



2 October 2012

Incorporated Associations RIS
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001

To Whom It May Concern

I attach a copy of Our Community's submission to Consumer Affairs Victoria on the revised regulations under the Associations Incorporation Act.

Our Community has for over a decade worked closely with not-for-profit organisations in Victoria, and we have frequently been called upon to adjudicate matters on which the old Model Rules were silent or were ambiguous. We are under no doubt that the old rules required close attention and extensive alteration. The new Rules have done much to remove doubt as to the interpretation of a number of clauses; however, they may have also introduced some new difficulties, and we would hope that Consumer Affairs would be prepared to look seriously at suggestions for improvement even at this late stage.

On a wider front, we seek reassurance that the Victorian government is committed to the most important measure to reduce red tape and confusion – the standardisation of incorporation requirements across state jurisdictions.

Yours sincerely

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OUR COMMUNITY: SUBMISSION TO CONSUMER AFFAIRS ON REVISED MODEL RULES

The proposed new Model Rules for Victorian Associations are in the main a well-thought-out and improved version of the old Model Rules. At a number of places, however, further improvements seem within reach.

Nomenclature

We note with approval that the Public Officer has now been renamed the Secretary, bringing the law into line with common usage. Can we also suggest that the Model Rules be renamed 'Model Constitution'? The confusion between rules (meaning constitution) and rules (meaning bylaws) is common and confounding.

Record of Names

In s. 37.3,

If the question is whether or not to confirm the minutes of a previous meeting only members who were present at that meeting may vote

Whatever the merits of the actual provision, this would seem to necessitate a means of discovering who was present at the previous meeting; and the previous requirement to this effect seems to have been deleted. The new s. 40.2

The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.

omits the previous requirement for a list of those present;

*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.***

Such a list would also seem to be required for purposes of establishing legal liability in cases of negligence.

Election of Officebearers

The Model Rules do not include the option of either

- (a) having officebearers serve for more than one year, or
- (b) having the General Meeting elect the members of the Committee who then elect their own officebearers.

Both of these can, of course, be inserted into an Association's rules, at the cost of paying extra for a non-standard issue, but some alternative might be preferable, as in the SA provisions:

The first committee shall hold office until the first annual general meeting after incorporation. **At this time, one half of the members of the committee, who shall be chosen by ballot, shall retire from the committee. At each subsequent annual general meeting one half of the members of the committee, being the longest serving members, shall retire.**

The association may wish to provide for a different procedure, e.g. that all committee positions shall be subject to re-election at each AGM.

Presiding

In S. 45.2, the new wording

- (2) If the President and the Vice-President are both absent, the Chairperson of the meeting must be—

omits the previous “absent **or unable**”. We would suggest both restoring it and adding “or unwilling”; given that the meeting has been called against the wishes of the executive, it seems possible that a President might both decline to preside and attempt to prevent any other person from doing so¹.

Casual Vacancies

In S. 56, the new wording

56 Filling casual vacancies

The Committee may appoint an eligible member of the Association to fill a position on the Committee that—

- (a) has become vacant because of rule 55; or
(b) is not filled by election at the last annual general meeting.

would seem to make it impossible to fill any casual vacancy that does not fall under rule 55. This has the potential to cause problems, even bearing in mind that

- (4) The Committee may continue to act despite any vacancy in its membership.

Indeed, this provision contains potential dangers of its own, and some additional clause such as this, from the Queensland Rules, should perhaps be considered;

- (2) The continuing members of the management committee may act despite a casual vacancy on the management committee.

(3) However, if the number of committee members is less than the number fixed under rule 24(1) as a quorum of the management committee, the continuing members may act only to—

- (a) increase the number of management committee members to the number required for a quorum; or**
(b) call a general meeting of the association.

1 See Davidson, Proposal for National Uniform Model Rules for Incorporated Associations

If the president and the vice-president are absent from a general meeting or unwilling to act, the members present shall elect one from their number to preside as chairperson at the meeting.

Access to Documents

All the matters listed above are comparatively minor difficulties that will seldom come into effect. The next issue presents problems that may be more far-ranging and more common.

S. 74 states that

A member may make a copy of any accounts, books, securities and any other relevant documents of the Association.

where

(4) For purposes of this rule—

relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following—

- (a) its membership records;
- (b) its financial statements;
- (c) its financial records;
- (d) records and documents relating to transactions, dealings, business or property of the association.

If this is intended to mean “any document of any description held by the Association” it will create innumerable problems. If it means something less than that, this requires extensive clarification.

Does the clause, for example, cover the minutes of the Committee of Management? The minutes of General Meetings are specified as open, and the minutes of Committee meetings are not; does this bring into effect *‘Expressio unius est exclusio alterius’*, or not? If a member of the Collingwood Football Club wishes to examine player contracts, can they? The contracts would certainly seem to relate to transactions.

It may well be that I have misinterpreted these provisions, and that they are less sweeping than they appear; if that is the case, however, I would expect many other people to be similarly confused. Whatever the situation, it will require considerable explanation if it is not to cause confusion or, indeed, panic.

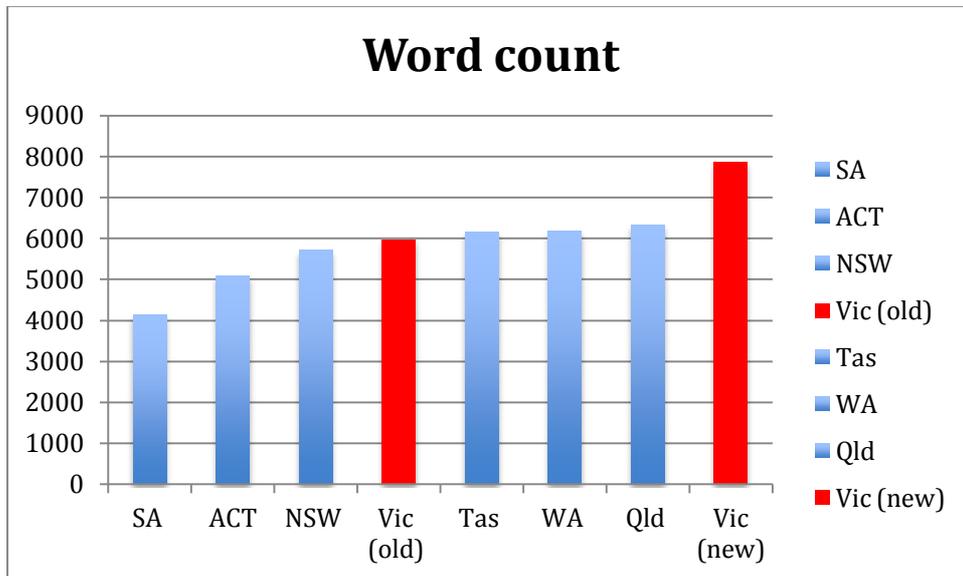
Alternative Formats

In some ways, too, the Model Rules model is showing its age. It is entirely feasible for an online rule development process to proceed by offering new organisations a choice at every point of alternative clauses that fit their particular circumstances. Such a system might, for example, offer organisations a choice between the one-year term clause offered by the Model Rules and a two-or three-year term with staggered retirements, or allow them to select between alternative provisions for the election of the officebearers either by the General Meeting or by the Board. The one-size-fits-all approach is neither efficient nor inevitable.

The Wider View

While the new Model Rules are in many ways superior to the old, they still of their nature do not address the overriding problem that requirements in each Australian state differ widely, making it difficult to meet the standards of all states. Efforts to align requirements through

COAG are not mentioned. Are these changes being introduced in concert with efforts in other states? Has there been any consultation with other states? Have all efforts been made to reduce differences in phrasing between states?



The new Rules are considerably more detailed than the old; has this change of approach been coordinated with other jurisdictions? Has any attempt been made, even, to incorporate clauses from the Rules applicable in other states to reduce the difference between jurisdictions?