pilchconnect

a specialist legal service for community organisations

Victorian Incorporated Associations reforms & the new ACNC regulatory framework: what does it all mean?

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The following information does not constitute legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information is current at 7 March 2013.

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What's going on?

1. **Victorian environment**

   - Associations Incorporation Reform Act 2012

2. **National environment**

   - Australian Charities & Not-for-Profits Commission Act 2012
   - ACNC Regulations (incl. governance standards) to commence 1 July 2013

3. **Things to watch out for / consider changing**

- What does these reforms mean for your legal structure, governance arrangements etc?

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What have you heard



about the…

Associations Incorporation Reform Act 2012

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What is the state of play?

- AI Act 1981 (old Act) is **no longer in operation**
- AIR Act 2012 (new Act) was passed in April 2012
- **The new Act commenced** on 26 November 2012
- There is a transitional period for the first year of the new Act, until 25 November 2013
- There are **new model rules** in the new Regulations

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AIR Act 2012 - key changes

1. Merger of public officer / secretary
2. Privacy obligations and Register of Members
3. Changes to financial reporting obligations
4. Use of technology for general and committee meetings
5. Prohibition on trading abolished
6. Codification of legal duties of office holders
7. New matters to be included in an association's rules

Summary – AIR Act changes

- New Act **is in force** (began 26 Nov 2012)

- Significant changes include:
  - no more ‘public officer’
  - financial reporting
  - members’ privacy
  - codification of officers’ duties
  - new matters to include in rules.

See PilchConnect’s ***Secretaries Satchel – A guide for Secretaries of Incorporated Associations***: www.pilch.org.au/secuide/

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Moving to the national context… ACNC

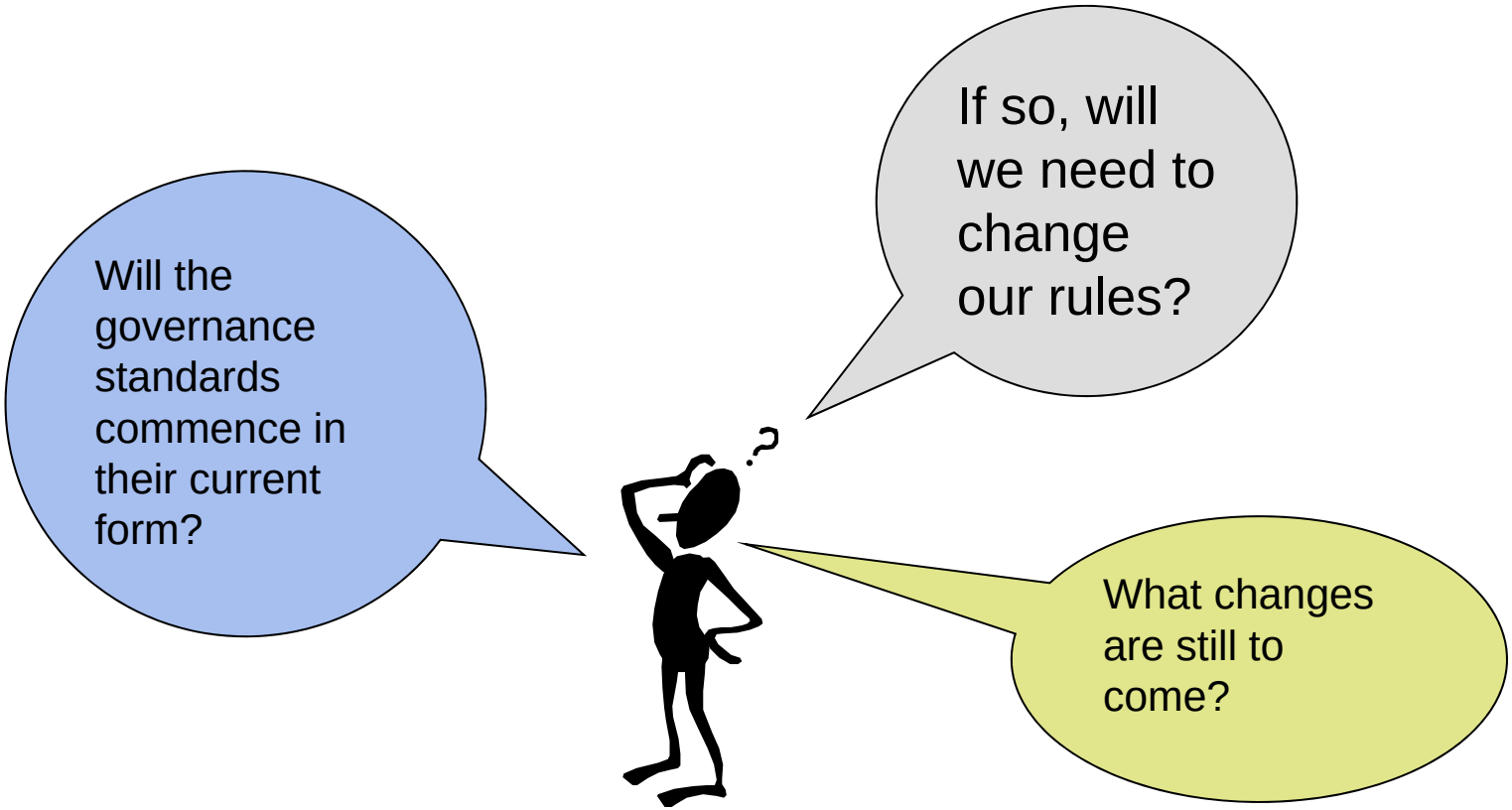
- ACNC Act **is in force** (began December 2012) – applies to reg'd charities

- Governance standards proposed to start 1 July 2013
  1. Purposes and NFP character
  2. Accountability to members
  3. Compliance with Australian laws
  4. Suitability of directors (responsible entities)
  5. Duties of directors

  *Note: all governance standards are imposed on the **charity**, not individuals within it (ie. directors)*

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Some common questions



Working towards national streamlining…

- One of key policy drivers for ACNC is reduction of red tape and streamlining of regulation / reporting

- ACNC legislation made changes to *Corporations Act*
  - these affect companies limited by guarantee (**CLGs**) and other bodies currently regulated by ASIC
  - CLG charities can simply report to (and in many respects will be regulated by) ACNC only
  - 'turning off' directors' duties from 1 July 2013

- ATO still deals with NFP/charity tax concessions

- Victoria not yet on board with streamlining measures

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So, what's better – IA or CLG – for registered charities?

Incorporated association	Company limited by guarantee
Where: operate in Victoria (but can become an RAB)	**Where**: operate nationally
Reports to: 2 regulators, CAV and ACNC	**Reports to**: 1 regulator, ACNC (for most things)
Costs: initial registration lower, but annual fees apply. Same tiers.	**Costs**: initial registration (still with ASIC) higher, no annual fees. Same tiers.
Directors & officers' duties: imposed on directors and officers under AIR Act (imposed on charity via governance stds, but IAs taken to comply if complying with AIR Act, til July 2017)	**Directors & officers' duties**: 'turned off' in Corporations Act (imposed on charity via governance standards, but for directors only)
Rules: required to address 23 matters listed in Schedule to AIR Act	**Rules**: more flexibility re content of rules (but note gov stds require accountability / transparency steps, directors' duties etc)
Amalgamation: easier – process set out in the AIR Act	**Amalgamation**: complex process

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Thinking of converting from IA to CLG?

- Benefits of streamlining, but process of converting can be costly and time-consuming, especially if your organisation has a large membership base

See PilchConnect's ***fact sheet on changing legal structure***

www.pilch.org.au/changingstructure

- Seek legal advice on options

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Help !



- ACNC website has FAQs and an advice line to assist with transition and compliance issues

- PilchConnect has many resources on AIR and ACNC reforms (and more to come – incl. training on reviewing your rules) www.pilch.org.au/legal_info

- PilchConnect's e-bulletin and website will keep you updated &informed of changes www.pilch.org.au/subscribe

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PilchConnect – legal help for community groups

Phone:	03 8636 4444 or **1800 706 220**
Website: E-bulletin:	www.pilchconnect.org.au www.pilch.org.au/subscribe
Training:	Legal training for community groups
☎ Advice:	Legal advice on the phone to answer small, simple questions
Lawyer to help:	Limited service – if more complex legal problem, we can get a lawyer to help your group for free
Law reform and policy:	On issues that affect the NFP sector (or significant part of it) eg, need for national fundraising regime

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