening this requirement is currently \$1,000 (**section 30B(1)**). Persons who are closely associated with the association, such as a member, committee member, employee, or partner or employee of a committee member are excluded from auditing the accounts (**section 30B(2)**).

The statement submitted to the members at the annual general meeting and the statement lodged with the Registrar must be accompanied by a copy of the prescribed association’s accounts, audited as described above (**sections 30(3A)** and **30(4)**).

Regulation 7 of the *Associations Incorporation Regulations 1998* (“**Regulations**”) states that a prescribed association must prepare its financial statements in accordance with the Australian Accounting Standards specified in schedule 1 to the Regulations. These Accounting Standards are set out in **schedule 4** to this Guide.

A prescribed association must keep all accounting records of the incorporated association for a period of 7 years. There is a penalty of \$500 for failing to do so (**section 30B(3)**).

A prescribed association may apply in writing to the Registrar for an exemption from the requirement to have its accounts audited (**section 30B(4)**).

ALTERATION TO STATEMENT OF PURPOSES OR RULES

The statement of purposes or rules of an association may only be changed by special resolution of the association in general meeting, and with the approval of the Registrar.

Special resolution

A special resolution is passed at a meeting if:

- of the entitled members of the incorporated association who vote in person or (if proxies are allowed) by proxy at the meeting, not less than three quarters vote in favour of the resolution; and
- any *additional* requirements of the rules of the incorporated association relating to the passing of the special resolution have been met (**section 29(2)**); where
- not less than 21 days notice has been given in accordance with the rules to all entitled members, specifying the intention to propose the resolution as a special resolution (**section 29(3)**).

“Entitled members” are members entitled under the rules to vote in a general meeting (**section 29(5)**).

Alteration of statement of purposes or rules

In order to change the statement of purposes or rules, a special resolution must be passed at a meeting, in the manner stated above. Once this is done, the public officer must lodge an application for approval of an alteration of the statement of purposes or the rules of an incorporated association within 28 days after the alteration was passed by special resolution.

An application for the alteration of the statement of purposes or rules must:

- be made by the public officer;
- be made in a form approved by the Registrar;
- (where there has been a change to the rules) be accompanied by a consolidated copy of the rules of the incorporation association;

- give notice of the special resolution and set out particulars of the alteration; and
- be accompanied by a declaration signed by 2 committee members that the resolution was passed in accordance with the Act (**section 22(3)**).

There is no specific application form for alterations to the statement of purposes or rules prescribed by the Regulations, and accordingly no application form is included in **schedule 3** to this Guide. Further assistance with the content of this form may be sought from the Associations Incorporation Office at Consumer & Business Affairs Victoria .

An alteration of the statement of purposes or the rules of an incorporated association does not take effect until it is approved by the Registrar (**section 22(2)**). The association will be notified of the Registrar's approval in writing. The Registrar must approve the alteration unless it is contrary to this Act or the Regulations (**section 22(4)**).

Availability of rules

An incorporated association must make a copy of its rules available for inspection at any reasonable time by a member at the request of that member (**section 22A**).

PART 6 – TRANSFER, WINDING UP AND CANCELLATION

There are now significant provisions included in the Act in relation to:

- transfer of an association's incorporation to another regime;
- winding up an association; and
- cancellation of an association's incorporation.

It is beyond the scope of this Guide to deal exhaustively with these provisions. In many cases, professional advice will be required, particularly in relation to the new provisions introduced by the 2000 Act dealing with the distribution of assets on voluntary winding up. A brief outline of the relevant provisions is set out below.

TRANSFER OF INCORPORATION

An incorporated association may apply to become registered or incorporated as a company under the *Corporations Law*, a co-operative under the *Co-operatives Act 1996* or as a body corporate under a law prescribed by regulation (**section 31AA**).

Alternatively, the Registrar may direct an association to transfer its incorporation to another legislative regime if the Registrar is satisfied that the continued incorporation of the association under the Act would be inappropriate or inconvenient, based on:

- the nature and scale of the association's activities;

- the value or nature of the association's property; or
- the extent or nature of the dealings which the association has with the public (**section 31AB**).

The Registrar must give prior notice of the intention to transfer incorporation to another regime, and provide the association with the opportunity to show cause why this should not occur. An appeal is available to the Administrative Appeals Tribunal within 28 days of receipt of the notice (**section 31AB**).

WINDING UP

The Act provides for 3 methods of winding up of an association under the Act.

Voluntary winding up

An incorporated association may be wound up voluntarily if the association resolves to do so by special resolution (**section 33**). The assets remaining after satisfaction of debts and liabilities are distributed in accordance with the special resolution made by the association under section 33A of the Act (subject to any trust affecting the assets). Section 33A prohibits the distribution of assets to members if the Association's rules (on the winding up date or at any time in the 5 years preceding that date) prohibited such a distribution. This provision is subject to two exceptions – briefly, if the Association's rules were altered with the Minister's consent to provide for a such a distribution, or if the assets are to be distributed to a body corporate.

The public officer must, within 28 days of the special resolution being passed, lodge with the Registrar a notice of the special resolution. The notice must be accompanied by a statutory declaration signed by two or more committee members stating that the special resolution was passed in accordance with the Act, and that all relevant documents have been lodged with the Registrar as required under the Act.

If a special resolution is not passed in relation to the distribution of the assets, the assets are distributed in accordance with the provisions of the rules (see model rule 35 in **schedule 1** to this Guide). If not otherwise provided for in the rules, the assets are divided amongst the members of the association in equal shares (**section 33B**). Note also that despite sections 33A and 33B, certain assets are not to be distributed on voluntary winding up, namely property supplied by a government department (see section 33C).

Winding up by the court

Alternatively, the Supreme Court may order the winding up of an incorporated association, on the application of the association, its members or creditors or the Registrar, if:

- the incorporated association has resolved by special resolution to be wound up by the court;
- the incorporated association suspends its operations for a whole year;

- the incorporated association is unable to pay its debts;
- the association has itself, or as trustee, traded or secured pecuniary profits for its members (unless authorised);
- the association has engaged in activities outside the scope of its statement of purposes; or
- the court is of the opinion that it is just and equitable that the incorporated association should be wound up (**section 34**).

Winding up on certificate of Registrar

The Registrar may, subject to compliance with a notification and show cause procedure, certify that the association be wound up on any of the following grounds:

- that the number of members is reduced to less than 5;
- that the incorporated association is not in operation;
- that the incorporated association has itself, or as trustee, traded (except in accordance with section 51) or secured pecuniary profit for its members;
- that the incorporated association has not provided statements in accordance with section 30(4) for the proceeding two years;
- that the incorporation of the association has been obtained by mistake or fraud;
- that the incorporated association exists for an illegal purpose;
- that the incorporated association has, after notice from the Registrar of any breach of this Act or the Regulations or of the rules of the incorporated association, failed to remedy the breach within the time specified in the notice;
- that the incorporated association has failed to transfer its incorporation to another regime, as directed; or
- that in the opinion of the Registrar, circumstances exist which, in the public interest, justify the winding up of the incorporated association (**section 35**).

An incorporated association may, within 28 days after the certificate is given, apply to the Supreme Court to review a direction of the Registrar to wind up (**section 36A**). The Registrar may appoint a liquidator (**section 36B**). The Regulations provide for security to be given by the liquidator to an amount of \$50,000 in certain circumstances (**regulation 9**). The reasonable costs of the winding up are payable out of the property of the incorporated association (**section 36C**).

CANCELLATION OF INCORPORATION

The Registrar may, by notice in the Government Gazette, cancel the incorporation of an incorporated association which has been wound up or has commenced to be wound up. The cancellation does not affect the winding up (**section 36E(1)**).

If the Registrar is of the opinion that any incorporated association (other than one being wound up) is not in operation, the Registrar may by notice require the incorporated association to show good cause why its incorporation should not be cancelled (**section 36E(3)**). If, after 28 days after notice is given, the Registrar is satisfied that the incorporation of the association should be cancelled, the Registrar may by notice published in the Government Gazette cancel that incorporation (**section 36E(5)**). On cancellation, the property of the incorporated association vests in the Registrar, and the Registrar is empowered to arrange for distribution of the assets (**section 36F**).

If the Registrar is satisfied that the incorporation of an incorporated association was cancelled as a result of an error on the part of the Registrar, the Registrar may reinstate the association as an incorporated association (**section 37(1)**). It is possible for a person aggrieved by the cancellation of incorporation of an association to apply to the Supreme Court for reinstatement within 15 years after the cancellation (**section 37(2)**).

PART 7 - DUTIES OF COMMITTEE MEMBERS

FIDUCIARY DUTIES AND INSURANCE

Fiduciary duties owed

By virtue of incorporation, the liability of members (including members who are committee members) of incorporated associations is limited to amounts due by way of subscriptions, joining fees or other amounts payable under the association's constituent documents.

The committee members of an incorporated (or unincorporated) association owe analogous common law fiduciary duties to the association and its members as are imposed on company directors. Those fiduciary duties require them to act honestly, in good faith and in what is considered to be the best interests of the incorporated association. If they fail in any of those duties, they may be liable to compensate members (or the association) who suffer loss as a result. In addition, there are now specific statutory obligations imposed on committee members (see below).

There will be circumstances where, despite incorporation, a committee member (or any other member of a body) may incur liability (perhaps jointly with the body) as a result of some personal action by him in the course of his or her duties – for example, where a committee member writes a defamatory article in a publication of the body.

Insurance

Insurance is a vital risk management tool for any association. Where appropriate, an incorporated association should consult with a reputable insurer to seek advice in relation to obtaining relevant insurance policies. These may include public liability, professional indemnity and directors and officers liability insurance.

STATUTORY DUTIES

The following duties are expressly set out in the Act.

Improper use of information or position

A member or former member of a committee of an association must not knowingly or recklessly make improper use of information acquired by virtue of their position in the association so as to gain any pecuniary benefit or material advantage for themselves or other persons or to cause detriment to the association. A penalty of \$6000 applies (**section 29A(1)**).

Similarly, a committee member of an incorporated association must not knowingly or recklessly make improper use of their position so as to gain any pecuniary benefit or material advantage for themselves or other persons or to cause detriment to the association (**section 29A(2)**). Again, a penalty of \$6000 applies.

A person who has contravenes this section may be ordered by the court to pay compensation to the association (**section 29A(3)**).

Disclosure of interest

Any committee member of an association who has a pecuniary interest in a contract or proposed contract with the association must disclose the nature and extent of that interest:

- to the committee, as soon as they become aware of it; and
- in the financial statement submitted by the association to its members, at the next annual general meeting of the association,

unless the pecuniary interest is one which exists only by virtue of the committee member:

- being an employee;
- belonging to a class of persons for whose benefit the association was established; or
- having a pecuniary interest in common with all or a substantial proportion of the members.

A penalty of \$1000 applies (**section 29B**).

Voting on contracts

A committee member of an association who has a pecuniary interest in a contract or proposed contract with the association, must not take part in any committee decision regarding the contract (although with some exceptions, may take part in deliberations regarding the contract), except pecuniary interests which exist only by virtue of:

- the committee member belonging to a class of persons for whose benefit the association was established; or
- the pecuniary interest being held by that committee member in common with all or a substantial proportion of the members.

A penalty of \$1000 applies (**section 29C**).

PART 8 - MISCELLANEOUS

POWERS OF INSPECTION

The Registrar's powers of inspection have been increased significantly by the insertion of a new Part VIIIA into the Act. It is not intended to detail the powers exhaustively here. The most significant powers are set out below.

- The Registrar may authorise any officer or employee of the public service to be an inspector under the Act (**section 37A**). An inspector must produce an identity card on applying for admission to premises (**section 37C**).
- Inspectors may by notice, require an incorporated association, or any person who is involved in the activities of an incorporated association, to produce relevant documents relating to the incorporated association (**section 37D**).
- Inspectors may by notice in the prescribed form require any person who is involved with the activities of an incorporated association to attend before an inspector and answer questions relating to the incorporated association (**section 37D**).
- An inspector may, with the consent of the occupier, enter premises to search for and seize relevant documents (**section 37E**).
- An inspector may apply to a magistrate for the issue of a search warrant (**section 37F**). Details of the warrant must be given to the occupier (**section 37H**).

It is an offence under the Act not to comply with the requirements of an inspector without reasonable excuse. It is also an offence to provide false or misleading information or, without reasonable excuse, to obstruct or hinder an inspector (**section 37L**).

FORMS AND LODGEMENT

All forms which must be lodged in compliance with the Act should be lodged with the Registrar at the following address:

Consumer Affairs Victoria
113 Exhibition Street Melbourne 3000
GPO Box 4567 Melbourne 3001
Telephone: 1300 36 16 73 Fax: (03) 8684 6210
www.consumer.vic.gov.au

The Act also provides for lodgment of forms by facsimile (subject always to payment of the relevant fee being \$60) (**section 45A**). If lodging a form by fax (fax: 9627 6210), payment must be made at the same time, via an account or by providing a credit card number.

Copies of the forms are included at **schedule 3** to this Guide. Forms may be obtained from Consumer & Business Affairs Victoria or from law stationers such as Blue Star Office. . All cheques should be made payable to *Consumer & Business Affairs Victoria* .

Where there is insufficient space on any prescribed form to insert all the required information, a separate sheet setting out the information must be annexed to the official form. The pages of the annexure must be labeled at the top of the front page with an identifying mark (usually "A", "B" etc). The following endorsement must also be inserted:

"This is the annexure of pages marked "...." referred to in the
(insert the form description) signed by me and dated the
20.....
.....(Signatures)."

This annexure must be signed by each person who signed the form to which it is annexed.

REGISTER

All documents lodged with *Consumer Affairs* Victoria are filed by the Registrar in a register which is available for inspection by the public on payment of the prescribed fee (**sections 39 and 40**). It is also possible to obtain copies of documents and certified duplicates of the documents held by the Registrar on application and payment of the prescribed fee.

A person is deemed to have notice of the facts, matters and documents mentioned in the public records if he or she has actual notice thereof. Further, if he or she has been put upon inquiry as to the existence of the fact, matter or document and has deliberately abstained from making further inquiry, and further inquiry could reasonably have been expected to disclose the fact, matter or document he or she is deemed to have had notice of the matters in the register (**section 41**).

Any document that:

- contains matters contrary to law;

- is false or misleading;
- has not been duly completed;
- is illegible in any part;
- does not comply with the provisions of the Act; or
- contains errors, alterations or erasures,

may be rejected by the Registrar until such defect is remedied or a new or supplementary document is lodged (**section 46**).

TRUST DEEDS

As mentioned earlier, the incorporated association may act as a trustee of a trust if the rules of the association do not disallow it. The incorporated association in its capacity as trustee does not have the power to do any act that would contravene the Act or the statement of purposes or rules of the incorporated association. Copies of the trust deed and any other deeds and instruments embodying the trust must be lodged with the Registrar within 14 days of the association becoming a trustee (**sections 16(2), (3) and (4)**).

SERVICE OF DOCUMENTS

Documents are served on the incorporated association by addressing them to the incorporated association and leaving it or sending it by post to the address of the public officer as notified to the Registrar (**section 48**).

PENALTIES

Severe penalties may be imposed on persons who make or authorise false and misleading statements or fail to correct a misleading statement:

- in documents lodged with the Registrar;
- in declarations made under the Act; or
- in documents that are submitted to a general meeting of the members (**section 49**).

Further penalties are in place for contravening or failing to comply with the provisions of the Act (**section 50**) and continuing to do so (**section 50A**). Provisions are also included for service of penalty notices (**section 50B**).

THE TRADING PROHIBITION

As noted in **Part 2** above, an incorporated association which trades or secures a pecuniary profit for its members, whether in its capacity as trustee or otherwise, may be penalized under the Act. Further, any member of the incorporated association who aids, abets or procures, or generally acts (or omits to act) or is knowingly concerned in the trading or securing of a pecuniary profit for members of the association, is deemed to have committed the offence. Such members are jointly and severally liable to any creditor of the incorporated association for all debts and liabilities incurred by it in consequence of the pursuit of such activities (**section 51**). Accordingly, the trading prohibition has significant consequences. Regard must always be had to the nature and scale of the association's activities before embarking on commercial "trading" type activities.

The trading prohibition does not apply to associations with a predominantly charitable purpose, if certain other requirements are met. Few, if any, sporting organizations will fall within the meaning of charitable.

AMALGAMATION

There is provision in the Act for two or more incorporated associations to apply to be incorporated as an amalgamated association (**section 31**). The Associations Incorporation Office requires Terms of Amalgamation to be lodged which detail what will occur in relation to the assets and liabilities of the association on amalgamation (see *Forms 10* and *11*). The assistance of a legal adviser may be desirable here.

STAMP DUTY EXEMPTION

In the event of land vesting in an association or incorporation or amalgamation, the instrument of transfer is exempt from stamp duty under the Victorian *Stamps Act 1958* (section 53A).

PART 9 - CHECKLISTS

The following checklists are intended as guides only. They are not intended to be exhaustive statements.

PROCEDURE FOR INCORPORATION OF ASSOCIATIONS

- Convene a meeting of members of the association.
- Prepare statement of purposes and, if model rules are inappropriate, rules.
- Majority of members resolve to:
 - appoint the applicant;

- approve the name; and
- approve the statement of purposes and rules.
- Identify all trusts and collate all deeds and instruments relating to such trusts.
- Prepare minutes of meeting.
- Complete and lodge *Forms 1 and 8* (including the rules, statement of purposes and trust documents) with the Registrar together with the prescribed fee.

BRINGING ANOTHER ENTITY UNDER THE ACT

- By special resolution (company) or other resolution prescribed, resolve that the company or other body become incorporated under the Act.
- Prepare statement of purposes.
- Amend existing rules, adopt the model rules or vary the existing constitution to comply with the Act.
- Approve name of the new body.
- Nominate a public officer.
- Lodge *Form 6* together with all requisite particulars and documents together with the prescribed fee.

CONTINUING RESPONSIBILITIES OF INCORPORATED ASSOCIATION

After the incorporation procedures have been complied with, the incorporated association must:

- comply strictly with the provisions of its rules;
- not trade nor secure a pecuniary profit for its members as itself or as trustee;
- hold its first annual general meeting within eighteen months of its incorporation and subsequent annual general meetings once in each calendar year, within 5 months of the end of the financial year (unless an extension has been granted);
- at the general meetings, present to the members present, as at the end of the financial year, the income and expenditure statement, the statement of assets and liabilities, the statement of all mortgages charges and securities affecting property and similar information in respect of each trust for which it acted as trustee (prescribed associations to attach audited accounts) and information regarding pecuniary interests of committee members in contracts;

- lodge with the Registrar particulars of any trust including copies of deeds or other documents or instruments that create or embody that trust within 14 days of the association becoming a trustee;
- not amend or alter its name or statement of purposes or rules except by special resolution;
- have a registered address and notify the Registrar of any change of registered address within 14 days;
- fill a vacancy that may arise in the office of public officer within 14 days of such vacancy and notify the Registrar of the same within 14 days; and
- otherwise comply with the Act.

PUBLIC OFFICER

The public officer of the incorporated association is, unless otherwise provided in the rules or unless removed in accordance with the rules, the applicant who was appointed to arrange for the incorporation of the association or a person appointed specifically to act in such capacity. The significant obligations of the public officer are:

- to lodge a *Form 8* Notice of Appointment of Public Officer within 14 days of his or her appointment;
- to apply for approval of any change to the statement of purposes or rules within 28 days of the passing of the special resolution authorizing such changes;
- to lodge a *Form 7* Application For Approval of Change of Name of the association within one month of the date of the meeting at which the special resolution to change the name was passed;
- to lodge a *Form 9* Annual Statement by Public Officer together with all requisite documents within one month of the meeting or, after approval of the Registrar for extension of time has been given after having applied in writing for an extension within such period as the Registrar allows;
- to lodge any other form or document as may be required under the Act or by the Registrar;
- to produce any document that the Registrar or his or her authorised officer requests;
- to advise the Registrar or his or her authorised officer of the whereabouts of any document upon request; and
- not to hinder or obstruct the Registrar or his or her authorised officer in the exercise of his or her powers of inspection.

FURTHER ENQUIRIES

If, after reading this Guide, you have further enquiries, these should be directed to:

Consumer Affairs Victoria
113 Exhibition Street Melbourne 3000
GPO Box 4567 Melbourne 3001
Telephone: 1300 36 16 73 Fax: (03) 8684 6210
www.consumer.vic.gov.au

SCHEDULE 1

MODEL RULES FOR AN INCORPORATED ASSOCIATION

The model rules are found in schedule 5 of the *Associations Incorporation Regulations 1997*.

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MODEL RULES FOR AN INCORPORATED ASSOCIATION

1. *Name*

The name of the incorporated association is
(in these Rules called “the Association”).

2. *Definitions*

(1) In these Rules, unless the contrary intention appears--

“**Act**” means the **Association Incorporation Act 1981**;

“**committee**” means the committee of management of the Association;

“**financial year**” means the year ending on 30 June;

“**general meeting**” means a general meeting of members convened in accordance with Rule 12;

“**member**” means a member of the Association;

“**ordinary member of the committee**” means a member of the committee who is not an officer of the Association under Rule 21;

“**Regulation**” means regulation under the Act;

“**relevant documents**” has the same meaning as in the Act.

(2) In these Rules, a reference to the Secretary of an Association is a reference-

(a) if a person holds office under these Rules as Secretary of the Association to the person; and

(b) in any other case, to the public officer of the Association.

3. *Alteration of the rules*

These Rules and the statement of purposes of the Association must not be altered except in accordance with the Act.

4. *Membership, entry fees and subscription*

(1) A person who applies and is approved for membership as provided in these Rules is eligible to be a member of the Association on payment of the entrance fee and an annual subscription payable under these Rules.

(2) A person who is not a member of the Association at the time of the incorporation of the Association (or who was a member at the time but has ceased to be a member) must not be admitted to membership unless-

- (a) he or she applies for membership in accordance with sub-rule (3); and
 - (b) the admission as a member is approved by the committee.
- (3) An application of a person for membership of the Association must-
- (a) be made in writing in the form set out in the Appendix 1; and
 - (b) be lodged with Secretary of the Association.
- (4) As soon as practicable after the receipt of an application, the Secretary must refer the application to the committee.
- (5) The committee must determine whether to approve or reject the application.
- (6) If the committee approves an application for membership, the Secretary must, as soon as practicable-
- (a) notify the applicant in writing of the approval for membership; and
 - (b) request payment within 28 days after receipt of the notification of the sum payable under these Rules as the entrance fee and the first year's annual subscription.
- (7) The Secretary must, within 28 days after receipt of the amounts referred to in sub-rule (6), enter the applicant's name in the register of members.
- (8) An applicant for membership becomes a member and is entitled to exercise the rights of membership when his or her name is entered in the register of members.
- (9) If the committee rejects an application, the committee must, as soon as practicable, notify the applicant in writing that the application has been rejected.
- (10) A right, privilege, or obligation of a person by reason of membership of the Association-
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates upon the cessation of membership whether by death or resignation or otherwise.
- (11) The entrance fee is the relevant amount set out in Appendix 4.
- (12) The annual subscription is the relevant amount set out in Appendix 4 and is payable in advance on or before 1 July in each year.

5. *Register of members*

- (1) The Secretary must keep and maintain a register of members containing-
- (a) the name and address of each member; and
 - (b) the date on which each member's name was entered in the register.

- (2) The register is available for inspection free of charge by a member upon request.
- (3) A member may make a copy of entries in the register.

6. *Ceasing membership*

- (1) A member of the Association who has paid all moneys due and payable by a member of the Association may resign from the Association by giving one month's notice in writing to the Secretary of his or her intention to resign.
- (2) After the expiry of the period referred to in sub-rule (1)-
 - (a) the member ceases to be a member; and
 - (b) the Secretary must record in the register of members the date on which the member ceased to be a member.

7. *Discipline, suspension and expulsion of members*

- (1) Subject to these Rules, if the committee is of the opinion that a member has refused or neglected to comply with these Rules, or has been guilty of conduct unbecoming a member or prejudicial to the interest of the Association, the committee may be resolution-
 - (a) fine that member an amount not exceeding \$500; or
 - (b) suspend that member from membership of the Association for a specified period; or
 - (c) expel that member from the Association.
- (2) A resolution of the committee under sub-rule (1) does not take effect unless-
 - (a) At a meeting held in accordance with sub-rule (3), the committee confirms the resolution; and
 - (b) If the member exercises a right of appeal to the Association under the rule, the Association confirms the resolution in accordance with this rule.
- (3) A meeting of the committee to confirm or revoke a resolution passed under sub-rule (1) must be held not earlier than 14 days, and no later than 28 days, after notice has been given to the member in accordance with sub-rule (4).
- (4) For the purpose of giving notice in accordance with sub-rule (3), the Secretary must, as soon as practicable, cause to be given to the member a written notice-
 - (a) setting out the resolution of the committee and the grounds on which it is based; and
 - (b) stating that the member, or his or her representative, may address the committee at a meeting to be held not earlier than 14 days and no later than 28 days after the notice has been given to that member; and

- (c) stating the date, place, and time of that meeting; and
 - (d) informing the member that he or she may do one or both of the following-
 - (i) attend the meeting;
 - (ii) give to the committee before the date for that meeting a written statement seeking the revocation of the resolution;
 - (e) informing the member that , if at that meeting the committee confirms the resolution, he or she may, not later than 48 hours after that meeting, give the Secretary a notice to the effect that he or she wishes to appeal to the Association in general meeting against the resolution.
- (5) At a meeting of the committee to confirm or revoke a resolution passed under sub-rule (1), the committee must-
- (a) give the member, or his or her representative, an opportunity to be heard; and
 - (b) give due consideration to any written statement submitted by the member; and
 - (c) determine by resolution whether to confirm or to revoke the resolution.
- (6) If at the meeting of the committee, the committee confirms the resolution, the member may, not later than 48 hours after that meeting, give the Secretary a notice to the effect that he or she wishes to appeal to the Association in general meeting against the resolution.
- (7) If the Secretary receives a notice under sub-rule (6), he or she must notify the committee and the committee must convene a general meeting of the Association to be held with 21 days after the date on which the Secretary received the notice.
- (8) At a general meeting of the Association convened under sub-rule (7)-
- (a) no business other the question of the appeal may be conducted; and
 - (b) the committee may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolutions; and
 - (c) the member, or his or her representative, must be given an opportunity to be heard; and
 - (d) the members present must vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- (9) A resolution is confirmed if, at the general meeting , not less than two-thirds of the members vote in person, or by proxy, in favour of the resolution. In any other case, the resolution is revoked.

8. Disputes and mediation

- (1) The grievance procedure set out in this rule applies to disputes under these Rules between-
 - (a) a member and another member, or
 - (b) a member and the Association.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute with 14 days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to revoke the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (4) The mediator must be-
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement-
 - (i) in the case of a dispute between a member and another member, a person appointed by the committee of the Association; or
 - (ii) in the case of a dispute between a member and the Association, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).
- (5) A member of the Association can be a mediator.
- (6) The mediator cannot be a member who is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must-
 - (a) give the parties to the mediation process every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute.
- (10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

9. Annual general meetings

- (1) The committee may determine the date, time and place of the annual general meeting of the Association.
- (2) The notice convening the annual general meeting must specify that the meeting is an annual general meeting.
- (3) The ordinary business of the annual general meeting shall be-
 - (a) to confirm the minutes of the previous annual general meeting and of any general meeting held since that meeting; and
 - (b) to receive from the committee reports upon the transaction of the Association during the last preceding financial year; and
 - (c) to elect officers of the Association and the ordinary members of the committee; and
 - (d) to receive and consider the statement submitted by the Association in accordance with section 30(3) of the Act.
- (4) The annual general meeting may conduct any special business of which notice has been given in accordance with these Rules.

10. Special general meeting

- (1) In addition to the annual general meeting, any other general meetings may be held in the same year.
- (2) All general meetings other than the annual general meeting are special general meetings.
- (3) The committee may, whenever it thinks fit, convene a special general meeting of the Association.
- (4) If, but for this sub-rule, more than 15 months would elapse between annual general meetings, the committee must convene a special general meeting before the expiration of that period.
- (5) The committee must, on the request in writing of members representing not less than 5 per cent of the total number of members, convene a special general meeting of the Association.
- (6) The request for a special general meeting must-
 - (a) state the objects of the meeting; and
 - (b) be signed by the members requesting the meeting; and
 - (c) be sent to the address of the Secretary.

- (7) If the committee does not cause a special general meeting to be held within one month after the date on which the request is sent to the address of the Secretary, the members making the request, or any of them, may convene a special general meeting to be held not later than 3 months after that date.
- (8) If a special general meeting is convened by members in accordance with this rule, it must be convened in the same manner so far as possible as a meeting convened by the committee and all reasonable expenses incurred in convening the special general meeting must be refunded by the Association to the persons incurring the expenses.

11. *Special business*

All business that is conducted at a special general meeting and all business that is conducted at the annual general meeting, except for business conducted under the rules as ordinary business of the annual general meeting, is deemed to be special business.

12. *Notice of general meetings*

- (1) The Secretary of the Association, at least 14 days, or if a special resolution has been proposed at least 21 days, before the date fixed for holding a general meeting of the Association, must cause to be sent to each member of the Association, a notice stating the place, date and time of the meeting and the nature of the business to be conducted at the meeting.
- (2) Notice may be sent-
 - (a) by prepaid post to the address appearing in the register of members; or
 - (b) if the member requests, by facsimile transmission or electronic transmission.
- (3) No business other than that set out in the notice convening the meeting may be conducted at the meeting.
- (4) A member intending to bring any business before a meeting may notify in writing, or by electronic transmission, the Secretary of that business, who must include that business in the notice calling the next general meeting.

13. *Quorum at general meetings*

- (1) No item of business may be conducted at a general meeting unless a quorum of members entitled under these Rules to vote is present at the time when the meeting is considering that item.
- (2) Five members personally present (being members entitled under these Rules to vote at a general meeting) constitute a quorum for the conduct of the business of a general meeting.
- (3) If, within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present-

- (i) in the case of a meeting convened upon the request of members--the meeting must be dissolved; and
 - (ii) in any other case--the meeting shall stand adjourned to the same day in the next week at the same time and (unless another place is specified by the Chairperson at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjournment meeting the quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members personally present (being not less than 3) shall be a quorum.

14. *Presiding at general meetings*

- (1) The President, or in the President's absence, the Vice-President, shall preside as Chairperson at each general meeting of the Association.
- (2) If the president and the Vice-President are absent from a general meeting, or are unable to preside, the members present must select one of their number to preside as Chairperson.

15. *Adjournment of meetings*

- (1) The person presiding may, with the consent of a majority of members present at the meeting, adjourn the meeting from time to time and place to place.
- (2) No business may be conducted at an adjournment meeting other than unfinished business from the meeting that was adjourned.
- (3) If a meeting is adjourned for 14 days or more, notice of the adjournment meeting must be given in accordance with rule 12.
- (4) Except as provided in sub-rule (3), it is not necessary to give notice of an adjournment of the business to be conducted at an adjournment meeting.

16. *Voting at general meetings*

- (1) Upon any question arising at a general meeting of the Association, a member has one vote only.
- (2) All votes must be given personally or by proxy.
- (3) In the case of an equality of voting on a question, the Chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) A member is not entitled to vote at a general meeting unless all moneys due and payable by the member to the Association have been paid, other than the amount of the annual subscription payable in respect of the current financial year.

17. Poll at general meeting

- (1) If at a meeting a poll on any question is demanded by not less than 3 members, it must be taken at that meeting in such manner as the Chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
- (2) A poll that is demanded on the election of a chairperson or on a question of any adjournment must be taken immediately and a poll that is demanded on any other question must be taken at such time before the close of the meeting as the Chairperson may direct.

18. Manner of determining whether resolution carried

If a question arising at a general meeting of the Association is determined on a show of hands--

- (a) A declaration by the Chairperson that a resolution has been--
 - (i) carried; or
 - (ii) carried unanimously; or
 - (iii) carried by a particular majority; or
 - (iv) lost; and
- (b) an entry to that effect in the minute book of the Association--

is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.

19. Proxies

- (1) Each member is entitled to appoint another member as a proxy by notice given to the Secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (2) The notice appointing the proxy must--
 - (a) for a meeting of the Association convened under rule 7(7), in the form set out in Appendix 2; or
 - (b) in any other case, in the form set out in Appendix 3.

20. Committee of Management

- (1) The affairs of the Association shall be managed by the committee of management.
- (2) The Committee--

- (a) shall control and manage the business and affairs of the Association; and
 - (b) may, subject to these Rules, the Act and the Regulations, exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by these Rules to be exercised by general meetings of the members of the Association; and
 - (c) subject to these Rules, the Act and the Regulations, has power to perform all such acts and things as appear to the committee to be essential for the proper management of the business and affairs of the Association.
- (3) Subject to section 23 of the Act, the committee shall consist of--
- (a) the officers of the Association; and
 - (b) two ordinary members--

each of whom shall be elected at the annual general meeting of the Association in each year.

21. *Office holders*

- (1) The officers of the Association shall be--
- (a) a President;
 - (b) a Vice President;
 - (c) a Treasurer; and
 - (d) a Secretary
- (2) The provisions of rule 23, so far as they are applicable and with the necessary modifications, apply to an in relation to the election of persons to any of the offices referred to in sub-rule (1).
- (3) Each officer of the Association shall hold office until the annual general meeting next after the date of his or her election but is eligible for re-election.
- (4) In the event of a casual vacancy in any office referred to in sub-rule (1), the committee may appoint one of its member to the vacant office and the member appointed may continue in office up to and including the conclusion of the annual general meeting next following the date of the appointment.

22. *Ordinary member of the committee*

- (1) Subject to these Rules, each ordinary member of the committee shall hold office until the annual general meeting next after the date of election but is eligible for re-election.
- (2) In the event of a casual vacancy occurring in the office of an ordinary member of the committee, the committee may appoint a member of the Association to fill the

vacancy and the member appointed shall hold office, subject to these Rules, until the conclusion of the annual general meeting next following the date of the appointment.

23. *Election of officers and ordinary committee members*

- (1) Nominations of candidates for election as officers of the Association or a ordinary members of the committee must be--
 - (a) made in writing, signed by two members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination0; and
 - (b) delivered to the Secretary of the Association not less than 7 days before the date fixed fore the holding of the annual general meeting.
- (2) A candidate may only be nominated fore one office, or as an ordinary member of the committee, prior to the annual general meeting.
- (3) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated shall be deemed to be elected and further nominations may be received at the annual general meeting.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- (5) If the number of nominations exceed the number of vacancies to be filled, a ballot must be held.
- (6) The ballot for the election of officers and ordinary members of the committee must be conducted at the annual general meeting in such manner as the committee may direct.

24. *Vacancies*

The office of an officer of the Association, or of an ordinary member of the committee, becomes vacant if the officer or member--

- (a) ceases to be a member of the Association; or
- (b) becomes an insolvent under administration within the meaning of the Corporations Law; or
- (c) resigns from office by notice in writing given to the Secretary.

25. *Meetings of the committee*

- (1) The committee must meet at least 3 times in each year at such place and such times at the committee may determine.

- (2) Special meetings of the committee may be convened by the President or by any 4 members of the committee.

26. *Notice of committee meetings*

- (1) Written notice of each committee meeting must be given to each member of the committee at least 2 business days before the date of the meeting.
- (2) Written notice must be given to me members of the committee of any special meeting specifying the general nature of the business to be conducted and no other business may be conducted unless a quorum is present.

27. *Quorum for committee meetings*

- (1) Any 4 members of the committee constitute a quorum for the conduct of the business of a meeting of the committee.
- (2) No business may be conducted unless a quorum is present.
- (3) If within half an hour of the time appointed for the meeting a quorum is not present--
 - (i) in the case of a special meeting—the meeting lapses;
 - (ii) in any other case— the meeting shall stand adjourned to the same place and the same time and day in the following week.
- (4) The committee may act notwithstanding any vacancy on the committee.

28. *Presiding at committee meetings*

At meetings of the committee--

- (a) The president or, in the President's absence, the Vice President presides; or
- (b) If the President and Vice-President are absent, or are unable to preside, the members present must choose one of there number to preside.

29. *Voting at committee meetings*

- (1) Questions arising at a meeting of the committee, or at a meeting of any sub-committee appointed by the committee, shall be determined on a show of hands or, if a member requests, by a poll taken in such manner as the person presiding at that meeting may determine.
- (2) Each member present at a meeting of the committee, or at a meeting of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote and, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

30. *Removal of committee member*

- (1) The Association in general meeting may, by resolution, remove any member of the committee before the expiration of the member's term of office and appoint another member in his or her place to hold office until the expiration of the term of the first-mentioned member.
- (2) A member who is the subject of a proposed resolution referred to in sub-rule (1) may make representations in writing to the Secretary or President of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
- (3) The Secretary or the President may give a copy of the representations to each member of the Association or, if they are not so given, the member may require that they be read out at the meeting.

31. *Minutes of meetings*

The Secretary of the Association must keep minutes of the resolutions and proceedings of each general meeting, and each committee meeting, together with a record of the names of persons present at committee meetings.

32. *Funds*

- (1) The Treasurer of the Association must-
 - (a) Collect and receive all moneys due to the Association and make all payments authorised by the Association; and
 - (b) Keep correct accounts and books showing the financial affairs of the Association with full details of all receipts and expenditures connected with the activities of the Association.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two members of the committee.
- (3) The funds of the Association shall be derived from entrance fees, annual subscriptions, donations and other sources as the committee determines.

33. *Seal*

- (1) The common seal of the Association must be kept in the custody of the Secretary.
- (2) The common seal must not be affixed to any instrument except by the authority of the committee and the affixing of the common seal must be attested by the signatures either of two members of the committee or, of one member of the committee and of the public officer of the Association.

34. *Notice to members*

Except for the requirement in rule 12, any notice that is required to be given to a member, by on behalf of the Association, under these Rules may be given by-

- (a) Delivering the notice to the member personally; or
- (b) Sending it by prepaid post addressed to the member at that member's address shown in the register of members; or
- (c) Facsimile transmission, if the member has requested that the notice be given to him or her in this manner; or
- (d) Electronic transmission, if the member has requested that the notice be given to him or her in this manner.

35. *Winding up*

In the event of the winding up or the cancellation of the incorporation of the Association, the assets of the Association must be disposed of in accordance with the provisions of the Act.

36. *Custody and inspection of books and records*

- (1) Except as otherwise provided in these Rules, the Secretary must keep in his or her custody or under his or her control all books, documents and securities of the Association.
- (2) All account, books securities and any other relevant documents of the Association must be available for inspection free of charge by any member upon request.
- (3) A member may make a copy of any accounts, books, securities and any other relevant documents of the Association.

APPENDIX 1

APPLICATION FOR MEMBERSHIP OF (NAME OF THE ASSOCIATION)

I,(*name and occupation*),
of(*address*)
desire to become a member of
(*name of Association*)

In the event of my admission as a member, I agree to be bound by the rules of the Association for the time being in force.

.....
Signature of Applicant

.....
Date

I,(*name*), a member of the Association, nominate the applicant, who is personally known to me, for membership of the Association.

.....
Signature of Proposer

.....
Date

I,(*name*), a member of the Association, second the nomination of the applicant, who is personally known to me, for membership of the Association.

.....
Signature of Secunder

.....
Date

APPENDIX 2

FORM OF APPOINTMENT OF PROXY FOR MEETING OF ASSOCIATION CONVENED UNDER RULE 7(7)

I,(*name*),

of.....(*address*)

being a member of(*name of Incorporated Association*)

appoint(*name of proxy holder*)

of(*address of proxy holder*)

being a member of that Incorporated Association, as my proxy to vote for me on my behalf at the appeal to the general meeting of the Association convened under rule 7(7), to be held on (*date of meeting*) and at any adjournment of that meeting.

I authorise my proxy to vote on my behalf at their discretion in respect of the following resolution (insert details of resolution passed under rule 7(1)).

.....
Signed

.....
Date

APPENDIX 3

FORM OF APPOINTMENT OF PROXY

I,(name),

of.....(address)

being a member of(name of Incorporated Association)

appoint(name of proxy holder)

of(address of proxy holder)

being a member of that Incorporated Association, as my proxy to vote for me on my behalf at the annual/special * general meeting of the Association to be held on (date of meeting) and at any adjournment of that meeting.

My proxy is authorised to vote in favour of/against * the following resolution (insert details of resolution)

.....

Signed

.....

Date

* Delete if not applicable

APPENDIX 4

SCHEDULE OF FEES

Fee	Amount
Entrance fee	
Annual subscription fee	

SCHEDULE 2

SAMPLE MINUTE OF INCORPORATION MEETING

MINUTE OF MEETING OF MEMBERS OF [Insert Name of Association]

held at [Insert Place] on [Insert Date] at [Insert time] am/pm

PRESENT: [Insert names of all persons in attendance]

APLOGIES: [Insert name of apologies received]

CHAIR: [Insert name of Chair]

The Chair discussed matters relating to the incorporation of ...[Insert name of unincorporated association]... ("Association") pursuant to the provisions of the *Associations Incorporation Act 1981* (Vic) ("Act").

BUSINESS: IT WAS RESOLVED by all members present, being the majority of the members of the Association, that:

1. upon its incorporation, the Association shall be called " ...[Insert proposed name]... Incorporated";
2. that the Statement of Purposes and Rules presented to the members and discussed at this meeting be the Statement of Purposes and Rules of ...[insert proposed name]... Incorporated upon its incorporation. A copy of the approved Statement of Purposes and Rules is annexed to this Minute of Meeting;

OR

the Statement of Purposes presented to the members at this meeting and discussed, be adopted as the Statement of purposes of ..[Insert proposed name]... Incorporated upon its incorporation and that the Model Rules pursuant to the provisions of the Act be adopted as the Rules of ...[Insert proposed name]... Incorporated;

3. [Insert name of proposed public officer]... of ...[Insert address of proposed public officer]...("Applicant"), who is a resident in the State of Victoria and has attained the age of 18 be authorised to incorporate the Association under the Act and to make application to the Registrar for the incorporation of the Association and to perform all such acts and do all things as may be necessary for or ancillary to securing the incorporation of the Association under the Act;

4. the place where the Association will be carried on is ...[Insert place where business will be carried on]... and the registered address of the Association is ...[insert place to which all formal correspondence will be sent]...;
5. the details of particulars of trusts relating to the Association and copies of all Deeds and other instruments creating or embodying such trusts be handed to the Applicant and that such documents shall accompany the Application for Incorporation; and
6. the Applicant be paid from the funds of the Association in the sum of ...[Insert relevant sum]... being the fee required for the incorporation the Association.

.....
CHAIR
Confirmed as a true record by the Chairman

.....
APPLICANT
Confirmed as a true record by the Applicant