

Changes to an incorporated association's rules

Legal information for Western Australian incorporated associations

This fact sheet covers:

- is our organisation an incorporated association?
- what are rules and are they the same as a 'constitution' or 'articles'?
- why would we need to change our rules?
- what is the legal process for making changes to our rules?
- what information should be included in the notice of a meeting where rules are proposed to be changed?
- what issues should we look out for before we change our rules? and
- how do we lodge and get approval of changes to the rules?

This fact sheet assists Western Australian incorporated associations to understand some of the issues that arise when making changes to their rules or constitution.

Is our organisation an incorporated association?

You can usually tell from an organisation's name whether it is an incorporated association, company limited by guarantee or a co-operative. All incorporated associations are required to have 'Incorporated' or 'Inc.' at the end of their names (for example, "ABC Org Inc."). You can check whether your organisation is registered as an incorporated association with the Consumer Protection Division of the Department of Commerce, (**Consumer Protection**).

RELATED RESOURCES

You can check online if your organisation is registered with the Department of Commerce, Western Australia [here](#)

CAUTION

This fact sheet is for Western Australian incorporated associations. For information on updating the constitution of other types of organisations, see the Constitution page of the Information Hub at www.nfplaw.org.au/constitution.



NEW LAWS FOR INCORPORATED ASSOCIATIONS

The *Associations Incorporation Act 2015* (WA) (**new Act**) replaced the former *Associations Incorporation Act 1987* (WA) (**previous Act**) on 1 July 2016.

All associations need to update their rules to comply with the requirements under the new Act (set out in Schedule 1 of the new Act) and will have three years to do so, until 1 July 2019.

Other requirements under the new Act apply from 1 July 2016 to all associations, including changes in relation to:

- financial reporting
- governance
- privacy
- becoming incorporated, and
- membership of incorporated associations.

More information about the application of the new Act, including a [Transition Pack](#) for organisations, is available on the Consumer Protection website at: www.commerce.wa.gov.au/consumer-protection/associations-new-law

What are rules?

Every incorporated association needs to have a set of rules that describes the organisation's basic structure and processes and outlines the rules that it operates by. In this fact sheet, we use the term 'rules', however other terms, such as 'constitution' and 'articles' can generally be used interchangeably. Your organisation may use any of these terms.

The rules of incorporated associations are collected in a written document which will usually specify:

- the aims or objects of the organisation
- how the members of the organisation are admitted
- the rights and obligations of members
- how the office-bearers and members of the governing body are elected or appointed
- how general meetings of members and meetings of the governing body are convened and conducted
- how the organisation is, in broad terms, to be governed, and
- what will happen to the organisation's assets if it is wound up.

An incorporated association registered under the *Associations Incorporation Act 2015* (WA) (**the Act**) is required by the Act to have rules that include a statement of purposes and address specified matters. Incorporated associations' rules must address all the matters required. These matters are set out in [Schedule 1](#) of the Act.

To help organisations wishing to become incorporated associations, there are model rules that organisations can choose to adopt. The model rules are a complete set of rules set out in the *Associations Incorporation Regulations 2016* (WA). The model rules include provisions relating to all Schedule 1 matters except for:

- the name of the association
- the objects of the association
- the quorum for a general meeting of members of the association
- the quorum for a meeting of the management committee of the association, and
- the period of the first financial year of the association.

If an association decides to adopt the model rules it will need to ensure the above matters are also addressed.

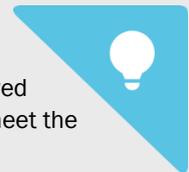
Why would we need to change our rules?

It is important that your rules accurately reflect how your organisation is governed and are up-to-date with any changes to the law. It is not helpful to have rules that no one looks at or follows, or that few can understand, or that are out of date and inconsistent with the law. You may also need to change your rules to implement a new structure, meet requirements of a new licence or funding arrangement, or to alter the way in which the organisation operates.

TIP

As well as updating rules when major reforms occur, an organisation's rules should be reviewed at least once every three years and if required, amended to ensure they are up to date and meet the requirements of the organisation.

Is it time for you to review your organisation's rules?



How can we update our rules to comply with the new laws?

Prior to 1 July 2016, incorporated associations in WA were regulated by the *Associations Incorporations Act 1987 (WA)* (**previous Act**).

The new Act commenced on 1 July 2016 and contains the rules which now govern Western Australian incorporated associations. Any associations that were incorporated after 1 July 2016 must comply with the requirements under the new Act. Any associations that were incorporated before 1 July 2016 will have until 1 July 2019 to review and update the rules of their association to ensure compliance with these new laws.

Consumer Protection has developed a [checklist](#) to assist in determining whether your organisation's rules cover the new Schedule 1 matters.

During the three-year transition period, the management committee or board has the power to amend an association's rules to comply with the new Act without requiring members to approve the changes

at a general meeting, so long as the amendments do no more than is required to ensure compliance with the Act. The management committee or board will need to lodge the changes with the Commissioner for Consumer Protection (**Commissioner**) and the amendments will only take effect once they have been approved by the Commissioner.

A Special Resolution of the members at a General Meeting will still be required if the amendments exceed what is required in order to comply with the Act. The amendments in this instance will be effective from the date of lodgement with the Commissioner.

The following steps outline the special process for reviewing and updating an organisation's rules during the transition period.

Step 1

Decide whether the association will adopt the prescribed model rules or update its own existing rules. If the association is writing its own rules, it must ensure that the updated rules include all Schedule 1 matters (see Consumer Protection's [checklist](#))

Step 2

Call a meeting of the management committee to vote on the alteration of the association's existing rules. At the meeting, ensure there is a quorum present before proceeding to vote on the proposed rules.

Step 3

After the committee has passed a resolution to alter the existing rules, the updated rules must be lodged with the Commissioner within 28 days after the committee meeting was held, together with the following documents:

- a notice of the resolution setting out 'particulars' (details) of the alterations
- a certificate signed by a member of the management committee that the resolution was duly passed, and
- if the association has updated its own rules (i.e. it has not adopted the new model rules), a consolidated copy of the rules of the association, including all alterations made to the existing rules.

These documents can be lodged online via the [AssociationsOnline](#) portal, which can be accessed via the Consumer Protection [website](#).

Step 4

After Consumer Protection has accepted the updated rules, the association will be notified in writing. The association must then notify its members that the rules have been updated and the changes accepted, along with the notice of the next annual general meeting.

CAUTION

If the management committee completes a broader review of the association's rules addressing whether they meet the needs of the organisation and makes more changes than those necessary to ensure the rules comply with the new Act, then the procedure set out above does not apply and, the members must pass these changes by special resolution at a general meeting (see the process set out below).



What is the general legal process for making changes to our rules?

The process discussed above only applies during the 3 year transition period to ensure compliance with the new laws.

The general statutory process for amending rules still applies where an incorporated association wishes to make other amendments to its rules or wishes to amend its rules outside the 3 year transition period.

The statutory process requires the members of an incorporated association to pass a special resolution at a general meeting resolving to accept any amendments to the rules of the incorporated association. An association will need to ensure that any additional requirements regarding a general meeting are complied with, for example, notice periods and quorums. Certain amendments may also require approval from a third party. For example, rules which affect charitable status or tax concessions and endorsements may require approval by the Australian Charities and Not-for-profits Commission (**ACNC**) or the Australian Taxation Office (**ATO**).

As well as complying with statutory requirements, you also need to comply with any extra requirements in your own rules. For example, the rules of a locally-based organisation may require the approval of the national body before changes to the local organisation's rules are effective, or the constitution may require a longer notice period when changes to rules are proposed.

Requirements for a special resolution

There are a number of statutory requirements applicable to the special resolutions of incorporated associations. In order for a special resolution to be valid and be capable of changing the rules of the organisation, the following requirements need to be met:

- a special resolution can only be passed at a general meeting of members. This can either be the annual general meeting (**AGM**) or a special general meeting. A special resolution cannot be passed at a committee or a board meeting, or by resolution without meeting (except where the special resolution concerns updating rules to comply with requirements of the new Act)
- proper written notice of the general meeting or AGM must be given to all members, providing certain information about the proposed special resolution (requirements for notices are discussed below), and

- the special resolution will only be passed if at least 75% of those members eligible to vote and that in fact vote on the resolution, vote in favour. This includes members who are not actually present themselves but whose “proxies” (see below) cast votes on their behalf. It excludes members who abstain from voting (for example, members who do not attend the meeting, or who attend but abstain from voting at the meeting) – though the abstaining members can still be counted for the purpose of assessing whether a quorum is present at the meeting.

CAUTION

Remember that any special resolution must also meet any requirements specified in the rules of your incorporated association. For example, the rules of your incorporated association may place other requirements on the passing of a special resolution such as a special, longer, notice period, or may require a higher majority than the 75% required by the legislation.



VOTING BY PROXY OR POSTAL VOTE

Members can vote by proxy or postal vote only if specifically allowed under the organisation's rules.

The Department recommends that organisations give careful consideration to whether proxy or postal voting should be allowed by its rules. These methods of voting allow members who cannot attend to vote, but at the same time those members will not be able to participate in the discussion at the meeting.

Proxy vote

A proxy is a person authorised to vote on a member's behalf if they cannot attend a meeting.

A written proxy form providing the proxy with authority to vote must be completed. The proxy may be given authority to vote as the proxy sees fit, or can provide specific authority for the proxy to vote only in a certain way. Organisations may have rules about when proxy forms need to be received (eg at least 48 hours prior to the relevant meeting).

Postal vote

A postal vote allows a member to cast his or her own vote by post or email. Allowing this method of voting may result in more members casting their vote than might be the case if the vote were restricted to those who actually attended the meeting.

The Department recommends that consideration be given to the process for casting these votes, e.g., whether a formal ballot paper is to be used, the date and time by which the votes must be received and what can be put in place to prevent fraudulent casting of proxy votes (e.g. a person casting more than one vote).



Notifying members that the proposed resolution is to be a special resolution

It is a requirement that a notice of a special resolution advises the organisation's members:

- that a special resolution is proposed and of the wording of the proposed special resolution, and
- the time and place of the general meeting at which it is proposed to move the resolution.

There are no requirements for specific wording to be used in the notice, however we recommend using wording along the following lines:

- “It is intended that the following resolution be proposed as a special resolution,” or
- “The following resolution will be proposed as a special resolution.”

Providing adequate notice and explanation of proposed changes

Meeting notices should be clear and provide adequate explanation of the decision that may be made, so that when a member scans the notice, they can understand clearly whether the matters to be addressed concern them. This allows a member to decide whether or not to attend the meeting to which the notice relates or arrange for a proxy or ballot vote to be cast (if available).

In setting out the terms of the proposed special resolution, it is important that sufficient detail is provided to members. Where the proposed special resolution is to make changes to the rules of the incorporated association a notice should:

- clearly set out the proposed change/s
- explain the effect of the changes, and
- explain the reasons for the proposed changes.

An explanatory document or table can be a good way to explain the proposed changes and their effect to members. It is not essential to provide members with a full copy of the proposed new rules if the proposed changes have been made clear in the notice. However, it is good practice to provide members with an opportunity to review the exact wording of proposed changes by providing an email address or contact number through which members can request a copy. If there aren't too many changes, it can be helpful to show the changes tracked against the current version of the rules.

NOTICE PERIOD

Consider what an appropriate notice period is for your association. For some organisations, a period such as 28 days may be too long and prevent the association from being able to respond quickly when needed. For other organisations, a shorter notice period, for example 14 days, may be too short and may not provide the organisation with enough time to respond.

TIP

If you are making lots of changes, it can be easier to put the 'new' rules to a vote rather than a suite of amendments - this only requires one resolution to be voted on.

However, if some of the changes are controversial (and may not be passed by the membership) it can be better to include controversial changes in separate resolutions. However, be very careful if you are separating out changes, as it is usual for the rules of an association to interrelate. As such, if your meeting results in some changed rules, but not all that were proposed, your rules may be incomplete, inconsistent or unworkable.

If you are putting one resolution to your members to adopt new rules, you still need to set out what all the changes are and the effect of the changes.

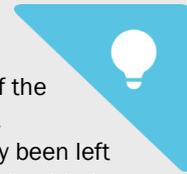
What issues should we look out for before we change our rules?

Statutory minimum requirements for rules

When amending rules, or creating a new set of rules, associations should check that their rules comply with the matters specified in Schedule 1 of the Act. An incorporated association must lodge their rules with Consumer Protection. If the rules of your organisation do not address all of the Schedule 1 requirements, Consumer Protection will reject the amendments to the rules.

TIP

It's a good idea to prepare a list or table, cross-referencing each of the items in Schedule 1 of the Act with your organisations new or amended rules. Write the applicable rule numbers against each of the matters required to be included. That way you can see if anything has accidentally been left out. It can be helpful to provide to Consumer Protection a list of the Schedule matters in a table with the rules where that matter is addressed, so that staff can easily process the rule changes.



Rights and liabilities of members

Any changes to the rules that affect the existing rights of members or that may increase their potential financial liability need to be approached with particular care. In such cases, unless the changes are completely uncontroversial, it will be prudent to seek legal advice before putting changes to a vote.

Transitional arrangements

Be careful when changing your rules (especially if you replace all of the rules) that the members under the old rules remain members under the new rules. Problems can arise when the categories of membership or the eligibility for membership change. You may need to include a transitional rule dealing with membership issues.

Similarly, you may need to make it clear that, despite the changes to the rules of an association, the office holders of the governing body (e.g. management committee or board) under the old rules continue in office under the new rules. Alternatively, there may need to be an extraordinary election for the new governing body, or the office holders may need to be specified in the new rules, with effect from a given date. If unsure, your organisation should seek legal advice.

Tax status

If your organisation has been endorsed by the ATO as a Deductible Gift Recipient (**DGR**) or is exempt from income tax, whether as a Tax Concession Charity (**TCC**) or otherwise for other tax concessions, you also need to make sure that any changes to the rules of an association will not jeopardise your tax status. In particular, any changes to the purposes of an incorporated association, winding up or distribution rules should be approached with care. If unsure, seek legal advice.

RELATED RESOURCES

For more information on DGR and TCC, please see the [Tax page](#) on the Information Hub.

Funding agreements

If you receive funding from an outside body (for example, a government department or philanthropic trust), you should check that the proposed changes to your organisation's rules do not conflict with anything in the relevant funding agreement or terms and conditions of the grant.

Your organisation may also be required under the funding agreement or grant terms and conditions to send a copy of the new rules to the funding body.

How do we lodge and get approval of changes to the rules?

Within one month of a special resolution altering or replacing an incorporated association's rules being passed, the organisation must lodge the following documents with Consumer Protection:

- a notice of the special resolution setting out the detail of the alterations to the rules,
- a certificate signed by a member of the association's management committee certifying that the resolution was duly passed as a special resolution, and
- unless the association has adopted the model rules, a consolidated copy of the association's rules, including all changes to which the special resolution relates.

RELATED RESOURCES

The notice of special resolution and declaration is Consumer Protection's Form 5. Consumer Protection's online portal for accessing forms and lodging online can be found [here](#).

Consumer Protection will send a letter to you confirming lodgement. Most changes to an association's rules take effect once the above documents have been lodged with Consumer Protection. Some types of changes (e.g. changes to an association's names, objects or purposes) take effect once the Commissioner has actually approved the changes.

Bodies also registered as charities

If your organisation is also registered as a charity with the ACNC, you must notify the ACNC of any changes made to your 'governing documents', which means changes to your rules. Most organisations

registered with the ACNC are required to provide ACNC a copy of their rules, which can be publically accessed on the ACNC register.

NOTE

There is a time limit for providing a copy of your rules to the ACNC. The time limit depends on the size of the charity.

- for small charities (having annual revenue less than \$250,000), the time limit for submitting notification is 60 days, and
- for medium charities (having annual revenue of \$250, 000 or more, but less than \$1 million) and large charities (having annual revenue of \$1 million or more), the time limit for submitting notification is 28 days.



Updated copies

Consumer Protection recommends that organisations keep a copy of all documents, including proposed alterations to the rules that are lodged with Consumer Protection, as Consumer Protection does not provide a final copy to the organisation.

Organisations should make sure copies of the consolidated updated rules (that is, the rules with all amendments made) are provided to committee members/directors and key staff so that they can familiarise themselves with them. Copies of the rules must also be provided to any member who requests one. Any member is legally entitled to a copy of the rules of an incorporated association.

Resources

Related Not-for-profit Law Resources

- ▶ Getting Started - www.nfplaw.org.au/gettingstarted

Not-for-profit Law's Getting Started page of the Information Hub has information on incorporating and choosing a legal structure.

- ▶ Running the Organisation - www.nfplaw.org.au/runningtheorg

Not-for-profit Law's Running the Organisation page has information on governance, meetings and record keeping and features the popular Secretary's Guide.

- ▶ People Involved - www.nfplaw.org.au/people

Not-for-profit Law's People Involved page has information on members, clients, employees and volunteers.

Legislation

- ▶ [Associations Incorporation Act 2015 \(WA\)](#)

- ▶ [Associations Incorporation Regulations 2016 \(WA\)](#)

Department of Commerce (WA), Consumer Protection resources

- ▶ [AssociationsOnline](#)

AssociationsOnline is an online portal available where incorporated associations can submit applications and manage their contact information.

- ▶ [Department of Commerce Incorporated Associations Guide](#)

The Department of Commerce website contains a guide for incorporated associations, including a section on meetings and altering rules.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

© 2016 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au