

Federation of Victorian Film Societies Inc

INFORMATION SHEET 08 - April 2024

INCORPORATION

The FVFS recommends that all member organisations become incorporated with the CAV (Consumer Affairs Victoria) because of the protection it offers to all individual members. However this is not a mandatory requirement of becoming a member of the FVFS.

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.

Registered 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. This is also a requirement of Incorporation.

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:

- 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
- The Secretary is the “Public Officer”.

The legislation means that:-

- The association’s rules constitute the terms of contract between the association and its members
- If an association’s current rules do not make provision for a mandatory matter required by the legislation, the matter is deemed to be included in the rules.
- If the association’s current rules are inconsistent with the Incorporation 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 Incorporation 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.

These are listed in Appendix A. These may be updated from time to time, so check with the Consumer Affairs website.

Standing Resolutions

You may find the Model Rules provided by Consumer Affairs are too generic and may be difficult to interpret in your situation. Rather than go to the effort of creating your own rules, with the additional cost of lodging them, you might consider adopting your own Standing Resolutions. Think of these as operating guidelines or clarification of the generic statements in the Model Rules. They must not conflict in any way with the adopted Model Rules and may be added to or modified by the film society itself without reference to Consumer Affairs. You may set them up so they can be modified at any time by committee agreement, or of you prefer, only by a motion at the AGM. See also FVFS Information Sheet 11 for more details.

How do you incorporate?

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

- **conduct** a general meeting of members (with appropriate notice) (this could be an AGM) where the members must, by majority vote:
 - **authorise** a person to incorporate the film society
 - **approve** proposed aims that also 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 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 April 2024 the following costs applied:-

Application for Incorporation \$79.50 (Using Model rules) or \$477 (Using your own rules).

Lodgement of an Annual statement \$47.70 – \$190.80 depending on tier, unless the organisation is registered with ACNC as a charity, in which case you are exempt from submitting annual reports to Consumer Affairs as ACNC will do so on your behalf. (ACNC is the Australian Charities and Not-for-profit Commission).

Application for approval to change the rules \$413.40 (or \$143.10 to change your name only).

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 at website www.consumer.vic.gov.au

FVFS Information Sheet 05 - Tax issues and the ACNC.

FVFS Information sheet 11 – Standing Resolutions

22 Apr 2024
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Federation of Victorian Film Societies
 ABN: 62 373 979 409 Inc: A0028942B
 03 9874 5270 17 Bruce St Mitcham Vic. 3132

APPENDIX A: Required Provisions of Association Rules.

This is copied from the Consumer Affairs web page on 20 April 2024, at <https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/running-an-incorporated-association/rules> They may well have changed slightly since then, so check the reference before acting.

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

Copy begins.....

“The 23 matters are set out in the Act under a number of headings. An association can use its own rule headings, however the rules must address the 18 mandatory matters in the following table.

Matters 3, 4, 7, 12 and 16 are optional because they will not be applicable to all associations. You should still note in your rules that these are not relevant to your organisation if you are choosing not to create rules for these matters (see details below).

For more details on each rule listed in the following table, download the [Model rules for an incorporated association \(Word, 198KB\)](#).

Matters for own rules	Model rule
1. The name of the incorporated association, such as "XYZ Association Inc".	Rule 1
2. The purposes of the incorporated association. These explain what the incorporated association is established to do.	Rule 2
3. The qualifications (if any) for membership of the incorporated association. If there are no specific qualifications for membership, the rules should say so. We recommend that your rules set out how someone applies to become a member; for example, by making a request in writing to the secretary of the association.	Rule 8
4. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association. If there are no membership fees, you should state that no fees, subscriptions or other payments are required from members. (Item 20 covers the association’s source of funds. If no fees are charged, you should not mention fees in your rule addressing item 20.)	Rule 9 (2)
5. The rights, obligations and liabilities of members. This must cover: <ul style="list-style-type: none">• which members have the right to vote at general meetings; there	Rules 13-15

Matters for own rules	Model rule
<p>must be at least five voting members.</p> <ul style="list-style-type: none"> • who will be informed of, and is permitted to attend, general meetings who can use facilities of the association • financial obligations of members. 	
<p>6. Provisions for ceasing membership or resigning as a member. For example, they might have to give written notice to the secretary or to a committee member. They may cease to be a member if their annual subscription is overdue for a substantial period, or they fail to attend a certain number of annual general meetings.</p>	Rules 16, 17
<p>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. Disciplinary procedures must provide for proper notice to the member being disciplined, an opportunity for them to be heard, and for the decision-maker to be impartial and unbiased. If your association does not intend or want to take disciplinary action against members, the rules should say so.</p>	Rules 19-24
<p>8. The grievance procedures for settling disputes under the rules between the incorporated association and any members or between a member and other member. This procedure must give each party to the dispute an opportunity to be heard on the matter and ensure that an unbiased decision-maker decides the outcome of the dispute.</p>	Rules 25-29
<p>9. The name, membership and powers of the committee or other managing body.</p>	Rules 42-48, 52, 53
<p>9(a). Set out a process for the election or appointment of members of the committee (or governing board) of the association.</p> <p>The rules must identify the name by which the governing body is known (this may simply be 'the committee') and the membership of the committee, such as president, vice president, treasurer or secretary. Such positions are commonly referred to as the office bearers of the association. In addition to office bearers, many associations also have ordinary members on the committee who do not hold a formal title. You may wish to have separate provisions to address the election or appointment of office bearers and ordinary members (if any) to the committee.</p>	Rules 49-54
<p>9(b). The terms of office of members of the committee. For example, members may hold office for a term of one year and then be eligible for re-election or reappointment at the next annual general meeting.</p>	Rule 55 (1), (2)

Matters for own rules	Model rule
<p>9(c). Reasons why the office of a member of the committee becomes vacant. Generally these include the end of term, resignation, death, insolvency (bankruptcy), loss of mental capacity or being removed from office by a resolution of the association at a general meeting.</p> <p>A member of the committee of an association vacates office in the circumstances provided in the rules of the association and if the member:</p> <ul style="list-style-type: none"> • resigns by written notice addressed to the committee • is removed from office by a special resolution • dies • becomes insolvent • becomes a represented person under the <i>Guardianship and Administration Act 1986</i> (for example, because they suffered an accident that caused a brain injury). 	<p>Rules 55 (3), 56</p>
<p>9(d). The filling of casual vacancies occurring within the committee. This is where a member of the committee ceases to hold office before their term of appointment ends (such as if they resign or die). Your rules could include a process for the committee or president to appoint someone to fill the office until the term for that position ends.</p>	<p>Rule 57</p>
<p>9(e). The quorum and procedure at meetings of the committee. The quorum is the minimum number of committee members who must be present before a committee meeting can be held. You can express this as a whole number or as a percentage or fraction.</p> <p>Your rules must also cover the procedure to be followed at committee meetings, such as:</p> <ul style="list-style-type: none"> • how much notice committee members will be given before meetings • who chairs committee meetings • order of business • how decisions are made. Do they need to be unanimous or is there a vote? Does the Chair have a casting vote? • what should happen if a committee member has a conflict of interest regarding a matter under consideration • can meetings be conducted using telephone or video communications or does every member have to be physically present in the same place • who takes minutes of the meeting and what is to be recorded. 	<p>Rules 58-67</p>

Matters for own rules	Model rule
<p>10. The procedures for the appointment and removal of the secretary. If the secretary is a member of the committee of your association under your rules, then the procedure for appointment and removal of committee members will be sufficient to cover this.</p>	<p>Rules 49,52,55-56, 57 (2)</p>
<p>11. The custody of records, securities and other relevant documents of the incorporated association. Set out who is responsible for this.</p>	<p>Rule 47 (2) (Secretary)</p> <p>Rule 48 (2), (3) (Treasurer)</p>
<p>12. Provisions for the custody and use of the association's common seal (if any). Use of a common seal is optional. If your association has one, the rules must state who is responsible for custody of the seal.</p>	<p>Rules 47 (2) (b), 72</p>
<p>13. Provisions for members to have access to, and to be able to obtain copies of, the records, securities and other relevant documents. These rules should cover:</p> <ul style="list-style-type: none"> • information relating to incorporation, rules, management, membership records and financial statements • the association's transactions, dealings, business or property • which records the committee may refuse to permit inspection of, such as confidential personal, employment, commercial or legal matters • the right to inspect the register of members, at a reasonable time. <p>Under the Act, a member is entitled to inspect the rules of their association and minutes of general meetings of the association at any reasonable time. They are also entitled to a copy of the rules of their association or minutes of general meetings if they make a request in writing to their association for a copy.</p> <p>If a member requests to inspect the register of members, the incorporated association must allow this at a reasonable time.</p> <p>Your rules may also provide for a member to be able to obtain a copy of the register of members but this is optional – you could provide for inspection but not allow copying.</p>	<p>Rule 75 (2), (3)</p>
<p>14. The preparation and retention (custody and storage) of accurate minutes of (see following two provisions):</p>	<p>Rules 41, 47 (2) in relation to general meetings.</p>

Matters for own rules	Model rule
<ul style="list-style-type: none"> (a) general meetings of the incorporated association; and (b) meetings of the committee or other body having the management of the incorporated association. 	<p>Rule 66 in relation to meetings of the committee or body that has management oversight.</p>
<p>15. Provision for members to have access to, and to be able to obtain copies of, minutes of general meetings, including financial statements that will be submitted at the association's annual general meeting.</p>	<p>Rule 75</p>
<p>16. Right of access (if any) members have to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted. You do not have to allow members access to minutes of committee meetings, but you must state whether or not you will allow it.</p>	<p>Rule 75</p>
<p>17. State how many general meetings the association must have each year and the period between those meetings. For example, the association may hold a general meeting every four months. The Act only requires an association to hold one general meeting per year, being the annual general meeting. Holding additional general meetings is decided by each association.</p> <p>Your rules must also provide for the manner in which a general meeting may be called. For example, general meetings may be called by the secretary or the committee or by a specified number or percentage of members giving a request in writing to the secretary to call a general meeting.</p>	<p>Rules 30, 33</p>
<p>18. Set out the procedure to be followed at general meetings. Include:</p> <ul style="list-style-type: none"> who chairs the meeting how voting is conducted (show of hands, secret ballot, casting vote) whether and in what circumstances the meeting can be adjourned the minimum number or percentage of all members who must be present to conduct a valid general meeting (the quorum) whether voting by proxy is allowed. 	<p>Rules 34-41</p>
<p>19. Set out the period of notice required to be given to members of a general meeting and the manner in which notice is to be given (such as post or email or both). The rules must also set out the period of notice (if any) a member must give other members if they propose to move a motion at a general meeting. If you wish to allow for members to propose motions</p>	<p>Rule 33</p>

Matters for own rules	Model rule
<p>from the floor at a general meeting, state that no advance notice is required.</p> <p>The Act imposes specific requirements for notice where the motion requires a special resolution for it to be passed.</p> <p>A motion proposing an alteration to the rules of an incorporated association must be passed by a special resolution.</p> <p>A special resolution must be passed by at least 75% of the members present or voting by proxy at a general meeting.</p> <p>Members must be given at least 21 days' notice of a motion that is to be passed by special resolution. The notice must include:</p> <ul style="list-style-type: none"> • the date, time and place of the meeting • the full proposed resolution • a statement of the intention that the motion be proposed as a special resolution. 	
<p>20. The sources from which funds of the incorporated association will be or may be derived. These may include fees paid by members, grants and donations, proceeds from the sale of products or materials (if relevant).</p>	Rule 68
<p>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. Include who:</p> <ul style="list-style-type: none"> • is responsible for receiving funds on behalf of the association and issuing receipts for those funds • is responsible for paying funds received into the associations' bank account • can authorise expenditure by the association and how authorisation is given (such as by signature of the treasurer and another committee member) • can sign cheques on behalf of the association and what authorisation they need to do so (such as resolution of the committee). 	Rule 69 particularly 69 (2), (3), (4)
<p>22. Provide for the process to be followed to alter your rules, including adding new rules and removing old rules. This must be consistent with the</p>	Note to Rules 39, 77

Matters for own rules	Model rule
<p>requirements of the Act and a simple statement that the rules of the association may be altered by special resolution at a general meeting of the association is sufficient.</p> <p>23. Set out what is to happen to any surplus assets of the association if it is wound up or dissolved. The distribution of surplus assets must not be contrary to the Act and generally surplus assets must not be distributed to any member or former member of the association.</p>	<p>Rule 76</p>

Quote ends.