

Checklist: Meeting new constitution requirements for incorporated associations

Legal information for New South Wales incorporated associations



Scheduled items under the *Associations Incorporation Act 2009* (NSW) that must be included in the constitution of your incorporated association

A statutory review of the *Associations Incorporation Act 2009* (NSW) (the **Act**) was undertaken in 2015, with all the recommendations made by the review adopted by the New South Wales (**NSW**) Government. The amended Act incorporating these recommendations came into effect 1 September 2016.

The following items must be addressed in the constitution (also referred to as rules) of a NSW incorporated association. These requirements are set out in Schedule 1 of the Act. Items that were not previously required by the pre-1 September 2016 Act (the **old Act**) are noted as 'new' below. There are also guidance notes identifying new requirements in the Act that may affect the way you should draft or apply your constitution.

If a new item listed below is not already covered by your constitution, you will need to update your constitution accordingly to address the item. Otherwise the new clause in the Model Constitution (Schedule 1 of the *Associations Incorporation Regulation 2016* (NSW)) addressing the item will automatically apply to your organisation.

If your association has adopted the Model Constitution in its entirety, the new items will automatically apply to your association without need for any other action by you, the association or its other members (see section 25 of the Act).

Scheduled items in the Act

Membership

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
1.	If your association has qualifications limiting who can be a member, these must be outlined in your constitution.	<p>Comparison note: This item is the same as in the Schedule to the old Act.</p> <p>Guidance note: An application for membership can now be made by email or other electronic means if the committee so decides. If the association wishes to enable an application to be made by email or other electronic means, they must update their constitution and specify it (unless section 25 of the Act applies, in which case this automatically applies).</p>	Your association's constitution should already address this item (because it was a scheduled item under the old Act).
2.	Your constitution must address the keeping of a register of the association's members.	<p>Comparison note: This item is the same as in the Schedule to the old Act.</p> <p>Guidance note: A secretary, or if there is no secretary, a public officer, must establish and maintain the register. A register may be maintained in an electronic or written form. The register may also specify an email address of a member.</p>	<p>Your association's rules should already address this item (because it was a scheduled item under the old Act).</p> <p>Rule 7 of the model constitution provides that the register of members must be kept in New South Wales at the main premises of the association, or if the association has no premises, at the association's official address. It must also be open for inspection, free of charge, by any member of the association at any reasonable hour.</p>
3.	If your association requires members to pay a membership fee, a joining fee, or any other fee payable by members (such as a subscription fee), your constitution must set out these fees and the circumstances in which they must be paid.	<p>Comparison note: This item is the same as in the Schedule to the old Act.</p>	Your association's constitution should already address this item (because it was a scheduled item under the old Act).

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
4.	Your constitution must indicate whether and if so, to what extent, the members of the association have any liability to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.	Comparison note: This item is the same as in the Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). Rule 9 in the Model Constitution limits a member's liability to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association to any amount that is unpaid by the member in respect of their membership of the association.
5.	Your constitution must include the procedure (if any) for the disciplining of members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.	Comparison note: This item is the same as in the Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). Note: the reference to the <i>Commercial Arbitration Act 1984</i> in the Model Constitution has been updated with the <i>Commercial Arbitration Act 2010</i> .
6.	Your constitution must include the mechanism for the resolution of disputes between members (in their capacity as members) and between members and the association.	Comparison note: This item is the same as in the Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act).

Management and Record Keeping

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
7.	<p>Your constitution must include the details of the composition and functions of the management committee or other managing body (for example a management board). This includes providing details of:</p> <ul style="list-style-type: none"> a) the procedure for the election or appointment of members of the committee b) the terms of office of members of the committee c) the maximum number of consecutive terms of office of any office-bearers on the committee d) the grounds on which, or reasons for which, the office of a member of the committee becomes vacant e) the filling of casual vacancies on the committee, and f) the quorum and procedure at meetings of the committee. 	<p>Comparison note: This is substantially the same as in the Schedule to the old Act, except for two changes. Firstly, the word 'constitution' has been substituted with the word 'composition'. This has no significant effect. Secondly, the constitution must now specify the maximum number of consecutive terms of office of any office-bearers on the committee.</p>	<p>Your association's constitution should already substantially address this item (because it was a scheduled item under the old Act).</p> <p>If your association does not specify whether or not office-bearers may serve consecutive terms in office, the clause specifying that there is no maximum number of consecutive terms for a committee member (including an office-bearer) in the Model Constitution will automatically apply: clause 14(5).</p>
14.	<p>Your constitution must address the custody of books, documents and securities of the incorporated association.</p>	<p>Comparison note: This item is the same as in Schedule to the old Act.</p> <p>Guidance note: Changes have been made to the Act in relation to address requirements: see section 6 (4) of the Act.</p>	<p>Your association's constitution should already address this item (because it was a scheduled item under the old Act).</p> <p>The clauses in the Model Constitution in relation to custody of books have changed to accommodate more stringent requirements. It is no longer satisfactory to have records, books and other documents simply kept in the custody of the public officer of the association, but</p>

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
			must now also be kept in NSW and at the main premises or official address of the association.
15.	Your constitution must provide for the inspection of the association's books and documents by the members.	Comparison note: This item is the same as in Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). The clause in the Model Constitution has changed to allow the committee to refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.
16.	Your constitution must provide for the association's financial year.	Comparison note: This item is the same as in Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). For associations registered immediately before 1 July 2010 whose constitution: <ul style="list-style-type: none"> i. does not deal with the financial year, and ii. has not been amended since 1 July 2010, the association is to retain their current financial year (see the transitional provision under regulation 19 in the Regulations).

Meetings

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
8.	Your constitution must set out the intervals between general meetings of members of the incorporated association and the manner of calling general meetings.	Comparison note: This item is the same as in Schedule of the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act).
9.	Your constitution must set out the time within which, and the manner in which, notices of general meetings and notices of motion must be given, published or circulated.	Comparison note: This item is the same as in the Schedule to the old Act.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). If an association has adopted the Model Constitution, a requisition of members for a special general meeting must now be in writing. This requisition may be in electronic form and lodged by electronic means.
10.	Your constitution must specify the quorum and procedure at general meetings of the association's members and whether members are entitled to vote by proxy at general meetings.	Comparison note: This item is the same as in the Schedule to the old Act. Guidance note: Allowances have been made in the Act for the use of technology in meetings. An association may wish to make changes to its procedures of attendance and voting at meetings to reflect the technology provisions.	Your association's constitution should already address this item (because it was a scheduled item under the old Act). In respect of technology, the Model Constitution allows members to take part in meetings from different locations using technology approved by the committee: rule 37. If rule 37 is in operation, then an alternative voting process to 'a show of hands' is permitted to make decisions in a general meeting.
11.	Your constitution must specify the kinds of resolutions that may be voted on by means of a postal or electronic ballot.	Comparison note: This item is similar to the Schedule to the old Act, with the addition of electronic ballot. Guidance: Allowances for an electronic ballot have been made in the Act. If electronic ballots are utilised, Schedule 3 to the Regulation outlines the procedure to be followed.	Your association's constitution should already address this item in relation to postal ballots (because it was a scheduled item under the old Act). If your association wishes to conduct some resolutions through electronic ballots, the organisation must specify which kinds of resolutions can be voted on by electronic ballots in their constitution.

Funds

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
12.	You constitution must address the sources from which the funds of the incorporated association are to be or may be derived.	<p>Comparison note: This item is the same as in the Schedule of the old Act.</p> <p>Guidance note: It is no longer a requirement to provide written evidence that an association's funding body was advised of a proposed transfer of registration or the association.</p>	Your association's constitution should already address this item (because it was a scheduled item under the old Act).
13.	Your constitution must set out 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.	<p>Comparison note: This item is the same as in the Schedule of the old Act.</p>	<p>Your association's constitution should already address this item (because it was a scheduled item under the old Act).</p> <p>The Model Constitution has been amended to include the word 'solely'. It says the funds must be used solely in pursuance of the objects of the association and that an association must not conduct its affairs so as to provide a pecuniary gain for any of its members: rule 41.</p>

Winding up

Schedule item no	Scheduled item requirements in the Act	Comparison with old Act scheduled items and guidance notes	Constitution Notes
17.	Your constitution must provide for the winding up of the incorporated association.	<p>Comparison note: This is a new item. The Act provides NSW Fair Trading (referred to in the Act as the 'Secretary') with the right to wind up an association subject to certain criteria.</p> <p>Guidance note: The Act sets out new provisions relating to the winding up of the association. These do not have</p>	The Model Constitution provides for the transfer of surplus assets on the winding up of the association to another organisation with similar objects and which is not carried on for profit or gain. The Model Constitution also requires members to pay any unpaid fees to the association on winding up, for satisfaction of debts and liabilities or the costs and expenses of winding up.

		to be included in the constitution, but must be followed.	
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Act changes – beware of inconsistencies

When updating your constitution, bear in mind changes to the law regarding the issues below. Your constitution should not say anything that is inconsistent with the Act.

Issue	Guidance notes
Address requirements	The Act contains new requirements of a satisfactory official address for an association.
Committee members' indemnity	The Act contains a statutory indemnity for committee members- your constitution cannot exclude this indemnity.
Duties	Committee members' duties are codified in the Act. If your constitution say something about committee members' duties you should check that they are consistent with the requirements in the Act.
Composition and membership of committee	The Act now contains a requirement for an association's constitution to consider the maximum consecutive terms that an office-bearer may serve.
Winding up provisions	The Act now contains new provisions relating to the winding up of the association. It provides an avenue for the Secretary to wind up the association under a section 61A certificate if the association ceases operation, or ceases to have 5 or more members, or the association's committee has not been able to form a quorum for 2 months, or the Secretary is satisfied that there is a single public interest in winding up or that not winding up may place public funds at risk.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au has a variety of resources on the following related topics:

✔ Toolkits – www.nfplaw.org.au/secretaryguide

This page features a comprehensive guide for running NSW incorporated associations.

✔ Governance – www.nfplaw.org.au/governance

This page covers the role of board members, the legal duties of boards, committees and office holders, insolvency and legal duties, and financial management and reserves.

Legislation

✔ [Associations Incorporation Act 2009 \(NSW\)](#)

This is the legislation that governs the setting up and running of an incorporated association in New South Wales. The matters that must be addressed in an incorporated association's constitution are listed in Schedule 1 of the Act.

✔ [Associations Incorporation Regulation 2016 \(NSW\)](#)

This is the regulation that governs the setting up and running of an incorporated association in New South Wales. The 'Model Constitution' are set out in Schedule 1 of the regulation.

Other resources

✔ [Fair Trading – Incorporated associations](#)

Visit the incorporated associations section of the Fair Trading website for information on how to become, manage or close an incorporated association.

✔ [Fair Trading – Summary of changes to the Model Constitution](#)

NSW Fair Trading has also compiled their own table, outlining the main changes to the Model Constitution following the recent reforms.

✔ [Fair Trading – Changes to the associations incorporation laws](#)

The Fair Trading website summarises the recent changes made to the incorporated associations legislation.

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