



Incorporated Associations Factsheet Kit




Consumer Affairs
Victoria



This kit contains all the factsheets of interest to Incorporated Associations.

Contents

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- Amalgamation
- Cancel or Wind Up an Incorporated Association

Need help?

For more information:

- **visit** the Consumer Affairs Victoria website at: **www.consumer.vic.gov.au**
- **telephone** CAV on: **1300 36 16 73**

How does an association become incorporated?

July 2008



Need more information?



Call Consumer Affairs Victoria
on 1300 36 16 73.



There are three main steps to incorporation.



Step 1

The association must hold a meeting of which all members are given at least 21 days notice.

Step 2

At this meeting, a majority of votes cast by members, whether personally or by proxy (if proxies are allowed), must:

- a) authorise a particular person to incorporate the association. This person must be at least 18 years old and reside in the State of Victoria
- b) approve a proposed statement of purposes
- c) approve proposed rules that comply with the Act or approve the adoption of the model rules.

Step 3

The person authorised to apply for incorporation must complete and lodge with the Registrar:

- a) the form Application for Association Incorporation together with the prescribed fee
- b) a copy of the proposed statement of purposes
- c) a copy of the proposed rules of the association. These rules must contain the matters specified in the Schedule to the Act
- d) copies of any trusts affecting the association.



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Notes

- If the association has approved the adoption of the Model Rules without any amendments, there is no need to attach a copy of the Model Rules to the application.
- The Australian Taxation Office (ATO) has additional requirements for associations seeking tax exempt status. It is recommended that further information is obtained from the ATO website www.ato.gov.au/nonprofit/ prior to incorporation.

The person who lodges the application for incorporation is the first public officer of the incorporated association, unless another person has been nominated as first public officer.

Unless the rules otherwise provide, the committee members of the unincorporated association form the first management committee of the incorporated association.

A Certificate of Incorporation will be issued by the Registrar after the application for incorporation has been accepted. This will bear the name of the incorporated association, the registration number and the date of incorporation.

Cheques must be made payable to Consumer Affairs Victoria. Receipts will only be issued upon request.

Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

Authorised by the Victorian Government 121 Exhibition Street Melbourne Victoria 3000.
AP-03-02

More information

Information on Associations is available from:

Consumer Affairs Victoria

Victorian Consumer & Business Centre

113 Exhibition Street
Melbourne 3000
Telephone 1300 36 16 73
Website www.consumer.vic.gov.au

Regional Offices

Consumer Affairs Victoria also has regional offices located in Ballarat, Bendigo, Geelong, Morwell, Mildura, Wangaratta and Warrnambool together with a mobile outreach service that regularly visits rural communities. To find details on the office or mobile service nearest you, ring 1300 55 81 81 or go to the Consumer Affairs Victoria website on www.consumer.vic.gov.au and click on the Contact Us link.

The rules of an incorporated association

September 2004

An association may adopt the Model Rules, adopt the Model Rules with changes, or draft its own rules which must contain the matters specified in the Schedule to the Act.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

Matters to be provided for in the Rules of an Incorporated Association

- 1 The qualifications (if any) for membership of the incorporated association.
- 2 The maintenance and inspection of the register of members.
- 3 The entrance fees, subscriptions, and other amounts (if any) to be paid by members.
- 4 The name, constitution, membership and powers of the management committee, and the:
 - a) election or appointment of members of the committee
 - b) terms of office of members of the committee
 - c) grounds on which, or reasons for which, a position on the committee shall become vacant
- d) filling of casual vacancies occurring on the committee
- e) quorum and procedure at meetings of the committee.
- 5 The quorum and procedure at general meetings of members of the incorporated association and whether members are entitled to vote by proxy at general meetings.
- 6 The time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published, or circulated.
- 7 The sources from which the funds of the incorporated association are to be, or may be, derived.

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- 8 The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association.
- 9 The intervals between general meetings of members and the manner of calling general meetings.
- 10 The manner of altering the statement of purposes of the incorporated association.
- 11 The manner of altering, rescinding, and making additional rules of the incorporated association.
- 12 Provisions for the custody and use of the common seal (if any) of the incorporated association.
- 13 The custody of relevant documents and securities of the incorporated association.
- 14 The inspection by members of relevant documents of the association.
- 15 The distribution of any surplus assets upon winding up or dissolution.
- 16 The procedure (if any) for disciplining members and the mechanism (if any) for appearances by members in respect of disciplinary action taken against them.
- 17 The grievance procedures for settling disputes under the rules between the incorporated association and any of its members or between a member and any other member.

More information

Information on Associations is available from:

**Consumer Affairs Victoria
Victorian Consumer &
Business Centre**

113 Exhibition Street
Melbourne 3000

Counter hours: 8.30am-5.00pm Mon-Fri

Postal Address

GPO Box 4567

Melbourne 3001

Telephone: 1300 36 16 73

Fax: 03 8684 6210

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Website www.consumer.vic.gov.au



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The statutory obligations of an incorporated association

September 2004

Incorporation may benefit an association and its members, yet it also brings a number of statutory obligations. Failure to comply with these obligations may lead to prosecution or a direction from the Registrar to wind up the association.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

Annual reporting obligations

Each calendar year an incorporated association must:

- hold an annual general meeting, within five months after the end of the association's financial year
- lodge an Annual Statement by Public Officer with the Registrar within one month after the annual general meeting.

Ongoing obligations

An incorporated association is also required to:

- ensure that the registered name and number of the association appears in all its notices, advertisements publications and business documents
- notify the Registrar of a change of its registered address
- notify the Registrar if it becomes a trustee of a trust
- notify the Registrar of any changes to its statement of purposes or rules
- make a copy of its rules available for inspection by its members on request
- notify the Registrar of a change of Public Officer or change of Public Officer's address

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- maintain adequate and accurate accounting records of its financial transactions
- make a copy of the trust deed of any trust held on behalf of the incorporated association by a person or body other than the association available for inspection by its members on request
- have its accounts audited at the end of each financial year and retain accounting records for seven years (prescribed associations only)
- notify the Registrar of any special resolution relating to winding up and distribution of assets.

More information

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Annual general meetings

September 2004

An incorporated association must hold an annual general meeting each calendar year.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

When to hold an annual general meeting

- The first annual general meeting may be held at any time within 18 months **after** becoming incorporated.
- The second and any subsequent annual general meeting must be held within five months **after** the end of the incorporated association's financial year.

What to submit at an annual general meeting

At the annual general meeting, the incorporated association must submit to its members a financial statement containing particulars of:

- the income and expenditure of the association during its last financial year
- the assets and liabilities of the association at the end of its last financial year (balance sheet)
- any mortgages, charges and securities affecting any of the property of the association at the end of its last financial year

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- in respect of each trust of which the association was trustee during the whole or part of the last financial year, particulars of:
 - the income and expenditure of the trust
 - the assets and liabilities of the trust
 - any mortgages, charges and securities affecting any of the property of the trust
- any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.

This financial statement must give a true and fair view of the financial position of the incorporated association during and at the end of its last financial year.

An association may apply to the Registrar for an extension of time for holding an annual general meeting. An *Application for Extension of Time* form must be lodged with the prescribed fee.

Cheques must be made payable to Consumer Affairs Victoria. Receipts will only be issued upon request.

More information

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Consumer Affairs Victoria

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Annual statements

September 2004

Within one month after the annual general meeting, the Public Officer must lodge with the Registrar an Annual Statement with the prescribed fee.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

The Annual Statement must be accompanied by:

- a statement of the income and expenditure of the association during its last financial year
- a statement of the assets and liabilities of the association at the end of its last financial year (balance sheet)
- details of any mortgages, charges and securities affecting any of the property of the association at the end of its last financial year
- in respect of each trust of which the association was trustee during the whole or part of the last financial year, particulars of:
 - the income and expenditure of the trust
 - the assets and liabilities of the trust
 - any mortgages, charges and securities affecting any of the property of the trust
- details of any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.

Public Officers of incorporated associations can now apply for their user identification and pass code online at <http://online.justice.vic.gov.au> and click on Business Registration.

You will receive your user identification online and the pass code in the mail and then you will be ready to:

- 1 change the contact name and address details for your incorporated association at no cost
- 2 apply for an extension of time for lodging an annual statement and pay by credit card.

You can search the Victorian Names Register for brief details of an incorporated association at no cost and purchase by credit card an extract of incorporation details.

Date of Issue:
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Extension of Time to Lodge

The Public Officer of an association may apply to the Registrar for an extension of time to lodge an annual statement online at

<http://online.justice.vic.gov.au> by completing the form *Application for Extension of Time* and paying the prescribed fee.

Cheques must be made payable to Consumer Affairs Victoria. Receipts will only be issued upon request.

Note

It should be noted that failure to lodge an annual statement is an offence under the *Associations Incorporation Act 1981* and may result in the association, the public officer and each member of the committee being liable to a penalty.

More information

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Website www.consumer.vic.gov.au

Accounting and audit requirements for prescribed associations

September 2004

A 'prescribed association' is an incorporated association with gross annual revenue over \$200,000 or assets over \$500,000.

Need more information?

Call Consumer
Affairs Victoria
on 1300 36 16 73.

Additional requirements

- A prescribed association must keep all accounting records of the incorporated association for a period of seven years.
- After the end of each financial year a prescribed association must have its accounts audited by a:
 - registered company auditor, or
 - a person who is a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia, or
 - any other person who is approved by the Registrar for this purpose.
- A person may not be appointed as an auditor of the accounts of a prescribed association if the person is:
 - a member of the committee, or
 - an employer or employee of a member of the committee, or
 - a member of the same partnership as a member of the committee, or
- an employee of the incorporated association.
- a prescribed association must prepare its financial statements in accordance with the Australian Accounting Standards specified in Schedule 1 of the *Associations Incorporation Regulations 1998*.

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The applicable standards are set out below.

The annual statement lodged with the Registrar must include a cash flows statement and a copy of the auditor's report.

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| | | |
|------------------------------|---------------------------------------|----------------|
| AASB1018 (replaces AAS1) | Statement of Financial Performance | June 2002 |
| AAS4 | Depreciation | August 1997 |
| AAS5 | Materiality | September 1995 |
| AAS6 | Accounting Policies | March 1999 |
| AAS8 | Events Occurring After Reporting Date | October 1997 |
| AAS15 | Revenue | June 1998 |
| AAS17 | Leases | October 1998 |
| AAS28 | Statement of Cash Flows | October 1997 |
| AAS36 | Statement of Financial Position | October 1999 |
| AASB1041 (replaces AAS38) | Revaluation of Non-Current Assets | July 2001 |



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Consumer Affairs Victoria

Associations Factsheet 7

The Public Officer

September 2004

The Public Officer is the association's main point of contact with Consumer Affairs Victoria.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

A Public Officer must be at least 18 years old and reside in the State of Victoria. Unless the rules otherwise provide, a Public Officer may hold any other office in the incorporated association. Upon vacating the position, the Public Officer should pass on all information held on behalf of the association to their successor.

Public Officers of incorporated associations can now apply for their user identification and pass code online at <http://online.justice.vic.gov.au> and click on Business Registration.

You will receive your user identification online and the pass code in the mail and then you will be ready to:

- 1 change the contact name and address details for your incorporated association at no cost
- 2 apply for an extension of time for lodging an annual statement and pay by credit card.

You can search the Victorian Names Register for brief details of an incorporated association at no cost and purchase by credit card an extract of incorporation details.

The responsibilities of the Public Officer

- 1 Notify the Registrar of appointment as Public Officer or a change of the Public Officer's address within 14 days of the change by lodging a *Change of Association Details* form. No fee is required.
- 2 Notify the Registrar of a change of the association's registered address within 14 days of the change by lodging a *Change of Association Details* form. No fee is required.
- 3 Within one month **after** the annual general meeting, lodge with the Registrar an *Annual Statement by Public Officer* and other required financial documents with the prescribed fee.

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- 4 Within 14 days of the association becoming trustee of a trust, lodge with the Registrar the particulars of the trust and a copy of any relevant documents.
No fee is required.
- 5 Apply to the Registrar for approval to alter the statement of purposes or rules within 28 days **after** the alteration was passed by special resolution. An *Application for Alteration of Rules or Purpose* must be lodged with the prescribed fee.
- 6 Apply to the Registrar for approval of a change of name within one month **after** passing a special resolution to change the association's name. An *Application for Change of Association Name* must be lodged with the prescribed fee.
- 7 Notify the Registrar of special resolution relating to the winding up and distribution of the assets of the association within 28 days of passing the resolution. A *Notice of Special Resolution for Distribution of Assets on Voluntary Winding Up* must be lodged with the prescribed fee.

Cheques must be made payable to Consumer Affairs Victoria.
Receipts will only be issued upon request.

More information

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The management committee

September 2004

The affairs of an incorporated association are managed by the committee of management, which may exercise the powers and functions of the association, subject to the Act, the regulations and the rules of the association.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

The rules of an incorporated association must set out the powers of the committee of management, quorum and procedure at committee meetings, election and terms of office of committee members, and grounds on which an office of a committee member becomes vacant.

The responsibilities of the management committee

Under the *Associations Incorporation Act 1981*, committee members have certain responsibilities. A breach of these responsibilities may constitute an offence under the Act, to which a penalty is attached.

The statutory responsibilities of committee members include:

- 1 Ensure the Registrar is notified of a change of the incorporated association's registered address within 14 days of the change by lodging a *Change of Association Details* form.
- 2 If the position of Public Officer becomes vacant, appoint a new Public Officer within 14 days.

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- 3 Ensure an annual general meeting is held within **five months** after the end of the association's financial year and submit a financial statement to members at the meeting.
- 4 Ensure an *Annual Statement by Public Officer* is lodged with the Registrar within one month after the annual general meeting.

The Act provides that committee members must not make improper use of their position to obtain a pecuniary benefit:

- A member or former member of the committee must not knowingly or recklessly make improper use of their position in the incorporated association or information acquired by virtue of their position so as to gain, directly or indirectly, any financial benefit or material advantage for themselves or any other person, or so as to cause a detriment to the association.
 - A member of the committee who has any direct or indirect financial interest in a contract, or proposed contract, with the incorporated association must disclose the nature and extent of their interest to the committee. Their interest must be recorded in the financial statements submitted to the association's members at the next annual general meeting.
- A member of the committee who has a direct or indirect pecuniary interest in a contract must not take part in any decision of the committee with respect to that contract.

More information

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Special resolutions

September 2004

Upon passing a special resolution, incorporated associations are required to notify the Registrar by completing and lodging the relevant form.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

When is a special resolution required?

A special resolution must be passed when an incorporated association decides to:

- change its name
- change its rules
- change its statement of purposes
- amalgamate with one or more incorporated associations
- wind up.

Passing a special resolution

A special resolution is passed at a meeting if:

- at least 21 days notice has been given (in accordance with the rules) to all members entitled to vote, specifying the intention to propose the resolution as a special resolution at that meeting
- at least three quarters of the members at the meeting who are entitled to vote, vote in favour of the resolution either in person or by proxy (if proxies are allowed)
- any additional requirement of the rules of the incorporated association relating to the passing of a special resolution have been met
- the chairperson declares the resolution has been carried, unless a poll is demanded.

Date of Issue:
September 2004

More information

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AP-11-01

Dispute resolution

January 2006

The rules of an incorporated association constitute the terms of a contract between the association and its members. A breach of the rules does not give rise to a breach of the Associations Incorporation Act 1981. Disputes are civil matters to be resolved by the parties involved. Consumer Affairs Victoria does not have the jurisdiction to intervene in disputes under the rules.

It is suggested that every endeavour should be made by the parties involved to resolve a dispute. Legal proceedings should only be considered if all other avenues to resolve a dispute have failed.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

Dispute resolution options

There are several options available to assist in resolving disputes between an association and any of its members or between a member and another member.

- A dispute may be addressed through the application of the grievance procedure that must be contained in an association's rules. If an incorporated association has not provided for a grievance procedure in its rules, then the procedure set out in the Model Rules applies.

- The Dispute Settlement Centre of Victoria may be approached to conduct mediation. This free service is located on 4th floor, 456 Lonsdale St, Melbourne 3000, and can be contacted on (03) 9603 8370 or freecall 1800 658 528.

Date of Issue:
January 2006

- In associations which operate under the Model Rules, members may request the management committee call a special general meeting to consider any issues or resolutions they wish to put to the meeting. The management committee must call a special general meeting on the written request of members representing at least 5% of the total membership of the association.
- If all efforts to settle the dispute have failed, an application may be made to the Magistrates Court under Section 14A of the Act. The Court may make an order giving directions for the performance and observance of the rules of the incorporated association or to enforce the rights or obligations of the incorporated association and members.

More information

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Consumer Affairs Victoria

Associations Factsheet 11

Amalgamation

September 2004

Any two or more incorporated associations may apply to amalgamate and become one incorporated association.

Need more information?

Call Consumer Affairs Victoria on 1300 36 16 73.

There are three main steps to becoming one incorporated association.

Step 1

The associations wishing to amalgamate must each pass a special resolution and approve the:

- a terms of the amalgamation
- b statement of purposes of the proposed amalgamated incorporated association
- c rules of the proposed amalgamated incorporated association.

Step 2

The associations wishing to amalgamate must each lodge with the Registrar a *Notice of Special Resolution Approving Amalgamation of Incorporated Associations*.

Step 3

The Public Officers of the incorporated associations must **collectively** lodge with the Registrar an Application for Amalgamation of Incorporated Associations. This form requests the following information:

- i details of the amalgamating associations, including:
 - names, registered addresses and Public Officers
- ii the name and registered address of the proposed amalgamated incorporated association
- iii name and address of the person nominated as the first Public Officer of the proposed amalgamated incorporated association. This person must be at least 18 years old and reside in the State of Victoria
- iv details of the rules which the proposed amalgamated incorporated association intends to adopt (Model Rules, Model Rules with amendments, own rules).

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A copy of the statement of purposes and the rules of the proposed amalgamated association (other than the model rules) must be enclosed with the application.

All documents must be lodged with the Registrar in one envelope with the prescribed fee.

A Certificate of Incorporation will be issued by the Registrar for the amalgamated association after the application for amalgamation has been accepted. At this time, the Registrar will cancel the incorporation of the individual incorporated associations.

Upon amalgamation, the property of the individual incorporated associations vests in the amalgamated incorporated association without the necessity for any conveyance, transfer or assignment. Any property so vested is subject to any trust, restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant contract or liability which applied immediately before it so vested.

More information

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Website www.consumer.vic.gov.au

All debts and liabilities of the individual incorporated associations become the debts and liabilities of the amalgamated incorporated association.

All cheques must be made payable to Consumer Affairs Victoria. Receipts will only be issued upon request.



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Cancel/Wind Up an Incorporated Association

May 2006

An association incorporated under the Associations Incorporation Act 1981 can be cancelled or wound up in the following ways:

Cancellation

This applies where an incorporated association has ceased to operate and has assets under \$1,000 and no liabilities, and if there are no current or proposed legal proceedings against it.

The association lodges with Consumer Affairs Victoria:

- a Statutory Declaration Requesting Cancellation of Incorporation
- any Annual Statements that may be outstanding prior to the time it ceased operating and the lodgement fee for each Annual Statement, and
- a copy of the minutes of any meeting with particulars of the appropriate resolutions where it was decided to cease operations and cancel the association's incorporation.

Voluntary Wind Up

This applies where an incorporated association wishes to wind up its operations and has assets in excess of \$1,000.

A meeting of members must be held to pass a special resolution to wind up.

The association lodges with Consumer Affairs Victoria:

- Notice of Resolution (the type of resolution required is a special resolution)
- Declaration of Solvency
- Notice of Appointment or Cessation of an External Administrator (liquidator)

Please note:

- If the assets of the association are in excess of \$1,000 but are \$10,000 or less the person appointed to liquidate the association must be a member of CPA Australia, a member of the Institute of Chartered Accountants in Australia, or a person approved by the Registrar of Incorporated Associations

Date of Issue:
May 2006

- If the assets of the association are more than \$10,000 a registered liquidator must be appointed to wind up the association in accordance with the requirements of the *Corporations Act 2001*
- Distribution of Assets on Voluntary Wind Up and the lodgement fee

Court Wind Up

An application to the Supreme Court for the winding up must be made by the association, a member or creditor of the association, or the Registrar of Incorporated Associations.

The Supreme Court may order an association to wind up if:

- the association has passed a special resolution to be wound up by the court
- the association suspends its operations for a year
- the association is unable to pay its debts
- the association has traded (except in accordance with section 51 of the *Associations Incorporation Act 1981*) or secured pecuniary profit for its members
- the association has engaged in activities outside the scope of its statement of purpose, and/or
- the court is of the opinion that it is just and equitable that the association should be wound up.

Certificate of the Registrar to Wind Up

The Registrar may issue a Certificate to wind up an incorporated association.

Some of the reasons for this course of action may be that:

- the number of members is reduced to less than five
- the association is not in operation
- the association has traded (except in accordance with section 51 of the *Associations Incorporation Act 1981*), or
- the association has not lodged Annual Statements for two years.

The Registrar may appoint a liquidator to wind up the association and the costs associated with the winding up are payable from the assets of the association.

Date of Issue:
May 2006

Forms

Contact Consumer Affairs Victoria for a copy of the following forms:

- Statutory Declaration Requesting Cancellation of Incorporation
- Annual Statement
- Notice of Special Resolution of Distribution of Assets on Voluntary Wind Up

Contact the Australian Securities and Investments Commission for a copy of the following forms (which on completion must be lodged with Consumer Affairs Victoria):

- Notice of Resolution (Form 205)
- Notice of Appointment or Cessation of an External Administrator (Form 505)
- Declaration of Solvency (Form 520)

Fees

For information about the amount of a fee for the lodgement of any form mentioned in this fact sheet can be found at www.consumer.vic.gov.au.

The information and comments contained in this fact sheet are intended to be of general assistance only. Legal advice should be sought if further information and assistance is required.

More information

Information on Associations is available from:

**Consumer Affairs Victoria
Victorian Consumer &
Business Centre**

113 Exhibition Street
Melbourne 3000

Counter hours: 8.30am-5.00pm Mon-Fri

Postal Address

GPO Box 4567

Melbourne 3001

Telephone: 1300 36 16 73

Fax: 03 8684 6210

Phone hours: 9.00am-5.00pm Mon-Fri

Website www.consumer.vic.gov.au

**Australian Securities and
Investments Commission**

Web: www.asic.gov.au

Email: info.enquiries@asic.gov.au

Phone: 1300 30 06 30

Telephone Interpreter
Service: 131 450



The information contained in this fact sheet is of a general nature only and should not be regarded as a substitute for a reference to the legislation or professional advice.
Authorised by the Victorian Government, 121 Exhibition Street, Melbourne, Victoria, 3000.
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