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New regulations governing incorporated associations in Victoria

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Meetings
Rule 35

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Key changes to the
model rules
include:

Email
Address

Electronic
Signature

Other
matters

Conflict of Interest - Rule 65

Stronger disclosure requirements for a conflict of interest. Committee members that have a material personal interest in a matter being considered must disclose their position, as well as the nature and extent of their interest, to the committee. The committee must also maintain a conflict of interest register that records any material personal interest declared by a member, as well as a management plan documenting actions required to mitigate the conflict (Rule 65).

The conflict of interest register must contain the following:

- (a) the name and position of the member who has disclosed a personal interest s65(5)(a);
- (b) a description of the nature and extent of that interest s65(5)(b);
- (c) a management plan documenting actions required to mitigate the conflict s65(5)(c).

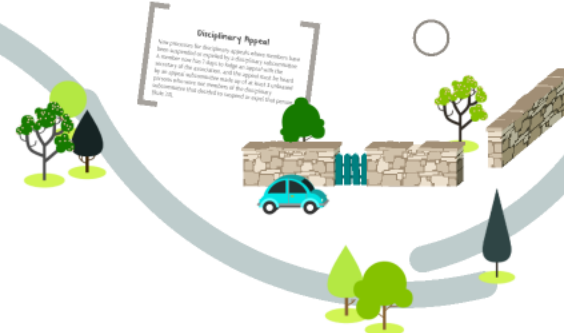
Grievance Procedures

There are changes to grievance procedures relating to mediation. Mediators must be impartial and the committee or association must ensure the parties cannot give an opinion on the dispute until the mediation is complete. The new model rules provide that any conflict of interest must be disclosed to the committee or association.

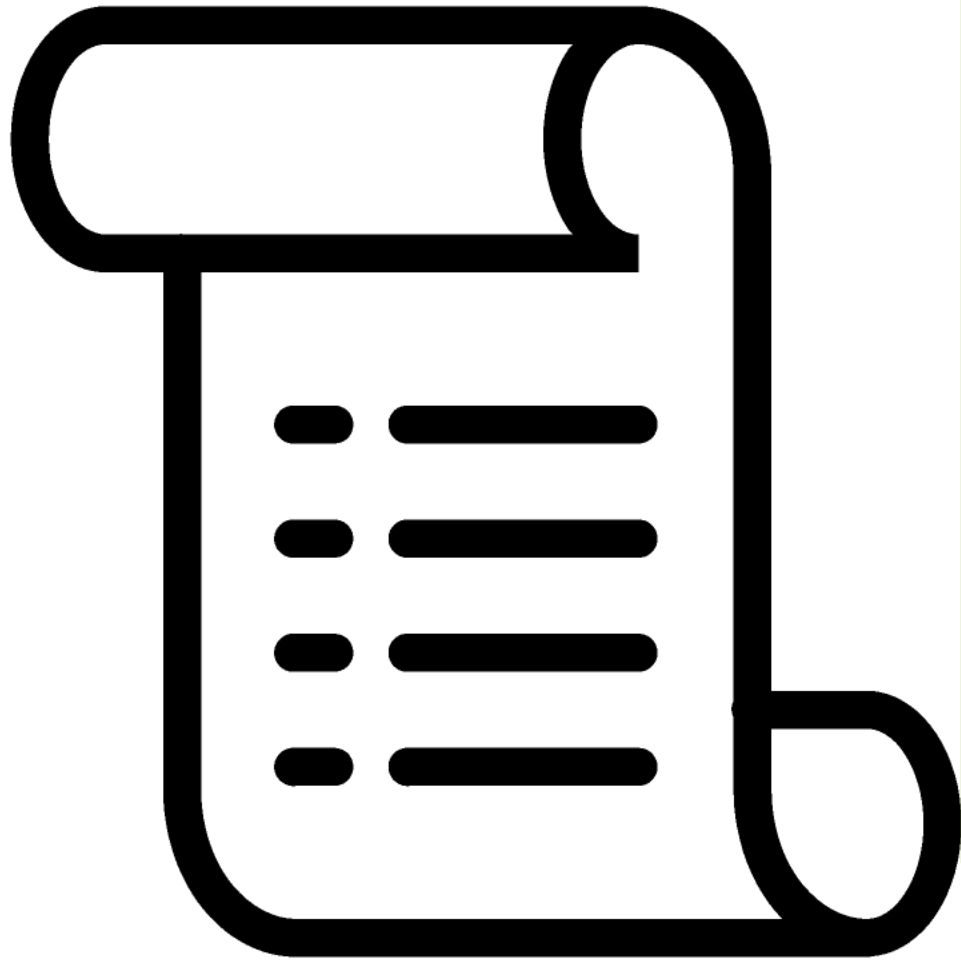
Mediation for Members

Disciplinary Appeal

New provisions for disciplinary appeals where members have been suspended or expelled from the association or association members of the association. The new model rules provide that any conflict of interest must be disclosed to the committee or association.



The model rules for
registered incorporated
associations have changed



The new Associations Incorporation Reform Regulations 2023 (Vic) have altered the Model Rules. Consumer Affairs Victoria (CAV) have communicated that it is important for associations to review and circulate the new model rules to ensure that everyone understands their rights and obligations.

**The model rules for
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**The model rules for
registered incorporated
associations have changed**

The model rules for registered incorporated associations have undergone several updates. These updates include changes to support the flexible use of technology, new processes for disciplinary appeals, changes to grievance procedures regarding mediation, and stronger disclosure requirements for conflicts of interest. The turnover thresholds for reporting purposes have also changed and now align with the requirements of the ACNC for registered charities.

How have the changes been applied?

The changes only apply if you are using the Model Rules. If you have previously made even small changes to the Model Rules, and submitted them as Model Rules rather than as Own Rules, then your document could have been completely replaced with the new version of the Model Rules (except for your purpose) with CAV. It is important to review the version currently registered with CAV to make sure it is correct.





Key changes to the
model rules
include:

Technology

Updated language to support the flexible use of technology. This includes using online membership applications (Rule 9), recording email addresses in the register of members (Rule 18), and online attendance at general and committee meetings (Rules 35 and 62).

PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES

Division 1—Membership

7 Minimum number of members

The Association must have at least 5 members.

8 Who is eligible to be a member

Any person who supports the purposes of the Association is eligible for membership.

9 Application for membership

- (1) To apply to become a member of the Association, a person must submit a written application to a committee member stating that the person—
 - (a) wishes to become a member of the Association; and
 - (b) supports the purposes of the Association; and
 - (c) agrees to comply with these Rules.
- (2) The application—
 - (a) must be signed by the applicant; and
 - (b) may be accompanied by the joining fee.

Notes

- 1 The joining fee is the fee (if any) determined by the Association under rule 12(3).
- 2 A requirement for a signature of a person may be met by electronic signature. See section 9 of the Electronic Transactions (Victoria) Act 2000.

Model Rules Inclusion - Electronic Signature

Section 9 of The Electronic Transactions (Victoria) Act 2000 permits the acceptance of a signature electronically.

Section 9(1)(a) requires that a reasonable method be applied to indicate the person's intention in respect to the communicated information,

Section 9(1A) confirms that the requirement for a signature can be met by the person selecting an option indicating agreement or affirmation.

Model Rules Inclusion - Collect Email Address.

18 Register of members

- (1) The Secretary must keep and maintain a register of members that includes—
 - (a) for each current member—
 - (i) the member's name; and
 - (ii) the address for notice last given by the member; and
 - (iii) the email address last given by the member (if available); and
 - (iv) the date of becoming a member; and
 - (v) if the member is an associate member, a note to that effect; and
 - (vi) any other information determined by the Committee; and
 - (b) for each former member, the name of the person and the date on which the person ceased to be a member of the Association.
- (2) Any member may, at a reasonable time and free of charge, inspect the register of members.

There is now a requirement to collect, if available, a member's last known email address to be recorded in the Register of members. The requirement in the model rules is listed at Section 18(1)(a)(iii)

Rule 35 Use of Technology & Rule 62

Minor word changes have been made to Section 35 and the 2023 Regulations have the wording as highlighted here.

2012 Regulations

35 Use of technology

- (1) A member not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member and the members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a member participating in a general meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

2023 Regulations

35 Use of technology

- (1) A general meeting may be held and members may take part by the use of technology that allows members to clearly and simultaneously communicate with each other participating member.
- (2) For the purposes of this Part, a member participating in a general meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

Meetings and Rule 62

There has been a slight wording change regarding the use of technology to hold a committee meeting with the 2023 Regulations

62 Use of technology

- (1) A committee member who is not physically present at a committee meeting may participate in the meeting by the use of technology that allows that committee member and the committee members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a committee member participating in a committee meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

62 Use of technology

- (1) A committee meeting may be held by the use of technology that allows committee members to clearly and simultaneously communicate with each other participating member.
- (2) For the purposes of this Part, a committee member participating in a committee meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

Disciplinary Appeal

New processes for disciplinary appeals where members have been suspended or expelled by a disciplinary subcommittee. A member now has 7 days to lodge an appeal with the secretary of the association, and the appeal must be heard by an appeal subcommittee made up of at least 3 unbiased persons who were not members of the disciplinary subcommittee that decided to suspend or expel that person (Rule 23).

Changed text for Section 23

The 2023 update for Section 23 includes 3 new subsections inserted at subsection 3 that outline the requirements for the composition of a subcommittee where a member has been expelled from the organisation and seeks to appeal that decision. It is important for members to read this information carefully.

2012 Regulations

23 Appeal rights

- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 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 (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 Association 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.

2023 Regulations

23 Appeal rights

- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that the person 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 **7 days** after the vote.
- (3)** If a person has given notice under subrule (2), the Committee must appoint at least 3 persons to an appeal subcommittee to consider the appeal.
- (4)** Subject to subrule (5), the Committee may appoint any person to an appeal subcommittee.
- (5)** A person must not be appointed to an appeal subcommittee if the person—
 - (a) was appointed to the disciplinary subcommittee to hear and determine the matter of the member concerned; or
 - (b) has a personal interest in the dispute; or
 - (c) is biased in favour of or against the member concerned.
- (6)** The committee must convene a meeting of the appeal subcommittee (the *disciplinary appeal meeting*) as soon as practicable and no later than 21 days after the notice of the appeal is received.
- (7) Notice of the disciplinary appeal meeting must be given to each member of the appeal subcommittee and the member concerned 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 appeal subcommittee members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

Grievance Procedures

There are changes to grievance procedures regarding mediation. In disputes between a member and the committee or association where the parties cannot agree on a mediator, any registered mediator can be appointed. This may include a registered mediator appointed or employed by the Dispute Settlement Centre of Victoria or accredited by the Victorian Bar (Rule 27). The rules also provide that any costs of mediation are to be paid by agreement between the parties, or where there is no such agreement, by the committee (Rule 28).

Mediation Rule 27 & 28

The new rules remove reference to a mediator potentially being a member of the organisation and instead sets out that the mediator must have no bias or personal interest in the dispute. S28 makes cost allocations clear

2012 Rules

27 Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, 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 Association—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 Association 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.

28 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.

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- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, 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 Association—a registered mediator.

Note

This includes a registered mediator appointed or employed by the Dispute Settlement Centre of Victoria or accredited by the Victorian Bar.

- (3) Subject to subrule (4), the Committee may appoint any person as a mediator.
- (4) The Committee must not appoint a person as a mediator if the person—
 - (a) has a personal interest in the dispute; or
 - (b) is biased in favour of or against any party.

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 - (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.
- (3) Any costs of mediation are to be paid—
 - (a) if an agreement as to costs is reached between the parties—in accordance with that agreement; or
 - (b) if there is no such agreement—by the Committee.

Conflict of Interest - Rule 65

Stronger disclosure requirements for a conflict of interest. Committee members that have a material personal interest in a matter being considered must disclose their position, as well as the nature and extent of their interest, to the committee. The committee must also maintain a conflict of interest register that records any material personal interest declared by a member, as well as a management plan documenting actions required to mitigate the conflict (Rule 65).

The conflict of interest register must contain the following:

- (a) the name and position of the member who has disclosed a personal interest s65(5)(a);
- (b) a description of the nature and extent of that interest s65(5)(b);
- (c) a management plan documenting actions required to mitigate the conflict s65(5)(c).



Changes to Rule 65

2012 Model Rules

65 Conflict of interest

- (1) A committee member who has a material personal interest in a matter being considered at a committee meeting must disclose the nature and extent of that interest to the 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.

Note

Under section 81(3) of the Act, 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.

- (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.

2023 Model Rules

65 Conflict of interest

- (1) A committee member who has a material personal interest in a matter being considered at a committee meeting must disclose the committee member's position and the nature and extent of that interest to the 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.

Note

Under section 81(3) of the Act, 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.

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 - (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) The Committee must keep a conflict of interest register.

(5) The conflict of interest register must record the following—

- (a) the name and position of the member who has disclosed a material personal interest;
- (b) a description of the nature and extent of that interest;
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New provisions for disciplinary appeals where members have been suspended or expelled from the association or association members of the association. The new model rules provide that any conflict of interest must be disclosed to the committee or association.



Changes to turnover thresholds

From 1 July 2024, the turnover base for Incorporated Associations have been revised to align with the ACNC requirements for registered charities. So, Self-Assessed Not-for-profit organisations that are not registered as charities now have the same turnover and reporting requirements as registered charities. The revised tier threshold amounts are:

- * Tier 1 - Small: total turnover less than \$500,000.
- * Tier 2 - Medium: total turnover between \$500,000 and \$3 million.
- * Tier 3 - Large: total turnover more than \$3 million.

Each Tier has specific reporting requirements, such as auditing or review, and you can see more on the requirements at Consumer Affairs Victoria website consumer.vic.gov.au

Some changes apply to all Associations.

The turnover threshold apply to all Associations. There are a couple of other additional changes that apply outside of the Model Rules as well, these include:

Asset ceiling for winding up. Previously, if an Association held \$10,000 of assets a liquidator would have to be appointed to wind it up (effectively spending the value of the assets on liquidation fees) that amount has increased to \$50,000.

Fee's have been staggered and increased and Own Rules now cost a lot more to update/change than Model Rules.

ATO and Not For Profit Register

The Regulations update unfortunately coincides fairly closely to the implementation of the ATO's Self-assessed, Not-for-profit register. All non charitable income tax exempt entities with an ABN will soon have to prove their income tax exemption status to the ATO every year.

Of serious concern in the sector is the prevalence of non-complying constitutions that have ineligible purposes, discriminatory clauses (according to the ATO) and inoperative winding up clauses which are the three areas the ATO and ACNC have been focusing on.

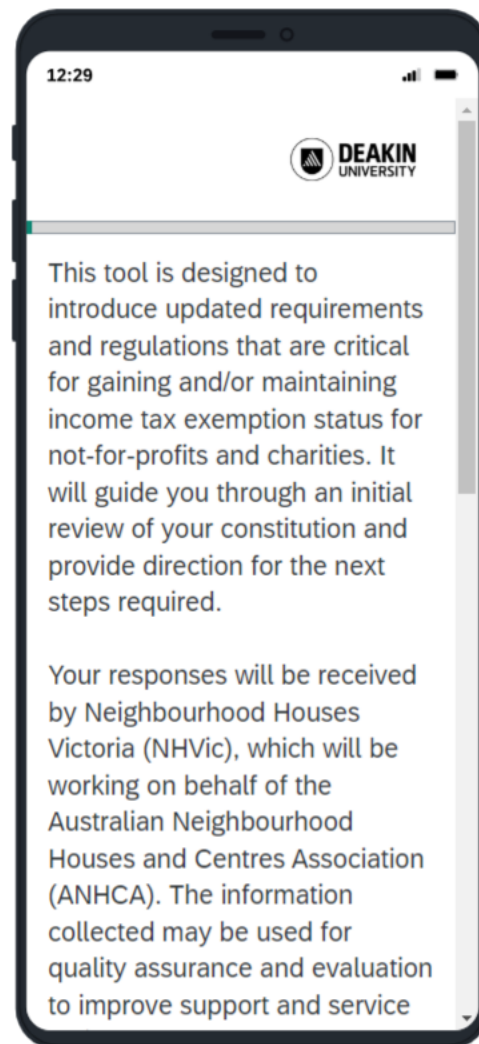
We have been working with the ACNC, Justice Connect, the ATO, Deakin Law School and others to build a solution to this problem and to assist member organisations that are not charities, gain charity registration where appropriate and to help existing charities bring their documents inline with current requirements of the ATO and ACNC.

A self assessment app will soon be available for Neighbourhood Houses to assess their position thanks to Deakin Law School and the ACNC is working with us on a bulk registration process to help us register non-charities as charities prior to the ATO register becoming a requirement.



This tool is designed to introduce updated requirements and regulations that are critical for gaining and/or maintaining income tax exemption status for not-for-profits and charities. It will guide you through an initial review of your constitution and provide direction for the next steps required.

Your responses will be received by Neighbourhood Houses Victoria (NHVic), which will be working on behalf of the Australian Neighbourhood Houses and Centres Association (ANHCA). The information collected may be used for quality assurance and evaluation to improve support and service delivery and may also be provided to the relevant state peak. Deakin University will have access to use de-identified data collected for teaching, research, scholarly publications and improvements to this tool.



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- (c) a management plan documenting actions required to mitigate the conflict s65(5)(c).

Grievance Procedures

There are changes to the grievance procedures relating to disputes in disputes between a member and the committee or association where the parties cannot agree an amicable and negotiated settlement or where the dispute is not resolved by the committee or association. The new rules provide that any conflict of interest must be promptly reported to the committee and the committee must take steps to resolve the dispute as soon as possible.

Mediation for Members

Disciplinary Appeal

New provisions for disciplinary appeals where members have been suspended or expelled by the committee or association. The new rules provide that a member who has been suspended or expelled may appeal the decision to the committee or association. The new rules also provide that the committee or association must take steps to resolve the dispute as soon as possible.

