

Victorian associations – legislative changes

This fact sheet will bring you up to date with proposed changes to the law which may affect your incorporated association. It applies to associations incorporated under the Victorian *Associations Incorporation Act 1981*.

Changes to the *Associations Incorporation Act 1981* (Vic) (“the Act”) mean that committee members of associations will have new duties, and associations with assets of less than \$500,000 will not have to be audited.

These and other changes will come into effect by 1 July 2012. This will allow time to develop new Model Rules, to reflect these changes.

The changes relate to:

- Duties of committee members;
- Members’ rights;
- Annual reporting requirements and audit thresholds; and
- Allowing associations to trade.

Duties of committee members

A new definition of “office holder” will deem those who effectively control the organisation to be officer holders. The duties of office holders are to be spelled out in the Act. Associations will be required to indemnify officers, but will only be able to do so for actions taken in good faith.

It is arguable that directors or committee members of associations always had these duties, but this amendment would remove any doubt.

These changes bring associations more into line with companies, which are regulated under the *Corporations Act 2001* (Cth).

The proposed new statutory duties are:

- Duty of care and diligence;
- Duty of good faith and proper purpose; and
- Duty to avoid trading while insolvent.

The **duty not to misuse information or position** will apply to former committee members as well as current committee members and those deemed to be office holders.

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Penalties

- Committee members (and any other “office holders”) risk a fine if they breach a duty. A penalty may apply where the breach is serious or where it materially prejudices the interests of the association or its members, or the association’s ability to pay its creditors.
- Criminal penalties may apply to breaches of the insolvent trading provisions.

Defences

- A “business judgement rule” will apply to the duty to act with care and diligence, similar to the rule in the *Corporations Act 2001*.
- In certain circumstances, a court will be able to accept an office holder’s reliance on another person’s advice as reasonable, and excuse them for a breach of duty.
- An incorporated association may indemnify members of the committee against any liability incurred in good faith on behalf of the association.

Members’ rights

Members are to be given additional rights, including the right to inspect and obtain a copy of the rules, the membership register, and minutes of general meetings. Members’ rights in relation to voting at general meetings have also received further protection.

Minutes of the Annual General Meeting will have to include a full copy of the financial statements.

Public Officer / Secretary

- The position of Public Officer will have a name change to “Secretary”.
- The Secretary does not have to reside in Victoria but must reside in Australia;
- Associations will be able to set out in their rules, the method for replacing the Secretary;
- It will be mandatory for the Secretary to keep a register of members.

Trading

The trading prohibition is to be removed, being regarded as out of date given the greater reliance of associations on trading as a source of funding.

Annual reporting

Associations with assets of \$500,000 or less will not have to be audited. There will be three tiers of associations, with graduated annual reporting requirements.

Grievance and dispute resolution procedures

Natural justice requirements will be spelled out: where disciplinary action is taken against a member, the member must be informed of the grounds for the action, and be given an opportunity to be heard. Disputes are to be determined by an independent arbiter.

Other changes

Some other miscellaneous changes are also proposed.

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