

“
*Review of
Associations
Incorporation Act 1981*
”

Interim report

“
Consumer Affairs
Victoria



DEPARTMENT
OF JUSTICE



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“ Foreword ”



There are approximately 30,000 associations incorporated in Victoria under the *Associations Incorporation Act 1981* (the Act). These associations play a major role in the community. Associations provide opportunities for sporting and fitness activities, arts

and cultural pursuits, education and the provision of community and charitable services. Associations allow people to participate in the community and to develop shared community resources. The Government wants to encourage such participation. It is essential, therefore, that the regulatory framework overseeing the operation of incorporated associations is efficient and effective.

To test both efficiency and effectiveness, the then Minister for Consumer Affairs, John Lenders MP, asked me to lead a review of the Act. The review process is now nearing completion. It has revolved around a series of opportunities for community input. After consultations with stakeholders a Discussion Paper was released in March 2004 calling for submissions. Submissions were received from around Victoria and were used to develop this interim report.

The changes proposed in this interim report will return the Act to its original purpose, to provide a practical means for the incorporation of small, voluntary, not for profit organisations. The overwhelming majority of associations currently incorporated under the Act are associations of this nature. Measures to ease the administrative burden on these associations are proposed, as are measures to increase transparency within associations.

The release of an interim report provides another opportunity for comment. Targeted consultations will occur in the next month before a final report on the review is provided to the new Minister for Consumer Affairs, Marsha Thomson MP.

The review panel would like to thank all those individuals and organisations that made submissions or participated in the consultations. The submissions and consultations provided a rich source of ideas that have been heavily drawn upon to develop the proposals for change presented in this interim report.

A handwritten signature in black ink, appearing to read "Dianne Hadden".

Dianne Hadden MP
Member for Ballarat Province

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“ *Executive summary* ”

In March 2004, a Discussion Paper was released as part of the review of the *Associations Incorporation Act 1981* (the Act). The Discussion Paper covered a diversity of issues, including financial reporting requirements, winding up provisions, dispute resolution, corporate governance and the role of the Public Officer. It also raised issues about the consistency of legislation across Australia and about the type and size of entities that should be incorporated under the Act. In all, the Discussion Paper posed 27 questions and the community was asked for their thoughts and opinions on these questions.

Submissions were received from around Victoria from interested individuals, all types of associations, legal groups and local councils. The review panel was impressed with the quality of the submissions and drew strongly upon these ideas to formulate the proposals for change presented in this interim report.

Significant changes are proposed. In particular, it is considered that the Act should be returned to its original purpose. It should serve small, voluntary, non-trading membership based organisations. The Act has a role to play in the Government's community building objectives.

However, for many of the very large trading associations currently registered under the Act, the Corporations Act is a better regulatory option. Under the proposal, a program of migration from coverage by the Act to the Corporations Act would occur, and registration under the Act would be refused to organisations that do not fit strictly defined criteria. With regard to the migration program a transition period of five years is proposed.

In addition to these significant changes, this interim report proposes a range of measures that should ease the administrative burden on associations and limit the cost of compliance with the Act. Under the proposals, it would no longer be necessary for small (non prescribed associations) to lodge annual financial returns. Some reform will occur in the winding up provisions.

Amendments are also proposed to increase transparency and the effective operation of associations. Better access to accurate minutes and to the deliberations of general meetings as well as reform in grievance procedures should allow associations to function more effectively.

A complete list of the proposals in the interim report is set out on page 3.

“ *List of proposals* ”

Proposal 1

Insert a purpose clause in the Act, which states that the Act is designed to serve not for profit organisations that are small, voluntary, non-trading and membership based. Consequent changes should be made to the Act to support the purpose clause.

Proposal 2

The criteria for refusing applications or directing existing incorporated associations to apply for incorporation under other legislation should be amended to directly relate to the purpose clause.

Proposal 3

A transition period of five years should be put in place and in the first stage an assessment could be made of those organisations that have an annual income of \$1 million or more.

Proposal 4

Retain the current two levels of reporting, but increase the asset level threshold for prescribed associations to \$1 million and apply an appropriate method of indexation to the asset level threshold.

Proposal 5

It will no longer be a requirement that all associations have to lodge annual statements. This will be required of prescribed incorporated associations only.

Proposal 6

The Registrar will have a new power to make an application for a court order to enforce the rules of an association or enforce the rights and obligations of members where it is required in the public interest.

Proposal 7

Require all incorporated associations to maintain an asset register.

Proposal 8

Permit incorporated associations with surplus assets of less than \$10,000 to apply to the Registrar for voluntary cancellation, thereby removing the need for these associations to appoint a liquidator.

Proposal 9

Prohibit the distribution of surplus assets to members or former members on winding up.

Proposal 10

Remove reference to the Public Officer from the Act and make the Secretary of the incorporated association responsible for these functions.

Proposal 11

Add to that part of the Schedule to the Act that lists rules that are not able to be deleted or altered the requirement that office holders of the association must return to the committee of the association any documents relating to the association that they have in their custody by virtue of their role in the association.

Proposal 12

Include in the Schedule to the Act that lists rules that are not able to be deleted or altered, the requirement that:

- an incorporated association must record and keep accurate minutes for general and committee meetings
- the rights and conditions of access to the minutes of general meetings (including access to financial statements), and
- the right and conditions of access of committee members to the minutes of committee meetings.

The rights and conditions of access to the minutes of committee meetings by members should be included in an association's rules but the rights and conditions are likely to vary between associations.

Proposal 13

Develop a Model Code of Good Governance which may be voluntarily adopted by incorporated associations.

Proposal 14

The disciplinary procedures and the grievance procedures should be kept as separate processes. After an appeal of a disciplinary procedure is dismissed, it should not be then possible to use the grievance procedure processes to pursue the same issue.

Proposal 15

Clarify and strengthen the section of the Act requiring incorporated associations to set down a Grievance Procedure in their rules (Section 14B).

Proposal 16

Amend the Grievance Procedure in the Model Rules specifically with regard to the requirements for mediation.

Proposal 17

Examine whether or not the Magistrates' Court is an appropriate forum for the hearing and determination of disputes, or whether another system of arbitration (including VCAT), would be a better system.

Proposal 18

Review the Model Rules to take account of the proposed changes to the Schedule to the Act.

“ Review report ”

1

The review of the *Associations Incorporation Act 1981* was undertaken to ensure that the regulation of incorporated associations remains effective and relevant to community needs. The Review, led by Dianne Hadden MP, Member for Ballarat Province, met with a range of stakeholders in December 2003 and January/February 2004 to help identify issues that should be examined.

A Discussion Paper was released in March 2004 and incorporated associations and other interested parties were asked to make submissions to the Review by 31 May 2004.

This paper reports on the results of the consultation process, considers the issues raised, and makes a number of recommendations to improve the regulation of incorporated associations and the operation of the Act.

Around 70 written submissions were made to the Review. Some of the submissions addressed most or all of the issues raised in the Discussion Paper, other submissions focussed on issues which were of particular interest or concern to the person or group making the submission.

All submissions were read and considered by the Panel. Responses to each issue raised in the Discussion Paper were analysed. Sixty-five submissions form the basis of the data reported in this paper. The remaining submissions addressed a single issue only or were separately considered.

The data provided in this report gives an indication of the general thrust of the comments in submissions and the percentage of respondents for or against a proposal. Where statistics have been provided to indicate the percentage and direction of responses, the level of non-response to each issue has also been reported.

“ *Type and size of entity incorporated under the Act* ”

2

The Associations Incorporation Act was introduced in 1981 to provide a simple and inexpensive means by which small voluntary organisations could obtain legal status. Under the Act, small clubs, community organisations, kindergartens and other like organisations could have the benefits of limited liability of members, perpetual succession, the ability to enter contracts, and the power to acquire, hold and dispose of property.

However, since 1981, the size (annual turnover and assets) and trading activities of many incorporated associations has grown considerably. The registration of many of the large organisations could be seen to be against the spirit of the Act.

Ancillary trading activities are permitted under the Act but as has been frequently pointed out, it is not clear at what point permissible ancillary trading activities change from being subsidiary to the principal purpose of the association to being a principal purpose in themselves and thus prohibited. Also, the prohibition against trading does not apply to charitable organisations that have made provisions in their rules precluding any distribution of assets, in the event of winding up or dissolution, for purposes that are not charitable.

In 1997, a number of amendments were made to the Act in recognition of the increase in size and complexity of organisations incorporated under the Act. Amendments were also made to the Act to introduce additional financial reporting requirements for 'prescribed' associations with gross annual receipts over \$200,000 and assets over \$500,000. In addition, amendments were introduced to permit the Registrar of Incorporated Associations to:

- refuse applications to incorporate
- refuse applications to transfer incorporation, and
- direct an existing incorporated association to seek incorporation under an alternative regulatory regime.

These amendments gave the Registrar discretion to take relevant considerations into account when determining whether or not it is appropriate for a particular association to come or remain under the Act. These considerations include whether incorporation under the Act would be inappropriate or inconvenient because of the scale or nature of activities, value or nature of property, or the extent or nature of dealings with the public. In addition to these primary considerations, the Registrar is able to take into account other factors that may be relevant.

Although only 7% of the 30,529 incorporated associations registered at the end of June 2004 were prescribed associations, many of these organisations conducted substantial business activities and generated revenue or managed funds of significant size. Around 680 incorporated associations registered in Victoria have gross annual revenue over \$1 million, of which 109 have gross annual revenue over \$5 million.

In recent years, questions have been raised as to whether the Act is an appropriate vehicle for the incorporation and regulation of these organisations. The Review Discussion Paper released in March 2004 invited comments on a number of issues pertinent to the regulation of large incorporated associations. These included whether large incorporated associations should be regulated under the *Corporations Act 2001* (Cth), the criteria that should be used to restrict incorporation under the *Associations Incorporation Act* and what impact, if any, this would have on the affected associations and their volunteer committee members.

2.1 Role of Associations Incorporation Act

In response to Issue 1 of the Discussion Paper - Should large incorporated associations be required to become a company limited by guarantee under the *Corporations Act*? - 28% responded 'yes' and another 6% responded 'yes' under certain conditions. Over half of the 65 written submissions did not address this issue. Reasons given in support of a move to the *Corporations Act* included the limitation of current reporting requirements under the *Associations Incorporation Act* for associations with significant assets, multiple staff and sources of income. In addition, it was argued that committees of management oversighting large scale business on behalf of the community should have the same responsibilities as company directors. Other submissions suggested that the Act was designed for, and should be limited to, smaller not for profit groups.

It is not efficient to have two regulatory systems at Commonwealth and State level regulating similar entities. Organisations that have similar purposes should be subject to similar levels of regulation otherwise resource misallocation can occur. For example, in a worst case scenario, resources could move to that part of the economy that is under less scrutiny and subject to weaker internal governance arrangements. This could be to the detriment of the overall health of the economy.

Large trading (not for profit) organisations should be subject to the same regulation and this should be the regulation provided at the national level by the *Corporations Act*.

The authors (S Woodward and S Marshall) of a recently released major research report, *A Better Framework: Reforming Not-for-Profit Regulation* (2004) argue for a single, Commonwealth statutory regime for all corporate bodies. This would be achieved by the referral of power from the States to the Commonwealth (along the lines of what has been achieved for company regulation). It would enable national regulation by the Australian Securities and Investments Commission (ASIC). A specialist form of corporate entity applying generally to not for profit organisations should then be developed.

The views in the report have been widely supported and have been used to further the argument for regulatory reform of the not for profit sector. The authors' arguments for transparency and regulatory integrity for the not for profit sector are important. However, there are drawbacks in having only one national regime and for Victoria to absent itself from any alternative incorporation option for small voluntary associations.

Small, local, voluntary non-trading membership based organisations are not likely to be better placed under the *Corporations Act*. The argument about consistent regulation being necessary to avoid resource misallocation has less relevance for small non-trading voluntary bodies. The less stringent compliance requirements of the *Associations Incorporations Act* are an advantage of the state-based system for these types of not for profit organisations.

Also, the Victorian Government's commitment to community building provides a rationale for retaining the Act to provide governance and reporting arrangements appropriate for small organisations that contribute to community building.

Proposal 1

Insert a purpose clause in the Act, which states that the Act is designed to serve not for profit organisations that are small, voluntary, non-trading and membership based. Consequent changes should be made to the Act to support the purpose clause.

2.2 Registration criteria

If the purpose of the Act is clarified the criteria for eligibility for registration must reflect this purpose.

A minority of submissions commented on the issue of registration criterion, opinions varied about the criteria that should be used as a basis for refusing incorporation under the Act. Six percent of submissions nominated the same income and asset thresholds that currently define 'prescribed associations', 5% nominated other higher thresholds, 9% commented that other criteria should be considered such as purpose of the association and 5% thought that the decision should be at the Registrar's discretion after review of all relevant factors.

This is a complex issue and the diversity of views from those who answered this question indicates that this is an issue where consensus is hard to achieve.

Consistent with Proposal One, the criteria for refusing applications or directing existing incorporated associations to apply for incorporation under an alternative regulatory regime should be directly related to the purpose of the Act, which is to serve small, voluntary, non-trading, membership based organisations. The following criterion is suggested:

- An organisation that has gross receipts in the previous financial year of over \$200,000 and any two or more of the following characteristics would not be eligible for incorporation under the Associations Incorporation Act:
 - membership fees as a proportion of annual income are less than 50%
 - borrowings of more than 25% of asset value or twice average annual income
 - a Gaming licence (for poker machines etc) or Liquor Licence (Club or general licence rather than an event licence)
 - employing or contracting more than four full time equivalent members of staff.

Application of the above criterion should result in the exclusion of those organisations that are of a critical size (the same criterion as one of the conditions for prescribed associations) as well as those organisations involved in or with economic activities that are not consistent with them being voluntary, membership based, and non-trading. Legislation would be tightened to ensure that artificial devices can not be used to make an association fit within the criterion. A high level of scrutiny by Consumer Affairs Victoria would be required to ensure the criterion is not circumvented.

Proposal 2

The criteria for refusing applications or directing existing incorporated associations to apply for incorporation under an alternative regulatory regime should be directly related to the purpose clause.

2.3 Transition phase

A transition period would be required for those organisations currently registered as incorporated associations but which do not meet the new registration conditions. A five year transition period may be required. A program of assessment could be put in place and in the first stage an assessment could be made of those organisations currently registered in Victoria that have annual revenue of \$1 million or more.

Proposal 3

A transition period of five years should be put in place and in the first stage an assessment could be made of those organisations that have an annual income of \$1 million or more.

Changes of this nature will not be without disruption and it should be noted that 14% of submissions were against a compulsory transfer of large incorporated associations to the Corporations Act. Reasons varied, some associations had transferred to the Act to avoid the more prescriptive regime and extra compliance costs under the Corporations Act and the more onerous responsibilities and potential liabilities applicable to directors under the Corporations Act. Several submissions (including those from a number of legal bodies) expressed the view that the Corporations Act is not appropriate legislation for not for profit organisations and that ASIC regulation of companies limited by guarantee has not been effective.

There is a substantial body of evidence to suggest reforms are required to ASIC and that the special needs of not for profit companies that are incorporated as companies limited by guarantee were overlooked when major changes were made to the Corporations Act.

However, rather than replicating regulatory regimes, a better approach is for the Victorian Government is to push for reform at the Commonwealth level. Also, the changes proposed by this review are transitional, allowing for a two-tiered system with member serving associations that are not involved in business/trading activities incorporated at the State level and the rest of the not for profit organisations to operate under the Corporations Act.

2.4 Impact on volunteer committee members

Issue 3 asked the question "What impact would incorporation under Corporations Law have on associations and their volunteer members?" Of those that responded, 11% thought there would be no, or limited, impact, 6% thought it would increase accountability, 3% thought it would increase compliance costs and 15% thought it would deter volunteers from serving as directors.

The possibility that such a change would be a significant deterrent to members of the community volunteering their services as committee members was raised as a very serious concern. There are a number of layers to this concern with the most obvious issue being whether a director of a company incorporated under the Corporations Act is subject to a higher level of duties and a higher level of potential liability than a committee member incorporated under the Associations Incorporation Act.

The Corporations Act sets out a number of specific provisions with respect to directors' duties. For example, the Corporations Act stipulates specific duties that require a director to:

- act in good faith
- act with due diligence
- not trade while insolvent, and
- not misuse information or their position.

The statutory duties set out in the Associations Incorporation Act are less onerous than those set out in the Corporations Act. The two key duties of a committee member under the Associations Incorporation Act are:

- not to misuse information or their position, and
- to disclose pecuniary interests.

While there are no provisions in the Associations Incorporation Act with respect to insolvent and fraudulent trading, section 51 of the Act provides that (subject to exceptions), an incorporated association shall not trade or secure pecuniary profit for its members. If this provision is breached, any member of the Association (not just members of the committee) involved in such activities shall be deemed to have committed an offence and may be jointly and separately liable to a creditor for any liabilities incurred as a consequence of the trading or securing pecuniary profit.

In addition to the more stringent duties in the Corporations Act, convictions are likely to be far easier to obtain under the Corporations Act. This is because many provisions imposing obligations on directors are civil penalties, which require a lesser standard of proof. Also, the potential penalties are far higher for a director found to breach the Corporations Act than for a committee member convicted of a breach of the Associations Incorporation Act.

Although these differences are clear, case law or general law has also to be considered. A number of opinions have been sought on this issue. Sound arguments have been presented to support the view that directors of companies and committee members of incorporated associations probably have the same general law duties and level of potential liability in relation to those duties. Here, the reasoning is that it is likely that committee members owe general law duties, including fiduciary duties and a common law duty to act with reasonable care, skill and diligence, on the same basis as directors of companies. Other than in the area of insolvency, the general law duties of directors and committee members are at least as extensive as the statutory duties. Accordingly, while it is true that directors are subject to a higher overall level of duties and liability than committee members, the argument has been made that the differences between the two are much less significant than may be thought.

However, in noting this interpretation, it must also be acknowledged that at present in Australia there have been no reported cases where it has been held that committee members owe an incorporated association fiduciary duties in the same way as directors of companies.

There is a perception amongst community groups that a director under the Corporations Act is subject to a higher level of duties and liability than a committee member under the Associations Incorporation Act. Advice to the Review Panel indicates that much of this perception is likely to be misplaced.

On the other hand, to the extent that there are real differences, a regulatory distortion occurs when like organisations that are trading and possibly competing against each other are oversighted by individuals subject to different duties and obligations with regard to care, diligence and good faith. This is another argument for reserving the Associations Incorporation Act for not for profit organisations that are small, voluntary, non-trading and membership based.

2.5 Costs

The cost of obtaining director's insurance is likely to be higher than that required for a committee member of an incorporated association. With regard to other costs (such as registration, annual review fees and auditing) enquiries indicate that incorporation under the Corporations Act may or may not be more costly than under the Associations Incorporation Act. A definitive answer is not possible because there are so many variables to take into account. However, where incorporation under the Corporations Act is more costly, the differences do not seem to be great and should not determine a policy position.

2.6 Other constraints

In the past, a range of specific difficulties have been raised about transferring from the Associations Incorporation Act to the Corporations Act. The argument has been made that it is more difficult for companies limited by guarantee (compared to incorporated associations) to amalgamate. Directors of companies limited by guarantee can more easily be removed and a smaller number of dissident members can require the convening of general meetings. It is also argued that the Corporations Act provisions, which permit recovery of property or compensation for the benefits of creditors, do not apply to incorporated associations.

In addition, in comments to this review as well as in earlier representations, technical issues have been raised about whether Victoria, acting unilaterally, has the power to require a "transfer" from incorporation under the Associations Incorporation Act to incorporation under the Corporations Act. The argument is made that reciprocal provisions in the Corporations Act would be required. These are technical rather than policy questions and can be teased-out during a consultation process. Under the current legislation, the Registrar can refuse an application to incorporate and can direct an existing incorporated association to seek incorporation under an alternative regulatory regime.

“Nationally consistent legislation”

3

While consideration of nationally consistent legislation is beyond the scope of this review, the review panel wanted to hear any problems encountered by incorporated associations that resulted from differences between state regimes for incorporated associations.

More than two thirds of the 65 submissions made no comment on this issue, 21% indicated that they had not encountered any difficulties as a result of differences between state legislation while only 11% said that they had encountered some difficulties. Some of these made the general points that different provisions were time wasting. Others had highly specific points of concern. Only one submission commented upon long-term difficulties and added the point that they did not consider that incorporation under the Corporations Act (company limited by guarantee) was the right option for them.

The relatively low level of complaint about the difficulties resulting from different state legislation could be because not for profit organisations operating in a number of states are more likely to have already transferred to the Corporations Act. There is considerable incentive for them to do this for even under existing legislation, associations that operate in more than one state have to register with ASIC.

In relation to Issue 5, 57% of submissions did not respond to this issue, 43% supported the idea that the States should move towards a nationally consistent regulatory regime for incorporated associations.

Organisations that cross state boundaries should be incorporated under the Corporations Act. This would be the logic of a two tiered system where there is a clear distinction between those organisations that should be under Commonwealth supervision and the local, voluntary non-trading organisations that should remain as incorporated associations under the State legislation.

This would be a preferable development to that of working towards a model Association Incorporation Act for adoption by all the States and Territories. Not all State and Territories would take up the model Act and even if they did, there would most probably be a range of modifications proposed from State to State.

“*Financial reporting for incorporated associations and the oversight role*”

The Associations Incorporation Act currently has two levels of financial reporting for incorporated associations, with large or prescribed associations being subject to additional financial reporting and audit requirements. A 'prescribed association' is defined as an association that has gross annual receipts over \$200,000 or gross assets over \$500,000. These associations must prepare their accounts in accordance with the accounting standards prescribed in the Associations Incorporation Regulations 1998 and have their accounts audited by a registered company auditor or a person who is a member of the CPA Australia (CPA), Institute of Chartered Accountants in Australia (ICAA) or any other person who is approved by the Registrar (National Institute of Accountants members qualified as Professional National Accountants have been approved).

Issues 6 to 11 in the Review Discussion Paper sought comment on the need to have different levels of financial reporting and whether small incorporated associations should be exempt from the requirement to lodge annual returns.

4.1 Levels of financial reporting

Over half of the 65 submissions did not comment on the need for different levels of reporting (Issue 6). Thirty-seven percent of respondents said that there should be different levels of reporting commensurate with the size of an association's income and assets and 8% said there would be no need for different reporting levels if large incorporated associations were excluded from the ambit of the Act.

In relation to Issue 7, 12% of respondents thought the current levels of asset values and income used to define prescribed associations were appropriate but 28% suggested that the amounts be reviewed, indexed or that different amounts should be applied. While these suggestions reflected a wide range of views about appropriate financial thresholds for additional reporting requirements, several submissions commented that, in particular, the current asset threshold of \$500,000 was too low as a trigger for additional accounting and auditing requirements.

A number of associations may own the land/premises out of which they operate but generate only minimal annual revenue from subscriptions and other activities. These associations often rely on members to prepare and audit their accounts and see no need, on the basis of their minimal income, to have an accountant prepare the association's accounts in accordance with accounting standards or engage an external auditor. Several submissions suggested that the current \$500,000 asset threshold for prescribed associations should not be used as the basis for identifying a prescribed association or, alternatively, the level of the threshold should be raised to reflect current property values. After the initial adjustment is made to the asset threshold, it may be appropriate to consider indexation as property values are, over the long-run, likely to increase.

On the whole, the responses supported two levels of reporting and, apart from the level of the thresholds, did not raise any significant problems in relation to the current reporting requirements for prescribed associations. Only 12% of submissions reported that incorporated associations or their accountants and auditors have experienced any difficulties in complying with the reporting requirements for prescribed associations (Issue 8). Problems have been encountered by small associations in obtaining accountants for an appropriate fee. The issue was also raised that the method of asset valuation employed by an association may determine its status as a prescribed association.

Proposal 4

Retain the current two levels of reporting, but increase the asset level threshold for prescribed associations to \$1 million and apply an appropriate method of indexation to the asset level threshold.

The current reporting system has a role to play even under the proposed changes to the Act. There would be fewer incorporated associations that have gross annual receipts greater than \$200,000 if the criterion on page 9 is used to refuse applications to incorporate and to re-direct existing incorporated associations. Many of these organisations have a complexity of stakeholders where in addition to members, volunteers give time and energy and other community members provide donations and participate in fundraising activities. Annual receipts greater than \$200,000 warrants auditing.

The proposal to raise the asset threshold for prescribed associations to an amount of \$1 million is not inconsistent with the other proposed changes suggested in proposals 1 to 3. For many associations, the asset is the building they occupy. These buildings have generally increased significantly in value over the last few years but without necessarily impacting on the operations of the association or the annual receipts that they receive.

4.2 Lodgement of annual statements by small incorporated associations

The Discussion Paper raised the question whether small incorporated associations with limited income and assets should be exempt from the requirement to lodge an annual statement (Issue 9). Forty percent of submissions did not respond to this issue, while 51% of submissions expressed the view that small associations should not be exempt from the requirement to lodge annual statements. Nine percent indicated that they should be exempt.

Several submissions pointed out that if there was no requirement to lodge annual statements some associations may not prepare accounts at all or may not prepare financial statements for submission to members at the Annual General Meeting (AGM). It was suggested that if the financial statements are prepared for submission to members at the AGM as required, there is little additional work involved in submitting a copy to the Registrar with the annual statement. In some incorporated associations, the only way members have been able to obtain access to financial information about the association is by accessing a copy of the financial statements that were lodged with the Registrar.

Other submissions suggested that it was reasonable for association members and stakeholders to expect a level of accountability and that some reporting requirements should be imposed in exchange for the benefits of incorporation. It was also suggested that the increased risk of poorly managed incorporated associations and the potential damage caused to communities would outweigh the small administrative savings from reduced reporting requirements.

Respondents identified a number of consequences that may arise if small associations were exempt from lodging annual statements (Issue 11). Some 32% thought that an exemption would reduce compliance, accountability or transparency. Others commented that financial statements must be accessible via a public register (5%) and that an annual statement is required to ensure that the association remains current (5%). Conversely, 5% thought an exemption for small associations would have little or no impact.

There is merit to these arguments, but they have to be aligned with practicality.

4.3 Role of Consumer Affairs Victoria in financial oversight

There are not the resources within Consumer Affairs Victoria to allow the unaudited accounts of small (non prescribed associations) to be adequately scrutinised. Any provision in the Act that requires the accounts of these small organisations to be submitted to CAV may give an inaccurate impression that a level of scrutiny is occurring, which in reality is simply not possible. The Commonwealth has accepted this reality with regard to small proprietary companies incorporated under the Corporations Act as these are not required to submit annual statements. Victoria should also recognise this same reality under the Act.

It must, of course, still be a requirement of the Act that financial statements have to be presented at the annual general meeting. The Act currently specifies the nature of the financial information that is to be provided. However, the best means of enforcing this measure will be by members enforcing their own rules requiring the presentation of financial statements at their annual meeting rather than by a penalty regime within the Act.

To this end, the relevant part of the Act regarding the rules of an association (Section 6) should be changed to prescribe that certain rules must be included in an association's rules and these rules must not be altered or deleted or modified in any way. In effect, this will mean that there will be two parts to the Schedule to the Act with the new part listing those rules that are not able to be deleted, altered or modified in any way. Consequent amendments will also have to be made to the Model Rules.

Proposal 5

It would no longer be a requirement that all associations have to lodge annual statements. This will be required of prescribed incorporated associations only.

The non prescribed associations will be provided with a basic statement on an annual basis giving details of their incorporation. The Secretary of the association will be required to confirm the accuracy of these details. This could also be linked with passing a solvency statement.

The Committee of Management could be required to pass an annual resolution to the effect that they have reason to believe that the association will be able to pay its debts as and when they become due and payable. However, if the Committee of Management is not able to pass this resolution, and instead has to pass a negative solvency resolution, notification must be provided to the Registrar by the Secretary. This information will be placed on the public register and the association may be subject, in certain circumstances, to winding up provisions on the certificate of the Registrar.

4.4 Protection of the public interest

To balance this move towards greater self-regulation in financial (and non financial matters - see later proposals) it is proposed to introduce a special provision into the Act allowing the Registrar to make interventions in the public interest. This provision will allow the Registrar to make an application for a court order to enforce the rules of an association or enforce the rights and obligations of a member if the Registrar considers that it is in the public interest. Guidelines about what constitutes public interest may need to be developed.

There may be circumstances where, for example, an association makes a major contribution to the cultural life and well-being of the surrounding community. However, if the association becomes unable to regulate itself and follow its rules about its financial statements and other issues, the intervention of the Registrar may be necessary to protect the broader public interest. Without this intervention the welfare of the surrounding community could be reduced.

Proposal 6

The Registrar would have a new power to make an application for a court order to enforce the rules of an association or enforce the rights and obligations of members where it is required in the public interest.

4.5 Asset registers

While the maintenance of an asset register is implicit in Section 30(3), which requires that an association submit to members at the annual general meeting a statement of assets and liabilities, the Review Panel has had feedback that some associations are not keeping proper records of the goods and property owned by the association. This is particularly relevant where goods are purchased with public funds or donations from the community.

Ideally, all Victorian Government funding agreements should stipulate that an asset register should be kept and maintained. In the case of funding for a particular association, a properly maintained asset register would be necessary to accurately calculate the value of assets held by the association and to ensure that, on winding up, all of the association's property can be accounted for and disposed of in accordance with its rules.

Another way of achieving the same objective would be to insert into the proposed new part of the Schedule to the Act (which lists rules that are not able to be deleted or altered) a specific requirement that an asset register be kept by an association.

Proposal 7

Require all incorporated associations to maintain an asset register.

For organisations that have their accounts audited, there is already likely to be an asset register. However, for smaller organisations this could be difficult and further assistance may be required. It may be practical to provide a simple definition of an asset (for example, an expenditure of more than \$300 on a good that is able to be used for a period of more than 12 months) as well as a template of an asset register for use by these organisations.

“Winding up incorporated associations”

5

The Associations Incorporation Act provides several alternatives for the dissolution of an incorporated association, including voluntary winding up by members; winding up by the Supreme Court on application of members, creditors or the Registrar; and winding up on certificate of the Registrar.

The Act also permits the Registrar to cancel incorporation of an association that has ceased operating by giving notice to the association requiring it to show cause why its incorporation should not be cancelled. If no response is received within 28 days, the Registrar may cancel the incorporation and any assets of the incorporated association vest in the Registrar.

Although the Registrar has undertaken periodic cancellation programs to maintain currency of the Register, there are practical difficulties associated with implementation including identifying defunct associations. It would be preferable to minimise the need for such programs and ensure that the Act facilitates the voluntary winding up of incorporated associations that wish to cease operating.

Certain winding up provisions in the Corporations Act (Parts 5.5 and 5.6) are applied to the voluntary winding up of an incorporated association. Prior to 1 November 2003, all incorporated associations were required to appoint a registered company liquidator in order to wind up their affairs. A recent amendment to the Act, effective from 1 November 2003, allows incorporated associations that wind up voluntarily and have gross assets of \$10,000 or less to appoint a person who is a member of CPA, ICAA or any other person or class of persons approved by the Registrar to act as liquidator. Incorporated associations with assets over this amount must use a liquidator registered with the ASIC under the Corporations Act.

In practice, many incorporated associations do not formally wind up but simply cease operating. These associations usually have few remaining assets and insufficient funds to cover the cost of appointing a liquidator. The Discussion Paper proposed that the Act be amended to include a simple procedure that would enable incorporated associations with assets below a prescribed value to request cancellation if the association has ceased or intends to cease operating (Issue 12).

Nearly all of the submissions that addressed this issue supported the adoption of a simple voluntary cancellation procedure for associations that have few or no surplus assets to distribute. Some submissions made suggestions regarding the level of assets that should require the appointment of a liquidator, the majority of which suggested amounts of less than \$10,000.

It is proposed to adopt a voluntary cancellation procedure that can be used by incorporated associations with surplus assets of less than \$10,000. Surplus assets are the assets remaining after the satisfaction of the debts and liabilities of the association and any costs, charges and expenses of winding up the association. The administrative detail required to put this proposal into operation will need further consideration.

Proposal 8

Permit incorporated associations with surplus assets of less than \$10,000 to apply to the Registrar for voluntary cancellation, thereby removing the need for these associations to appoint a liquidator.

While the comparable ASIC amount is \$1,000 this figure is too low for many incorporated associations. As many of these organisations tend to fade-away rather than be formally wound-up, there needs to be an incentive (or at least no disincentive) for cancellations to be put in place. For this reason the higher figure of \$10,000 is suggested.

5.1 Voluntary administration

During the consultation process, some individuals and organisations expressed concern about the absence of provisions in the Act enabling voluntary administration of an incorporated association's affairs. Currently, incorporated associations that are experiencing financial difficulties do not have the option of appointing an insolvency administrator to take financial control and make arrangements for the continued trading and survival of the organisation. Incorporated associations that are insolvent may make application to the Supreme Court for the appointment of a Provisional Liquidator, who is required to report to the Court at various intervals, however, this process is more cumbersome and costly and the role of a Liquidator differs from that of a Voluntary Administrator.

A voluntary administration regime was introduced for companies in 1993, which now forms Part 5.3A of the Corporations Act. It was suggested that the adoption of similar provisions in the Associations Incorporation Act would provide greater flexibility for incorporated associations undergoing financial difficulties and increase the options for saving the organisation.

It is likely that only relatively large incorporated associations with business activities would avail themselves of the option to appoint a voluntary administrator. Given the proposed changes to the scope and coverage of the Act, the need for voluntary administration provisions in the Act would not seem to be necessary.

5.2 Distribution of assets to members

The Discussion Paper raised the issue of whether the Act should be amended to prohibit the distribution of surplus assets to members or former members on winding up. The Act prohibits an incorporated association from securing pecuniary profit for its members but permits assets to be distributed to members on winding up in some circumstances.

Half of the submissions received did not address this issue, 34% responded that distribution of assets to members should be prohibited and 12% thought that distributions to members should not be prohibited.

Comments given in support of the proposal to prohibit distribution of the assets of an incorporated association to members on winding up include: the Act should be strictly for not for profit organisations; it is inappropriate for assets of an incorporated association to be distributed to members or former members; assets should be distributed to a like association and distribution of an incorporated association's assets to private individuals or companies is inconsistent with the philosophy underpinning most not for profit organisations.

However, several respondents thought that the Act should be flexible enough to provide a corporate structure for a wide range of associations and that distribution of association assets to members may be appropriate in some circumstances, provided that the association does not receive government funding or concessions or seek tax exemptions.

On balance, the Act was intended to facilitate the effective operation of not for profit groups and the distribution of assets to members on winding up is contrary to the spirit of the Act. With the proposed changes to the Act, this inconsistency should become even more pronounced. However, it is recognised that some current incorporated associations were established by members essentially as private organisations that do not receive public or community funding or seek tax exemptions. It is intended to provide grandfathering provisions to ensure that these associations may distribute to members on winding up if this is permitted by their existing rules.

Proposal 9

Prohibit the distribution of surplus assets to members or former members on winding up.

This may not be the most opportune time to implement this change given the decision handed down by the full bench of the Federal Court in *Coleambally Irrigation Mutual Co-operative Ltd v Commissioner of Taxation* [2004] FCAFC 250 upholding the decision by Hill J in *Coleambally Irrigation Mutual Co-operative Ltd v Commission of Taxation* [2004] FCA 2.

Justice Hill of the Federal Court held that where members of an organisation are prevented from obtaining the value of the assets of the organisation on winding up, the organisation cannot be for their mutual benefit and the principle of mutuality cannot apply. Membership income has previously been income tax exempt for a number of incorporated associations on the basis of the mutuality principle. The Court found against the Australian Taxation Office's long-accepted practice of allowing not for profit organisations to rely on the mutuality principle to reduce their assessable income. The decision affects those organisations that use operation or winding-up clauses which prevent the distribution of profits or assets for the benefit of the members. Income tax exempt organisations such as endorsed charities and community service organisations are not affected by this decision.

Coleambally Irrigation Mutual Co-operative Limited has applied for special leave to appeal the decision. If this ruling was changed it would have a significant impact on many associations.

Given this, it is appropriate to delay a decision on this proposal until the outcome of this appeal is known.

The Discussion Paper raised a number of issues in relation to the appointment and role of the Public Officer. Under the current regime, the Public Officer of an incorporated association is the first point of contact in the association and any official notices from Consumer Affairs Victoria are sent to the Public Officer at the registered address of the association.

If the office of Public Officer becomes vacant, the committee must appoint a new Public Officer within 14 days after the vacancy arises. The Act currently requires that a newly appointed Public Officer must notify the Registrar of his or her appointment within 14 days of the appointment.

In practice, many Public Officers fail to notify CAV of their appointment, which has a detrimental impact on the currency of the Register. In addition, there have been occasions when disputes within an incorporated association have led to more than one person claiming to be the Public Officer and lodging documents with Consumer Affairs Victoria on behalf of the association.

6.1 Merge the public officer and secretary role

The Discussion Paper proposed that the committee of management be responsible for notifying the Registrar of a change of Public Officer and that the written notification should be certified by two committee members (Issues 16 and 17). The majority of submissions that responded to these issues supported these proposals.

However, when further consideration was given to this issue it was realised that it had a significant disadvantage. The proposal to have two members of the committee of management certify the notification of the appointments of the Public Officer would be contrary to the objective of allowing incorporated associations to provide this type of information electronically. Providing information on-line should be of major benefit to a diverse range of community groups.

Further, allowing the position of Public Officer to continue creates administrative activities for both associations and for Government that are difficult to justify.

During the Review's preliminary consultations, it was suggested that there might be some confusion about the title and role of Public Officers, given the similarities between the duties of a Public Officer and the duties usually undertaken by the Secretary of an association. It was suggested that the role could be undertaken by the Secretary or another executive committee member of an association and be renamed.

Of the submissions that responded (48% of submissions did not respond to this question), 30% thought the role of Public Officer should be performed by the Secretary or another executive committee member. Fourteen percent thought it should be a separate position, and 8% thought that the Act should retain its current flexibility in relation to this role.

It was suggested that if the legislation was changed so that the Public Officer role was automatically filled by the Secretary, practical difficulties could ensue if the elected office became vacant and the association found it difficult to get a replacement candidate for a longer period of time. The Act requires that a vacancy in the role of Public Officer be filled within 14 days and the Registrar be notified of a change in Public Officer within 14 days of the appointment.

However, the contrary argument can be made, for there is little reason why a temporary Secretary or committee member cannot be appointed to conduct this role in the short term. In addition, the current provisions, which require the notification of the name and address of the Public Officer, are unduly cumbersome. It would be administratively simpler for incorporated associations if the contact point for an incorporated association was simply the Secretary of the association at the registered address of the association. Updating individual names would no longer be necessary.

Proposal 10

Remove reference to the Public Officer from the Act and make the Secretary of the incorporated association responsible for these functions.

6.2 Return of documents

Another issue identified in the Discussion Paper was that sometimes outgoing Public Officers fail to return the documents or records of the association in their possession to the association in a timely manner (Issue 18). For example, an outgoing Public Officer, particularly if he or she was also a committee member, may hold copies of accounting records, financial statements, changes to rules of the association or other relevant documents.

This may make it difficult for an association to prepare the following year's annual statements and may lead to loss of continuity in the association's operations.

All of the submissions supported adding a provision which would make it compulsory for an outgoing Public Officer to return all documents of the association in his or her possession within the prescribed period. Several submissions commented that this provision should be extended to all elected officials that are also likely to hold association documents in their custody. Given the merging of the Public Officer and Secretary role this provision would be expressed as applying to all association officer holders.

Proposal 11

Add to that part of the Schedule to the Act that lists rules that are not able to be deleted or altered, the requirement that office holders of the association must return to the committee of the association any documents relating to the association that they have in their custody by virtue of their role in the association.

The documents must be returned within 14 days of cessation of their duties or, if the committee of the association has agreed to a longer period, within that period.

A number of issues were raised in the Discussion Paper concerning good corporate governance practices, including the need to keep accurate minutes of meetings, whether a mandatory Code of Practice should be adopted, and the operation of the Model Rules (Issues 22 to 25).

7.1 Minutes of meetings

All of the responses to this issue in the Discussion Paper agreed that it should be mandatory for incorporated associations to record and keep minutes of all general and committee meetings. It is proposed that incorporated associations be required to record and keep accurate minutes of all general and committee meetings. This would be inserted as a provision in the new part of the Schedule to the Act that lists rules that are not able to be deleted or altered.

An association would be required to ensure that the minutes are confirmed by members present at a subsequent meeting and signed by the chair of the meeting at which the proceedings took place or by the chair of the meeting at which the minutes were confirmed.

The books containing the minutes would be required to be kept by the association at its registered address or in the custody of an officer of the association in accordance with its rules.

It is proposed to prescribe a right of access for members to minutes of general meetings of an incorporated association. Members should be able to inspect the minutes of general meetings free of charge. If a copy of the minutes of a general meeting is requested by a member, the association will be permitted to charge a reasonable fee to cover the costs of the copy. Committee members will also have a right to inspect the minutes of committee meetings free of charge.

Although some submissions commented that all members of an incorporated association should also have access to minutes of committee meetings, the Review recognises that matters that are discussed at committee meetings may be of a confidential nature and that the committee should have the ability to freely raise and discuss these matters without being concerned that the information may be made public. The decision about whether or not to give members access to minutes of committee meetings and any conditions of access should rest with each incorporated association. However, the rights of members to access minutes of committee meetings and conditions of access should be clearly set out in the rules of an association.

The schedule to the Act that lists rules that are not able to be deleted or altered should also include rules about the rights and conditions of access by members to the minutes of general meetings.

Proposal 12

Include in the Schedule to the Act that lists rules that are not able to be deleted or altered the requirement that:

- **an incorporated association must record and keep accurate minutes for general and committee meetings**
- **the rights and conditions of access to the minutes of general meetings (including access to financial statements), and**
- **the right and conditions of access of committee members to the minutes of committee meetings.**

The rights and conditions of access to the minutes of committee meetings by members should be included in an association's rules but the rights and conditions are likely to vary between associations.

Although there was considerable support for a Code of Practice, it is recognised that there are many different types of incorporated associations which have a wide range of purposes, structures and activities. It would be difficult to draw up a Code of Practice that meets the needs of most or all incorporated associations unless it were confined to general principles only. However, a set of good governance principles may be too broad to be a practical guide to office bearers.

It is therefore recommended that initially a Model Code of Good Governance be developed as a guide for incorporated associations. Depending on the success of the Model Code of Good Governance, it could be incorporated into the Act at a later date.

Proposal 13

Develop a Model Code of Good Governance which may be voluntarily adopted by incorporated associations.

The Model Code of Good Governance will not be mandatory, but associations may choose to give it the status of a contract between the association and its members by incorporating it into the rules of the association.

7.2 Codes of practice

The Discussion Paper questioned whether an incorporated association should be bound by a Code of Practice or good governance principles set out in the Act or Schedule (Issue 24). While 45% of submissions did not address this issue, 35% of submissions thought that incorporated associations should be bound by a Code of Practice and another 5% thought a Code of Practice should be published as a guide only. Some submissions pointed out that the Act already embodies good governance principles and that more information and education is needed to ensure that associations comply with their obligations.

“Dispute resolution”

8

Under the Act, the rules of an incorporated association constitute the terms of a contract between the association and its members. The Act enables an incorporated association and its members to apply to the Magistrates' Court for an order to enforce the observance or performance of the rules or to declare and enforce the rights or obligations of the incorporated association or its members.

The Act also requires that incorporated associations include a grievance procedure in their rules for dealing with any dispute under the rules. If a grievance procedure has not been included in the rules of an incorporated association, then the grievance procedure set out in the Model Rules is deemed to apply.

The procedure in the Model Rules provides for the appointment of a mediator who may be chosen by agreement between the parties. If the parties cannot agree, the mediator may be appointed by the committee of the association in cases where the dispute is between members of the association. If the dispute is between the association and a member or members and a mediator cannot be chosen by agreement then the mediator must be a person employed by the Dispute Settlement Centre of Victoria.

The Discussion Paper sought feedback on whether the current dispute resolution options available under the Act are sufficient and effective and whether any alternative options should be considered (Issues 20 and 21).

Thirty-seven percent of submissions commented that the current mechanism for dispute resolution is not sufficient or effective while 11% replied that they are effective. Forty-three percent of submissions did not address this issue and 9% made other comments, some of which highlighted the need to provide more information about the options available.

Although a significant proportion of respondents thought the current system of dispute resolution is ineffective, their views about alternative systems varied widely. In response to the question "what alternatives should be considered?", 9% thought the Registrar should hear and determine disputes, 6% thought Consumer Affairs Victoria should be responsible for the appointment of a mediator and the enforcement of the rules, 11% thought the disputes should be referred to the Victorian Civil & Administrative Tribunal (VCAT) or another panel of experts. Five percent of respondents commented that more information and education should be provided to associations and 11% made other comments, including that more authority should be given to the funding organisations and to local government; members should be given rights to access all relevant documents and the grievance procedure should apply to an association's bylaws as well as its rules.

8.1 Separating grievance and disciplinary procedures

It appears that there may be some confusion about the application of a grievance procedure and a disciplinary procedure. The Model Rules contain both a disciplinary procedure (Rule 7) and a grievance procedure for dealing with disputes under the rules (Rule 8). The disciplinary procedure sets out a process for disciplining a member who has refused or neglected to comply with the rules or is guilty of conduct unbecoming or prejudicial to the interests of the association. The grievance procedure provides a mechanism for dealing with disputes between a member and another member, or a member and the association, about matters regulated by the rules.

In practice, there has been some overlap between the two processes. For example, a member who has been disciplined by the committee but disagrees with the disciplinary decision has the right to appeal the decision under the disciplinary provisions. When the appeal fails some association members have sought to use the grievance procedure. This makes for a torturous process. The two procedures should be kept separate.

Proposal 14

The disciplinary procedures and the grievance procedures should be kept as separate processes. After an appeal of a disciplinary procedure is dismissed, it should not be then possible to use the grievance procedure processes to pursue the same issue.

8.2 Grievance procedures

Other aspects of the operation of the grievance procedure were also questioned. Comments made by respondents suggest that the effectiveness of the current options for dispute resolution is limited because:

- associations often do not follow their own grievance procedure
- parties to the dispute often refuse to attend mediation
- agreements reached by mediation are not enforceable
- the Magistrates' Court has not been an effective forum for resolving disputes.

Suggestions for improvements offered by respondents included:

- mediation should be compulsory
- the Registrar should be given the power to appoint a mediator in some circumstances
- the Registrar should provide mediation and/or arbitration services
- specific mediation and arbitration mechanisms should be prescribed
- disputes unable to be resolved by mediation should be referred to VCAT rather than the Magistrates' Court
- more information materials about dispute resolution options should be provided.

It is important to ensure that any core dispute resolution procedure prescribed by the Act can be utilised by the full range of incorporated associations and that associations retain the ability to adopt the grievance procedure that suits their own requirements, provided that the core principles are met.

It is proposed to amend the Act to set out the core provisions that must be included in a grievance procedure for an incorporated association and to make it clear that if an incorporated association does not have a complying grievance procedure in their rules, then the grievance procedure in the Model Rules will apply. Some changes have been proposed to the grievance procedure in the Model Rules, including allowing for more options than recourse just to the Dispute Settlement Centre of Victoria.

Proposal 15

Clarify and strengthen the section of the Act requiring incorporated associations to set down a Grievance Procedure in their rules (Section 14B).

Section 14B should be redrafted to incorporate the principles of natural justice and provide that the grievance procedure adopted by an incorporated association in its rules must:

- give the aggrieved party an opportunity to be heard
- ensure that adequate notice is given of the hearing and the matters to be considered
- allow the aggrieved party to appoint a representative to speak on his or her behalf
- ensure that the person or body making a decision about the grievance is impartial
- provide for the grievance to be referred to a mediator at the request of either of the parties to the dispute.

If an incorporated association does not have a grievance procedure in its rules in accordance with the requirements of the Act, the grievance procedure in the Model Rules will apply. However, first the grievance procedures in the Model Rules should be amended.

The current grievance procedure in the Model Rules requires the parties to the dispute to meet and discuss the matter in dispute. If the parties are unable to reach a resolution or if a party fails to attend the meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

It is proposed to remove the mandatory requirement in the Model Rules for the disputing parties to meet and discuss the matter in dispute prior to the appointment of a mediator; that is, a dispute may be referred directly to a mediator. The disputing parties may still meet, if they choose.

The requirement in the Model Rules that disputing parties must hold a meeting in the presence of a mediator within 10 days is too arbitrary and it may be difficult for the parties to comply with this time frame for various reasons. The time limit should be extended to 28 days or removed altogether.

It is further proposed to amend the Model Rules to stipulate that if there is a dispute between a member and the association or a member and another member in relation to any matter regulated by the rules of the association, and a member has been requested to attend mediation, it is a condition of membership that the member (or the association, whichever is relevant) must attend mediation. Failure to do so may result in the application of the disciplinary sanctions that are permitted under the rules of the association, eg. a fine, suspension or expulsion.

Proposal 16

Amend the Grievance Procedure in the Model Rules specifically with regard to the requirements for mediation.

In view of the comments that have been made about the effectiveness of the Magistrates' Court as a forum for determining disputes, further investigation should occur into this issue.

Proposal 17

Examine whether or not the Magistrates' Court is an appropriate forum for the hearing and determination of disputes, or whether another system of arbitration (including VCAT), would be a better system.

If the Magistrates' Court is retained as the forum for determination of disputes, then consideration should be given to amending Section 14A of the Act. The amendment should allow the Court to refer disputes about observance of the rules of an incorporated association or the rights and obligations of members, for mediation or arbitration by a nominated party.

Proposal 18

Review the Model Rules to take account of the proposed changes to the Schedule to the Act.

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