

# Federation of Victorian Film Societies Inc

## INFORMATION SHEET 08 Version 4

# INCORPORATION

In 2012 a new law was passed in Victoria called “The Incorporations Associations Reform Act 2012” which replaces previous legislation governing incorporated associations. This Information Sheet reflects the requirements of this new law.

The FVFS recommends that all member organisations become incorporated because of the protection it offers to all individual members.

## What is Incorporation?

Incorporation of a film society means that it becomes a separate legal entity in its own right, separate from the individual members. In other words, the film society is considered at law to have a distinct identity that continues despite changes to its membership.

Incorporation allows your film society to:

- **continue** regardless of changes to membership
- **accept** gifts and bequests
- **buy and sell** property
- **enter** into enforceable contracts
- **sue or be sued**, and
- **invest** and **borrow** money.

Incorporation also provides benefits for members and officers, including:

- **protection** against personal responsibility for any debts or liabilities incurred by the film society, and
- **limiting** of personal liability to outstanding fees.

Incorporated film societies are non-profit organisations. Any profits made should be put back into the film society and not provided as personal gain for its members.

## Statutory Obligations of Incorporation

Although Incorporation confers benefits upon the film society and its members, it also brings a number of statutory obligations. If the film society fails to comply, it may lead to prosecution under the law.

These obligations relate to the:

- Financial reporting
- Trading
- Office holder duties and indemnities

- Member rights and obligations
- Specific mandatory matters
- Model rules for adoption
- Procedures for resigning and cessation of membership
- Preparing and keeping minutes
- Access to minutes and financial statements
- Discipline of members
- Grievance procedures
- Change of Public Officer to the secretary.

The new legislation means that:-

- The associations rules constitute the terms of contract between the association and its members
- If an associations current rules do not make provision for a mandatory matter required by the new law, the matter is deemed to be included in the rules.
- If the associations current rules are inconsistent with the new law then they are deemed to be of no effect.
- If an association adopts the Model Rules it is deemed to have addressed all mandatory matters required of the new law.
- Changes to the Model Rules, other than statutory modifications (ie clauses 1 – 3) require Registrar approval. In this case the association will be regarded as employing their own rules.
- Organisations with less than \$250,000 revenue will not need an auditor unless specified by their own rules, but financial reports should be endorsed by the treasurer and a second member of the committee.

Read more about the obligation of Incorporated Associations and responsibilities of its officers in the Consumer Affairs Fact Sheets available on their website:

<http://www.consumer.vic.gov.au/forms> and click on “Incorporated Associations”.

## Your Own Rules

An organisation is permitted to incorporate using their own rules, but they must address all the mandatory requirements of the new law.

These are listed in Appendix A.

## How do you incorporate?

When your committee decides that your film society should incorporate, you must:

- **conduct** a general meeting of members (with appropriate notice) where the members must, by majority vote:
  - **authorise** a person to incorporate the film society
  - **approve** proposed aims that meet the requirements of the FVFS
  - **approve** aims and rules that comply with the Act or direct the committee to apply to adopt the model rules.

The authorised person must then:

- **complete and lodge**, with the fee:
  - the Application for Film society Incorporation,
  - a copy of the proposed aims of the film society, and its financial year,

- a request to adopt the Consumer Affairs Model Rules or provide a copy of the proposed “Own rules”.
- **post** your Application for Association Incorporation form, supporting documents and registration fee to: Consumer Affairs Victoria GPO Box 4567 Melbourne 3001

## Charges for incorporation

In September 2013 the following costs applied:-

Application for Incorporation \$32.10 (Model rules) or \$186.20 (own rules)

Lodgement of an Annual statement \$51.40

Application for approval to change the rules \$75.20

For the latest charges see <http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/fees-and-forms>

## Further Reading

More 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](http://www.consumer.vic.gov.au)

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## APPENDIX A: Required Provisions of Association Rules.

This is copied from the Consumer Affairs web page on 17 Sept 2013, at <http://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/running-an-incorporated-association/rules/own-rules>

To find it we searched their database for “required provision of association rules”.

The following provisions of Schedule 1 of the *Associations Incorporation Reform Act 2012* must be included if your incorporated association creates its own rules.

We encourage you to use the model rules as a starting point when drafting your own rules, making amendments to suit the needs of your association where required. For more information and to download a copy of the model rules, view the Model rules section on our Incorporated association rules page.

| Required provision   | Model rule     |
|--|----------------|
| 1. The name of the incorporated association  | Rule 1         |
| 2. The purposes of the incorporated association  | Rule 2         |
| 3. The qualifications (if any) for membership of the incorporated association  | Rule 8         |
| 4. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association   | Rule 9 (2)     |
| 5. The rights, obligations and liabilities of members  | Rules 13–15    |
| 6. Provisions for the resignation of a member or cessation of membership   | Rule 16, 17    |
| 7. The procedure (if any) for the disciplining of members and the mechanism (if any) for appearances by members in respect of disciplinary action taken against them   | Rule 19–24     |
| 8. The grievance procedures for settling disputes under the rules between the incorporated association and any members or between a member and other member  | Rule 25–29     |
| 9. The name, membership and powers of the committee or other body having the management of the incorporated association (in this paragraph referred to as the committee) and – (see following five provisions) | Rule 42–48, 53 |
| 9. (a) the election or appointment of members of the committee   | Rule 49, 52,53 |
| 9. (b) the terms of office of members of the committee   | Rule 55 (1)    |
| 9. (c) the grounds on which, or reasons for which, the office of a member of the committee becomes vacant  | Rule 56        |

| <b>Required provision</b>   | <b>Model rule</b>   |
|---|---|
| 9. (d) the filling of casual vacancies occurring within the committee   | Rule 57   |
| 9. (e) the quorum and procedure at meetings of the committee  | Rules 58–67   |
| 10. The procedures for the appointment and removal of the secretary of the incorporated association   | Rules<br>49,59,52,55(3)   |
| 11. The custody of records, securities and other relevant documents of the incorporated association   | Rule 47 (2)<br>(Secretary)<br><br>Rule 48 (2), (3)<br>(Treasurer) |
| 12. Provisions for the custody and use of the common seal (if any) of the incorporated association  | Rule 47 (2) (b)   |
| 13. Provision for members to have access to, and to be able to obtain copies of, the records, securities and other relevant documents of the incorporated association                                       | Rule 75 (2), (3)  |
| 14. The preparation and retention of accurate minutes of – (see following two provisions)   | See following<br>two provisions                                   |
| 14. (a) general meetings of the incorporated association  | Rule 41<br><br>Rule 47 (2)  |
| 14. (b) meetings of the committee or other body having the management of the incorporated association   | Rule 66   |
| 15. Provision for members to have access to, and to be able to obtain copies of, minutes of general meetings of the incorporated association, including financial statements submitted at a general meeting | Rule 75   |
| 16. Right of access (if any) by members to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted  | Rule 75   |
| 17. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings  | Rule 30<br><br>Rule 33  |
| 18. The quorum and procedure at general meetings and whether members are entitled to vote by proxy at general meetings  | Rule 36<br><br>Rules 37–41<br><br>Rule 34                         |
| 19. The time within which, and the manner in which, notices of general meetings and notices of motion must be given, published or circulated  | Rule 33   |

| <b>Required provision</b>   | <b>Model rule</b>                   |
|---|-------------------------------------|
| 20. The sources from which funds of the incorporated association are to be or may be derived  | Rule 68                             |
| 21. The manner in which the funds of the incorporated association must be managed and, in particular, the mode of drawing and signing cheques on behalf of the incorporated association | Rule 69 especially 69 (2), (3), (4) |
| 22. The manner of altering and rescinding the rules of the incorporated association and of making additional rules  | Note to Rule 38, 76                 |
| 23. The disposition of any surplus assets on the winding up or dissolution of the incorporated association  | Rule 76                             |

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