

Victorian Association of Tesol and Multicultural Education Inc. ("VicTESOL" or "Association"): Proposed new Rules - summary of differences against existing constitution

The table below summarises the material differences between the provisions of the proposed new rules of VicTESOL and VicTESOL's existing constitution, i.e. this table sets out provisions which:

1. are new and do not have an equivalent in the existing constitution of VicTESOL; are
2. are modified from provisions in the existing constitution of VicTESOL.

The current constitution refers to the *Associations Incorporation Act 1981* (Vic). This legislation has since been replaced by the *Associations Incorporation Reform Act 2012* (Vic) (**Act**). Accordingly, an update to VicTESOL's constitution/rules was required in order to bring it into line with the requirements of Act.

The proposed new rules have been based on the Model Rules set out in Schedule 4 of the *Associations Incorporation Reform Regulations 2012* (Vic) (**Regulations**), with amendments to reflect the particular needs of VicTESOL.

Please note that this table only provides snapshot of the material differences between VicTESOL's existing constitution and the proposed new rules, and does not provide a comprehensive summary of all the provisions in the proposed new rules (including those that are the same or substantially similar to the existing constitution). Officers and members should ensure that they read the proposed model rules in full.

Further, we note that, in accordance with the Act:

1. an association may only alter its rules by a special resolution at a general meeting of its members;
2. the association must make an application for the approval of the alteration to the Registrar within 28 days after the alteration was passed by special resolution; and
3. the alteration does not take effect until it is approved by the Registrar.

As a small registered charity, VicTESOL must also notify the Australian Charities and Not-for-profits Commission (**ACNC**) of changes to its rules within 60 days of the change, and provide a copy of the new rules to the ACNC.

Proposed new rule	Matter	Explanation
2	Purposes	Slight changes to the purposes of the Association have been made to reflect VicTESOL's support of events and initiatives outside geographic limits of Victoria, but with a particular focus on Victoria.
7	Minimum number of members	Under the proposed new rules, the Association must have at least 5 members. The existing constitution does not specify a minimum number of members.
9-12	Application for membership	<p>The proposed new rules prescribe a more detailed process for accepting the application of a new member, and reflects the Association's online application and payment process. The Committee is able to regulate the membership intake, approve new members or reject an application by returning the applicant's application fee and notifying the applicant in writing.</p> <p>The joining fee payable by a new member is determined by the Association at each AGM for the following financial year. The existing constitution do not specify how the annual subscription fee is determined, only that it is "not less than one dollar".</p>
13	General rights of members (voting rights)	The proposed new rules include, as additional prerequisites, that a member is only able to vote at a general meeting of the Association if more than 10 business days have passed since he or she became a member and if his or her membership rights have not been suspended for any reason.
14	Rights of members not transferable	The proposed new rules clarify that the rights of a member are not transferable and end when that person's membership ceases.
15	Ceasing membership	The proposed new rules clarify that a person's membership in the Association ceases on resignation, expulsion, incapacity or death.
16	Resigning as a member	<p>A slight change has been made to the timing of notice to be given by a person who wishes to resign as a member. Under the proposed new rules, a member may resign by providing 30 days' prior written notice (the current rules provide that one month's notice is to be given).</p> <p>The proposed new rules also clarify that, where no subscription is payable, a member is taken to have resigned if:</p> <ul style="list-style-type: none"> • the Secretary has made a written request to the member to confirm that he/she wishes to remain a member; and • the member has not provided written confirmation within 3 months after receiving that request.

Proposed new rule	Matter	Explanation
17	Register of members	The proposed new rules stipulate that the Association must keep and maintain a register of members that includes certain specified information, and that members may inspect that register free of charge. This is consistent with the provisions in the Act.
18-23	Disciplinary action against a member	<p>The process for disciplinary action follows the recommended process in the Model Rules, which is similar to the process set out in the existing constitution. The main differences are:</p> <ul style="list-style-type: none"> • a subcommittee appointed by the Committee (disciplinary subcommittee) must be appointed to consider what disciplinary action, if any, is to be taken against a member (the existing constitution provides that the Committee itself will consider the matter). The members of the subcommittee may comprise of committee members, members of the Association or anyone else, but must not be biased against, or in favour of, the member concerned; • the disciplinary committee may not fine the member; • the member may appeal against the disciplinary action within 48 hours after such action has been decided by the subcommittee (the existing constitution only allows an appeal request to be made within 24 hours of the decision); • if the member requests an appeal, the appeal is to be heard and decided by the Committee, rather than by a general meeting of the members of the Association; <p>[Note to VicTESOL: We understand that VicTESOL wishes for the disciplinary appeal meeting to be heard by the Committee, rather than at a general meeting of the Association (as per the Model Rules and the existing constitution). However, upon reconsideration, we are concerned that this change may increase the perception of bias and that the rights of members are being reduced unfairly. This perception could arise: (1) if the committee members (who hear the appeal) were also members of the disciplinary subcommittee which made the initial decision now being appealed; or (2) if the committee members themselves are biased against, or in favour of, the member concerned (even if the committee members hearing the appeal were not on the disciplinary subcommittee). Note that the Act requires that the outcome of any disciplinary procedure must be determined by an unbiased decision-maker. Accordingly, it may be preferable to either: (1) revert to the existing constitution and Model Rules by providing that the appeal will be heard at a general meeting of the Association (rather than by the Committee), or (2) if the appeal is to be heard by the Committee, including language to clarify that any committee members who are biased or have a personal interest in the matter, and any committee members who were on the disciplinary committee, must refrain from participating and voting in the appeal process. Of course, this may mean that, in establishing the disciplinary sub-committee, the Committee must ensure that not all of the committee members sit on that initial disciplinary committee. Happy to discuss.]</p>

Proposed new rule	Matter	Explanation
		<ul style="list-style-type: none"> the appeal meeting must be held within 21 days of the aggrieved member's appeal request (the existing constitution provides that the appeal meeting must be held within 28 days); and the appeal decision must be approved by not less than two-thirds of the committee members (rather than two-thirds or more of the members voting at the general meeting), and votes may not be made by proxy.
24-28	Grievance procedure	<p>The proposed new rules include a grievance procedure that follows the recommended process in the Model Rules. This procedure provides a process by which disputes between a member and another member, the Committee or the Association may be resolved by mediation. If mediation does not resolve the dispute, the parties to the dispute may seek to resolve the dispute in accordance with the Act or otherwise at law. The proposed new rules also provide that a member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.</p>
29	Annual general meetings	<p>The AGM of the Association must be held within 5 months (rather than 3 months) after the end of the Association's financial year (a 5-month time period is consistent with the recommendations in the Model Rules). As noted above, the ordinary business of an AGM will also include confirmation or variation of the amounts (if any) of the annual subscription and joining fee.</p>
31	Special general meetings held at the request of members	<p>The Committee must convene a special general meeting if a request is made by at least 50% of members (rather than 10 members). This is to reduce the possibility for members to call a general meeting for improper or vexatious purposes.</p> <p>This rule also clarifies that, if the Committee fails to convene a special general meeting within 1 month and the members themselves then convene the meeting, then the meeting may only consider the business that was stated in the initial meeting request made to the Committee by those members.</p>
33	Proxies	<p>The proposed new rules clarify that a member appointing a proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any manner as the proxy sees fit.</p> <p>The notice of a general meeting must state that a member may appoint another member as his or her proxy for the meeting, and include the form of proxy appointment.</p>
34	Use of technology (at general meetings)	<p>The proposed new rules provide that technology may be used for general meetings to allow members who are not physically present at the meeting to participate in and vote at the meeting.</p>

Proposed new rule	Matter	Explanation
35	Quorum at general meetings	<p>The quorum for an AGM is now 10% of members entitled to vote (rather than 10 members).</p> <p>The quorum for a special general meeting is 40% of members entitled to vote.</p> <p>The use of a percentage (rather than a fixed number of members) ensures that the quorum requirement can adapt to changing membership numbers, and is less susceptible to foul play.</p> <p>If a quorum is not present within 30 minutes of the appointed time for a general meeting (other than a meeting convened at the request of or by members), then the meeting must be adjourned to another date not more than 21 days after the adjournment (rather than the same day in the next week, at the same time).</p> <p>If a quorum is not present within 30 minutes of the appointed time for an adjourned general meeting, then those members present are taken to satisfy the quorum (i.e. there is no longer a requirement for a minimum of 5 members to be present at an adjourned meeting).</p>
37	Voting at general meetings	<p>If a question put to the vote of members is to confirm the minutes of a previous general meeting, only those members who were present at that previous general meeting may vote on that question.</p>
43-47	Composition of Committee	<p>The proposed new rules include the concept of the "Executive Committee", comprising of the President, Vice-President, Secretary and Treasurer. The members of the Executive Committee have special rights/powers that the general committee members do not (e.g. authorise the Treasurer to make payments, sign cheques and documents on behalf of the Association, 2 executive committee members must be present to meet a quorum at Committee meetings). In addition, executive committee members may not hold the same position for more than 3 years.</p> <p>The Committee comprises of the executive committee members plus up to an additional 8 ordinary members elected in accordance with the rules (the existing constitution provided that there would only be an additional 3 ordinary committee members).</p> <p>The proposed new rules also provide that notice of the Secretary's appointment must be given to the Registrar within 14 days after the appointment.</p> <p>The proposed new rules do not include any references to an "Administrative Assistant" or "Financial Manager" (these positions are named in the current constitution).</p>
48-50	Committee positions	<p>The proposed new rules clarify that a member is only eligible to be elected and appointed as a committee member if he or she is 18 years or over and is entitled to vote at a general meeting.</p>

Proposed new rule	Matter	Explanation
		<p>Under the proposed new rules, the Chairperson must call for nominations for the election of each position on the Committee at the AGM (under the existing constitution, nominations must be delivered to the Secretary not less than 7 days before the meeting).</p> <p>Nominations must be made by 1 other member of the Association (under the existing constitution, nominations must be made by 2 other members).</p>
53	Ballot	<p>The proposed new rules provide further detail on the ballot procedure to be followed if a ballot is required for the election of a committee position, i.e.:</p> <ul style="list-style-type: none"> • the appointment of a returning officer to conduct the ballot; • how the ballot is conducted; • how to count ballot papers; and • the process for resolving a deadlock if 2 or more candidates receive the same number of votes for a particular position.
54	Term of office	<p>The proposed new rules clarify that, as per the Act, a committee member may be removed by a special resolution at a general meeting of the Association.</p>
55	Vacation of office	<p>The proposed new rules include additional circumstances in which a person ceases to be a committee member. These are:</p> <ul style="list-style-type: none"> • the operation of section 78 of the Act (i.e. the person becomes insolvent under administration, becomes a represented person within the meaning of the <i>Guardianship and Administration Act 1986</i>); and • in the case of the Secretary, the person ceases to reside in Australia.
56	Filling casual vacancies	<p>The proposed new rules provide that, if the position of Secretary becomes vacant, the Committee must appoint a member to that position within 14 days after the vacancy.</p> <p>Any person appointed by the Committee to fill a casual vacancy holds that position only until the next annual general meeting, at which time they may be re-elected.</p>
57	Meetings of Committee	<p>Special committee meetings may be convened by the President or by any 4 (rather than 3, as provided by the existing constitution) members of the Committee.</p>
58	Notice of Committee Meetings	<p>The notice period for committee meetings has been increased from 2 days to 14 days to allow committee members ample warning and ensure that they have a proper opportunity to prepare for and attend the meeting.</p>

Proposed new rule	Matter	Explanation
59	Urgent meetings	The proposed new rules provide a process by which Committee meetings may be held on shorter notice in cases of urgency. Any resolution made at such meeting must be passed by an absolute majority of the committee members, being the majority of committee members currently holding office (as opposed to a majority of the committee members present at the meeting).
61	Use of technology (at Committee meetings)	The proposed new rules provide that technology may be used for Committee meetings to allow committee members who are not physically present at the meeting to participate in and vote at the meeting.
63	Voting (at Committee meetings)	The proposed new rules clarify that voting by proxy at Committee meetings is not permitted.
64	Conflict of interest	<p>This new rule addresses conflicts of interest that a committee member may have in matter that is being considered by the Committee. The rule provides that, in these circumstances, a member who has a material personal interest in a matter being considered at a committee meeting must disclose the nature and extent of that interest to the Committee. The member must not be present while that matter is being considered, and must not vote on the matter.</p> <p>This rule does not apply to a material personal interest that:</p> <ul style="list-style-type: none"> • exists only because the member belongs to a class of persons for whose benefit the Association is established; or • the member has in common with all, or a substantial proportion of, the members of the Association. <p>Note that under section 81(3) of the Act, if there are insufficient committee members to form a quorum because one or more members has a material personal interest in the matter are disqualified from voting, then a general meeting may be called to deal with the matter.</p>
68	Management of funds	<p>The proposed new rules contain more detailed provisions about how the funds of the Association are managed, including that:</p> <ul style="list-style-type: none"> • the Association must open an account with a financial institution from which all expenditure is made and all revenue is deposited; • the Committee may approve expenditure on behalf of the Association (subject to any restrictions imposed by a general meeting of the Association); • the Committee may authorise the Treasurer to expend funds on behalf of the Association without approval of the Committee; and

Proposed new rule	Matter	Explanation
		<ul style="list-style-type: none"> all funds must be deposited into its account as soon as possible and in any case no later than 10 working days after receipt.
69-70	Financial records and financial statements	In accordance with the Act, the proposed new rules require the Association to keep certain financial records for 7 years, and to prepare annual financial statements.
74	Custody and inspection of books and records	The proposed new rules provide that, on request, the Association must allow members to inspect, free of charge, the register of members, minutes of general meetings and financial records, and any other relevant documents including minutes of committee members (however, the Committee may refuse to permit a member to inspect records of the Association that contain confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association).
75	Winding up and cancellation	The proposed new rules provide that, if the surplus assets of the Association are to be given to another body with charitable purposes similar to those of the Association, then the body to which such surplus assets are to be given must be decided by special resolution (the current rules are unclear as to whether such decision is to be made by an ordinary or special resolution).
76	Alteration of rules	The proposed new rules provide that any alterations of the rules must be passed by a special resolution at a general meeting of the Association, and that changes to the rules are not required to be approved by the Department of Education.
N/A	Life Members and Complimentary Members	The proposed new rules do not contain any reference to Life Members or Complementary Members, or the process for proposing or accepting such members.