

Adapting to new laws

On 1 November 2012, the *Associations Incorporation Act 1981* will be replaced with the *Associations Incorporation Reform Act 2012* (and its associated regulations). The new Act includes 'transitional arrangements' to help associations adjust to the new laws. These are outlined below:

1. Status of the incorporated association

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

2. Statement of purposes

Once the new Act commences, the association's statement of purposes will automatically be deemed part of its rules.

If an association applies to change its rules after the new legislation starts, its statement of purposes must be included in its proposed new rules.

3. Rules

Schedule 1 of the new Act contains new items that an association's rules must address. These are:

- an association's name and purposes
- members' rights and obligations
- procedures for resignation and cessation of membership
- the process for appointment and termination of the secretary
- preparing and keeping minutes of general and committee meetings
- enabling members to access minutes of general meetings, including financial statements submitted at a general meeting
- right of members' access (if any is specified in the rules) to committee meeting minutes.

Whether an association is using its own or model rules, it does not need to rush to change them with the introduction of the new law. See below for more information.

Associations using their own rules

If an association uses its **own rules** (that is, not the model rules), these continue to be valid, but once members decide to make any changes, the rules must also address every item required in Schedule 1. In the meantime, if there is an inconsistency between the association's existing rules and the new Act, the requirements of the new Act apply.

Associations using model rules

These associations should review the new model rules to determine if they are suitable for their purposes. If these associations do not notify Consumer Affairs Victoria about their rules within **12 months** of the new laws commencing, their current rules will automatically be replaced with the new model rules.

If an association does notify Consumer Affairs Victoria, they can:

- switch to the new model rules earlier
- create their own rules.

The new model rules address all items the new Act requires to be included in the rules.

After 1 November, you can find the new model rules at consumer.vic.gov.au/forms.

An association's rules (whether their own or model rules) must address all items required under Schedule 1. If they do not, the relevant provision of the new model rules addressing that item is deemed to be included in the rules.

4. Public officer replaced with secretary

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

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

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

5. Financial statements

The new Act will introduce a three-tiered reporting structure. An association will be classed as tier one, two or three, depending on its revenue. For example:

- Tier one: \$0 - \$250,000
- Tier two: \$250,000 - \$1,000,000
- Tier three: more than \$1,000,000.

This new structure will replace the current 'prescribed' and 'non-prescribed' reporting structure.

Incorporated associations must understand the new structure and work out which tier they come under, as this will affect their reporting obligations. Visit consumer.vic.gov.au/associations for details.

New format for submitting financial statements

Consumer Affairs Victoria will send the annual statement in a new form to associations with financial year end dates on or after 1 November 2012.

Associations with a financial year end date before 30 June 2013 will have the choice of submitting their annual statement in this new form or the current 'prescribed/non-prescribed' form. See 'Options for submitting statements' below for details.

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

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

Options for submitting statements

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

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

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

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

6. Ongoing processes

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

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

Any resolution, appointment or notice made under the old Act is deemed valid under the new Act.

Any actions taken by Consumer Affairs Victoria under the old Act are deemed to have been taken under the new Act.

Want more information?

Consumer Affairs Victoria

Consumer Affairs Victoria registers and regulates incorporated associations in Victoria, and administers incorporated associations law.

consumer.vic.gov.au/associations