

## TO VFC MEMBERS

### **AMENDMENTS TO VERMONT FOOTBALL CLUB RULES**

Following the Victorian Government's passing of the **Associations Incorporation Reform Act 2012**, it is necessary for us to amend our Rules in line with the changes.

To do this we have cross referenced the Vermont FC Rules as they stood after the 2012 Annual General Meeting and the Model Rules for an Incorporated Association as produced by the Government following the adoption of the new Act.

Our Rules are different from the average Club Rules in that we have had to expand them to include operations of the Wantirna Hill Club as required by the Victorian Gaming Commission.

Attachment (1) is a Summary of Changes provided by Pilch, an organisation that provides Legal assistance to Non Profit Organisations.

In our view, these changes do not alter the way we administer the Club now, but they introduce greater responsibility for those in charge, but at the same time introduce an indemnity by the Club for such "Office Holders", subject to a number of provisions.

#### **RULE 4. INTERPRETATIONS**

Add definition of "Office Holders"

**"Office Holders"** A member of the Executive Committee, any Sub Committees and a person, including and employee, who is involved in key decisions that affect the operations of the Club or who is influential in the affairs of the Club.

#### **RULE 5.10 DISCIPLINE, SUSPENSION AND EXPULSION OF MEMBERS**

##### **EXISTING 5.10 RULE**

##### **5.10 DISCIPLINARY ACTION & GRIEVANCE PROCEDURE**

###### **1. Grounds for taking disciplinary action**

The Committee may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Club; or
- (c) has engaged in conduct prejudicial to the Club.

###### **2. Disciplinary subcommittee**

- (1) If the Committee is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Committee must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary subcommittee—
  - (a) may be Committee members, members of the Club or anyone else; but
  - (b) must not be biased against, or in favour of, the member concerned.

###### **3. Notice to member**

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—

- (a) stating that the Club proposes to take disciplinary action against the member; and
  - (b) stating the grounds for the proposed disciplinary action; and
  - (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
  - (d) advising the member that he or she may do one or both of the following—
    - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
    - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
  - (e) setting out the member's appeal rights under rule 5.10.5.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

#### 4. Decision of subcommittee

- (1) At the disciplinary meeting, the disciplinary subcommittee must—
  - (a) give the member an opportunity to be heard; and
  - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary subcommittee may—
  - (a) take no further action against the member; or
  - (b) subject to subrule (3)—
    - (i) reprimand the member; or
    - (ii) suspend the membership rights of the member for a specified period; or
    - (iii) expel the member from the Club.
- (3) The disciplinary subcommittee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

#### 5. Appeal rights

- (1) A person whose membership rights have been suspended or who has been expelled from the Club under rule 5.10.4 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
  - (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
  - (b) to the Secretary not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (5.10.2), a disciplinary appeal meeting must be convened by the Committee as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (4) Notice of the disciplinary appeal meeting must be given to each member of the Club who is entitled to vote as soon as practicable and must—
  - (a) specify the date, time and place of the meeting; and
  - (b) state—

- (i) the name of the person against whom the disciplinary action has been taken; and
- (ii) the grounds for taking that action; and
- (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

#### 6. Conduct of disciplinary appeal meeting

- (1) At a disciplinary appeal meeting—
  - (a) no business other than the question of the appeal may be conducted; and
  - (b) the Committee must state the grounds for suspending or expelling the member and the reasons for taking that action; and
  - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (5.10.1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A member may not vote by proxy at the meeting.
- (4) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

#### —Grievance procedure

#### 7. Application

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
  - (a) a member and another member;
  - (b) a member and the Committee;
  - (c) a member and the Club.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

#### 8. Parties must attempt to resolve the dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

#### 9. Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 5.10.8, the parties must within 10 days—
  - (a) notify the Committee of the dispute; and
  - (b) agree to or request the appointment of a mediator; and
  - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement—
    - (i) if the dispute is between a member and another member—a person appointed by the Committee; or

- (ii) if the dispute is between a member and the Committee or the Club—  
a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the Committee may be a member or former member of the Club but in any case must not be a person who—
  - (a) has a personal interest in the dispute; or
  - (b) is biased in favour of or against any party.

#### 10. Mediation process

- (1) The mediator to the dispute, in conducting the mediation, must—
  - (a) give each party 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 throughout the mediation process.
- (2) The mediator must not determine the dispute.

#### 11. Failure to resolve dispute by mediation

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

### **NEW RULE 5.10 ( taken from Model Rules 19-29)**

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### **RULE 8 POWERS & DUTIES OF THE EXECUTIVE COMMITTEE**

Add new clause 8.4 that describes in more detail responsibilities of Committee Members

#### 8.4 GENERAL DUTIES

- (1) As soon as practicable after being elected or appointed to the Committee, each committee member must become familiar with these Rules and the Act.
- (2) The Committee is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Committee comply with these Rules.
- (3) Committee members must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) Committee members must exercise their powers and discharge their duties—
  - (a) in good faith in the best interests of the Club; and
  - (b) for a proper purpose.
- (5) Committee members and former committee members must not make improper use of—
  - (a) their position; or
  - (b) information acquired by virtue of holding their position—so as to gain an advantage for themselves or any other person or to cause detriment to the Club.
- (6) In addition to any duties imposed by these Rules, a committee member must perform any other duties imposed from time to time by resolution at a general meeting.

### **RULE 10. APPOINTMENT OF VACANCIES ON THE EXECUTIVE COMMITTEE**

Add new Clause 10.3 in relation to replacing a Secretary

10.3 If the position of Secretary becomes vacant, the Committee must appoint a member to the position within 14 days after the vacancy arises and advise the Registrar.

## **RULE 11 SUB COMMITTEES**

Add additional sentence to 11.1 to note that Sub Committees were subject to the new Clause 8.4 General Duties.

“In particular Rule 8.4 General Duties”

## **RULE 15 THE SECRETARY**

Replace entire rule due to increased responsibilities of a Secretary

### **Existing Rule**

#### **15. THE SECRETARY**

The secretary’s functions include, but are not limited to—

- (a) calling meetings of the association, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the president of the association; and
- (b) keeping minutes of each meeting; and
- (c) keeping copies of all correspondence and other documents relating to the association; and
- (d) maintaining the register of members of the association.
- (e) dealing with correspondence

## **NEW RULE**

### **15. Secretary**

- (1) The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.
- (2) The Secretary must—
  - (a) maintain the register of members in accordance with rule 5.8 and
  - (b) keep custody of the common seal of the Club
  - (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
  - (d) perform any other duty or function imposed on the Secretary by these Rules.
- (3) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment

## **RULE 17 FINANCIAL MANAGEMENT**

Replace entire Rule with Rules 69, 70 and 71 of the Model rules

### **EXISTING RULE**

#### **17 FINANCIAL MANAGEMENT**

##### **17.1 Management of Funds**



- (1) The Club must open accounts with a financial institutions from which all expenditure of the Club is made and into which all of the Club's revenue is deposited. Except as per Rule 11.4 in Relation to Sub Committees.
- (2) Subject to any restrictions imposed by a general meeting of the Club, the Committee may approve expenditure on behalf of the Club.
- (3) The Committee may authorise the Manager, Secretary or President to expend funds on behalf of the Club (including by electronic funds transfer) up to a specified limit without requiring approval from the Committee for each item on which the funds are expended.
- (4) All cheques, electronic transfers, and other negotiable instruments must be signed/approved by at least two Committee persons including the Manager. (Subject to Sub Rule 17.1.3) If this is not possible, the transaction is to be recorded and payment ratified retrospectively.
- (5) All funds of the Club must be deposited into the financial account of the Association as soon as practical to do so after receipt.
- (6) With the approval of the Committee, the Manager may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

## **17.2 Financial Records**

- (1) The Club must keep financial records that—
  - (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- (2) The Club must retain the financial records for 7 years after the transactions covered by the records are completed.
- (3) The Manager must keep in his or her custody, or under his or her control—
  - (a) the financial records for the current financial year; and
  - (b) any other financial records as authorised by the Committee.

## **17.3 Financial statements**

- (1) For each financial year, the Committee must ensure that the requirements under the Act relating to the financial statements of the Club are met.
- (2) Without limiting subrule (1), those requirements include—
  - (a) the preparation of the financial statements;
  - (b) if required, the review or auditing of the financial statements;
  - (c) the certification of the financial statements by the Committee;
  - (d) the submission of the financial statements to the annual general meeting of the Club;
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.
- (3) The Financial Year of the Club shall be from the 1<sup>st</sup> of November to the 31<sup>st</sup> of October or as decided at an Annual or General Meeting

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## **RULE 19 SEAL**

Change word “Manager” to “**Secretary**”

## **RULE 21 CUSTODY RECORDS**

Replace existing with Model Rules 75

### **Existing Rule**

#### **1. CUSTODY RECORDS**

Except as otherwise provided in these Rules. The Manager shall keep in his custody or under his or her control all books, computer records and securities of the Club, other than those referred to in Rule 17.3.1.

### **New Rule**

## **21. CUSTODY AND INSPECTION OF BOOKS AND RECORDS**

### **(1) Members may on request inspect free of charge—**

- (a) the register of members;**
- (b) the minutes of general meetings;**
- (c) subject to subrule (2), the financial records, books, securities and any other relevant document of the Club, including minutes of Committee meetings.**

### **(2) The Committee may refuse to permit a member to inspect records of the Club that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Club.**

### **(3) The Committee must on request make copies of these rules available to members and applicants for membership free of charge.**

### **(4) Subject to subrule (2), a member may make a copy of any of the other records of the Club referred to in this rule and the Club may charge a reasonable fee for provision of a copy of such a record.**

### **(5) 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 Club 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 Club.**

## **ADD NEW RULE 28 INDEMNITY**

### **28. INDEMNITY**

Subject to the provisions of any relevant statute, members of the Management Committee and other Office Holders shall be indemnified by the Club for all acts done by them in good faith on its behalf. Unless it arises as a result of his or her dishonesty, failure to exercise the degree of care, adhere to established rules and guidelines, diligence and skill required by law.

## **ADD NEW RULE - CONFLICT OF INTEREST**

### **29. CONFLICT OF INTEREST**

- (1) A committee or Sub Committee member who has a material personal interest in a matter being considered, at a convened committee meeting in accordance with these Rules, must disclose the nature and extent of that interest to the Committee or Sub Committee.
- (2) The member—
  - (a) must not be present while the matter is being considered at the meeting; and
  - (b) must not vote on the matter.
- (3) This rule does not apply to a material personal interest—
  - (a) that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the Association.
- (4) If there are insufficient committee members to form a quorum because a member who has a material personal interest is disqualified from voting on a matter, a general meeting may be called to deal with the matter.

## **ADD NEW RULE - MINUTES OF MEETINGS**

### **30. MINUTES OF MEETINGS**

- (1) The Committee ( Including Appointed Sub Committees) must ensure that minutes are taken and kept of each committee meeting.
- (2) The minutes must record the following—
  - (a) the names of the members in attendance at the meeting;
  - (b) the business considered at the meeting;
  - (c) any resolution on which a vote is taken and the result of the vote;
  - (d) any material personal interest disclosed under Rule 29.

## **ADD NEW RULE - LEAVE OF ABSENCE**

### **31. LEAVE OF ABSENCE**

- (1) The Committee may grant a committee member leave of absence from committee meetings for a period not exceeding 3 months.
- (2) The Committee must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the committee member to seek the leave in advance.

## **ADD NEW RULE - NOTICE REQUIREMENTS**

### **32. NOTICE REQUIREMENTS**

- (1) Any notice required to be given to a member or a committee member under these Rules may be given—
  - (a) by handing the notice to the member personally; or
  - (b) by sending it by post to the member at the address recorded for the member on the register of members; or
  - (c) by email or facsimile transmission.
- (2) Subrule (1) does not apply to Emergency Meetings.
- (3) Any notice required to be given to the Association or the Committee may be given—
  - (a) by handing the notice to a member of the Committee; or
  - (b) by sending the notice by post to the registered address; or
  - (c) by leaving the notice at the registered address; or
  - (d) if the Committee determines that it is appropriate in the circumstances—
    - (i) by email to the email address of the Association or the Secretary; or
    - (ii) by facsimile transmission to the facsimile number of the Club.

**Lee Bidstrup**

**Manager**

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## Reforms for Victorian incorporated associations

May 2012

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### Background and timing

In 2009 and 2010, the Victorian Government introduced amendments to the laws which regulate all incorporated associations in Victoria, the *Associations Incorporation Act 1981* (**the current Act**).

The reforms introduced a number of changes to the way in which incorporated associations manage their affairs. Importantly, while some of the reforms came into effect immediately, the majority of the changes were deferred until a later date. Those changes have never come into force.

In April 2012, the Victorian Parliament passed the *Associations Incorporation Reform Act 2012* (**the new Act**), incorporating the 2009 and 2010 changes in a re-write of the current Act. This new Act means that the uncommenced provisions of the 2009 and 2010 amendments will never commence, but the changes will be picked up in the new Act when it commences.

Following is a summary of the key changes introduced by the new Act.

New Model Rules for incorporated associations are in the process of being drafted and will reflect the changes introduced by the new Act.

It is expected that the new Act will commence operation by **1 December 2012**, but could be brought into force earlier.

Note: The following is a summary of some of the more significant changes introduced by the new Act. Remember, the new Act has not yet commenced – it is expected to commence later in 2012.

This summary is not an exhaustive list of all the changes introduced by the new Act. If you would like to know about all of the changes, there is a link to the legislation and other resources at the end of this document. Alternatively contact PilchConnect on (03) 8636 4444.

### Key reforms in the new Act

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#### Codification of duties for office holders

The new Act spells out legal duties applying to office holders (including former office holders), in addition to clarifying their current obligations. Under the new Act, an 'office holder' is defined as:

- ▶ a member of the committee;
- ▶ the secretary; or

- 
- ▶ a person, including an employee of the association, who is involved in key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association.

The practical effect of defining an 'office holder' will be minimal, as the common law (judge-made law) already imposes duties on those governing an incorporated association. However the new Act will clarify the exact nature of the duty as it applies to incorporated associations, including:

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- ▶ Clarifying the existing duty to not make improper use of information or position;
  - ▶ Introducing a legislative duty to exercise powers and discharge duties with reasonable care and diligence. Note: business judgment defence listed below;
  - ▶ Introducing a legislative duty to exercise powers and discharge duties in good faith and for a proper purpose; and
  - ▶ Introducing a legislative duty to prevent the association from trading while it is insolvent. (An association is 'insolvent' when it cannot pay its debts when they are due.) Note: this duty is a result of the application of the *Corporations Act 2001* (Cth) to insolvent associations.

The new Act also introduces civil penalties (fines of up to \$20,000) for office holders found to have fallen short of these duties, subject to a number of defences (see below).

### **Defences for office holders**

#### The 'business judgment' rule

The new Act introduces a 'business judgment' defence to claims that an office holder has failed to meet the required standard of care and diligence. Reliance on this defence will be available where an office holder:

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- ▶ makes the judgment in good faith for a proper purpose;
  - ▶ does not have a material interest in the subject matter of the judgment;
  - ▶ appropriately informed themselves about the subject matter of the judgment; and
  - ▶ rationally believes the judgment is in the best interests of the association (an objective test).

This defence was arguably always available to committee members of incorporated associations, however the new Act confirms this.

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#### Reliance on information or advice

The new Act introduces a defence to claims that an office holder has breached a legislative duty where that office holder has reasonably relied on information or advice.

When determining what will be 'reasonable', the new Act creates a presumption that a number of sources of information or advice can be reasonably relied upon – as long as the reliance is in good faith and an independent assessment of the advice has occurred.

The presumption applies to information or advice received from:

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- ▶ employees of the association that the office holder reasonably believes are reliable and competent;
  - ▶ professional advisors where the subject matter falls within their scope of expertise;
  - ▶ another office holder when acting within their authority; or
  - ▶ a sub-committee of the association, where the office holder is not a member of the sub-committee.



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### Indemnity for office holders

The new Act creates an obligation on all incorporated associations to indemnify office holders against any liability incurred in good faith by that office holder on behalf of the incorporated association in the course of performing his or her duties.

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Currently, many organisations have a rule to ensure that committee members are indemnified for personal loss, however this amendment makes it a requirement for all associations to indemnify the broader category of 'office holders'.

### Tiered reporting procedures

The new Act removes the prescribed/non-prescribed distinction applying to associations, which currently sets disclosure and reporting obligations. The new Act introduces a three-tiered approach to reporting, based on total revenue for the organisation's financial year.

#### Tier one

Tier one associations have a total revenue of less than \$250,000 (unless other amount prescribed), or have been declared by the Registrar of Consumer Affairs Victoria (**CAV**) in exceptional circumstances.

Tier one associations will continue to report to CAV on the same annual basis as applied to 'non-prescribed' associations in the current Act. However, a tier one association must have accounts reviewed by an independent accountant if, at a general meeting, a majority of members present at the meeting vote to require it, or if CAV directs the association to do so.

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#### Tier two

Tier two associations have total revenue of between \$250,000 and \$1 million, or have been declared by CAV in exceptional circumstances.

Tier two associations will be required to have their accounts 'reviewed' by a recognised accountant or any other person approved by the Registrar. The reviewer must be independent, conduct the review in accordance with relevant industry standards, and provide a written report of the review to the association.

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This review differs to a formal audit, however an association must have its accounts audited by an independent accountant if, at a general meeting, a majority of members present at the meeting vote to require it, or if CAV directs the association to do so.

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#### Tier Three

Tier three associations have a total revenue exceeding \$1 million.

Tier three associations will continue to report to CAV on the same basis as applies to 'prescribed' associations in the current Act (however the new Act adds the National Institute of Accountants to the current list of approved accountants).

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Generally, the new Act provides scope for an association to apply to CAV for an exemption from any or all of the reporting requirements for a particular year or longer.

### **Merger of the Public Officer / Secretary role**

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The new Act replaces all references to 'public officer' with 'secretary'. In most cases, the secretary will assume the responsibilities of the public officer.

Transitional provisions in the new Act make it clear that the public officer of an association prior to the new Act coming into force will be deemed to be the secretary of that association while it is operating under its old rules. Importantly, an association that operates under the existing model rules has 12 months from the commencement of the new Act to adopt the new model rules, or change its rules and have them approved by CAV (otherwise after 12 months the new model rules will apply automatically). An association operating under its own rules (ie, rules previously approved by CAV) can continue to use them once the new Act commences, until it either has new rules approved by CAV or it chooses instead to adopt the new model rules.

### **Removal of the prohibition on trading**

The current Act stipulates that an association is not permitted to trade, either in its own right, or as a trustee, with some (complicated!) exceptions.

The new Act abolishes the prohibition on trading, allowing associations to engage in trade or trading activities consistent with their purposes. The prohibition on associations securing pecuniary profits for its members remains in force.

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### **Use of technology at committee and general meetings**

The new Act specifically allows associations to hold valid committee meetings and general meetings via new technology (eg teleconference) provided that the technology allows meeting participants to 'clearly and simultaneously communicate with each other'. This amendment acknowledges the diverse range of methods used to conduct meetings with participants in different locations.

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### **New matters that must be provided for in an association's rules**

The Schedule to the current Act stipulates 17 core matters that must be provided for in the rules of an association. The new Act restructures these items and inserts several new matters.

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The rules of an incorporated association will now be required to cover new matters in relation to the keeping of, and access to, minutes of meetings. All incorporated associations will need to have rules which:

- ▶ require that accurate minutes of all general and committee meetings be prepared and kept;
- ▶ provide members with access to the minutes of the general meetings of the incorporated association (including accounting records and financial statements); and
- ▶ clarify whether or not members can have access to the minutes of meetings of the committee of management of the incorporated association (and, if so, the terms and conditions on which minutes will be made available).

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Other significant additions include requirements for associations to provide for the:

- ▶ rights, obligations and liabilities of members;
  - ▶ resignation of a member or cessation (ending) of membership;
  - ▶ procedures for the appointment and removal of the secretary; and
  - ▶ disposition of any surplus assets on the winding up or dissolution (ending) of the association.
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### **Removal of members of the committee (and secretary)**

The new Act introduces a number of triggering events, in addition to those in the association's rules, where a committee member (including the secretary) will be taken to have vacated their office. These events include where the person:

- ▶ resigns by written notice to the committee;
- ▶ is removed by special resolution at a general meeting;
- ▶ dies;
- ▶ becomes bankrupt;
- ▶ becomes a 'represented person' for the purposes of the *Guardianship and Administration Act 1986*; or
- ▶ is the secretary and ceases to reside in Australia.

A committee member is also taken to have vacated his or her office if a statutory manager is appointed to conduct the affairs of the association.

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### **Conflicts of interest and committee members**

The new Act introduces changes to the requirements for disclosing and managing conflicts of interest at committee level. The term 'pecuniary interest' in the current Act is replaced by 'material personal interest' in the new Act (this makes it a broader category – a *non-financial* interest may be included).

A committee member who has a material personal interest in a matter being considered at a committee meeting must not be present while the matter is discussed and voted on. This differs to the position in the current Act, which allows committee members with a pecuniary interest in a matter to be present during deliberations, despite not being able to vote on the matter.

### **Clarification of the rights of members**

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The new Act clarifies the rights of members of associations, including the circumstances in which members can inspect or get a copy of the rules.

The new Act also clarifies a member's rights to:

- ▶ be notified of the date, time and place of all general meetings of the incorporated association;
  - ▶ attend and vote at general meetings (if their membership allows for voting); and
  - ▶ be sent a proxy form, where proxies are permitted.
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### Grievance procedures

The new Act sets out specific requirements for an association's grievance procedures, rather than the current Act which simply notes in the Schedule that an association's rules must include a procedure for addressing grievances.

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An association's grievance procedures must:

- ▶ give each party to a dispute an opportunity to be heard; and
- ▶ be determined by an unbiased decision maker.

### Disciplinary action against a member

The new Act also introduces new requirements for an association's disciplinary procedures (but note it is not compulsory for an association to include disciplinary procedures in its rules).

If an association proposes to take disciplinary action against a member, the association must comply with its own disciplinary procedures and must ensure that:

- ▶ the member who is the subject of the disciplinary procedure is informed of the grounds upon which the disciplinary action is proposed;
- ▶ the member is given an opportunity to be heard;
- ▶ any outcome arising from a disciplinary proceeding is determined by an unbiased decision maker; and
- ▶ the disciplinary procedure is completed as soon as is reasonably possible.

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### A note on rules

If an association's rules contain matters that are inconsistent with the new requirements, the inconsistent part of the rules will be invalid once the new Act commences. Also, if these rules do not cover matters required by the new Act, the new model rule(s) relevant to these matters will apply. Associations may need to review and/or update their rules to make sure they are compliant with the new requirements.

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### Further information and resources

- ▶ For the full text of the *Associations Incorporation Reform Act 2012*, see [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)
- ▶ PilchConnect has a webpage that is tracking these reforms at [www.pilch.org.au/legalupdates](http://www.pilch.org.au/legalupdates)
- ▶ PilchConnect's earlier submissions on the reforms are available at [www.pilch.org.au/!Areform/](http://www.pilch.org.au/!Areform/)
- ▶ PilchConnect's e-bulletin will keep subscribers updated on any developments. Subscribe at [www.pilch.org.au/subscribe](http://www.pilch.org.au/subscribe)