

Changes to an incorporated association's rules

Legal information for incorporated associations in the Northern Territory



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 incorporated associations in the Northern Territory (NT) 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, a 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."). An incorporated association should be registered with the NT Department of Business.

CAUTION

This fact sheet is for incorporated associations in the NT. For information on updating the constitution of other types of organisations, see the [Constitution page](#) of the Information Hub.



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 the organisation will be collected in a written document, which will usually specify:

- the aims or purposes 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 Act 2003* (NT) is required 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 section 21 of the Act.

FURTHER READING

You can read section 21 of the *Associations Act 2003* (NT) on the [Northern Territory Government's website](#).



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?



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

Generally, incorporated associations can only change their rules by passing a ‘special resolution’ of members. It is important that the statutory (legal) requirements for a special resolution are complied with, otherwise the resolution will not be valid and the changes will not take effect (discussed below).

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, an incorporated association must comply with the following requirements:

- 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 board meeting, or by a resolution without meeting
- at least 21 days’ notice of the general meeting must be given to all members
- the notice must state the text of the proposed special resolution
- the notice must specify the intention to propose the resolution as a special resolution and provide adequate explanation (see 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 those 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 a meeting.

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. There are no requirements for the wording to be used, 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.”

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, or may require a higher majority than the 75% prescribed by the legislation.



PROXIES

A proxy is a person authorised to vote on a member's behalf if they cannot attend a meeting. The appointment of a proxy is usually required to be in writing using a specified form. Organisations may have rules about when proxy forms need to be received (e.g. at least 48 hours prior to the relevant meeting). Proxy voting may be excluded by the rules of an incorporated association.

Note: a 'Representative' is different from a proxy. A Representative is the person who a company or organisational member nominates as its Representative to attend and exercise that company's or organisation's voting rights at a meeting of members.



Providing proper notice and explanation of proposed changes

The law requires that members receive full and fair notice of matters that will be addressed at a meeting. 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 are ones that concern them. This allows a member to decide whether or not to attend the meeting to which the notice relates.

Where changes to rules are concerned, full and fair notice means:

- the proposed changes need to be clear
- an explanation of the effect of the changes should be provided, and
- an explanation of the reasons for the proposed changes should be provided.

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.

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) it can be better to include out the controversial changes in separate resolutions. Be very careful if you are separating out changes, as it is usual for the rules of an association to interrelate. As such, having some rules changed and others not can result in conflicting and sometimes unworkable rules. 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 requirements

When amending their rules, or creating a new set of rules, organisations should check that the rules as amended comply with section 21 of the *Associations Act 2003* (NT), otherwise the Commissioner will reject the amendments and a new members resolution will have to be passed.

TIP

It's a good idea to prepare a list or table, cross-referencing each of the model rules in the [Schedule](#) of the *Associations (Model Constitution) Regulations 2004* (NT) with your organisation's 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.

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.

RELATED RESOURCES

For more information about members' rights, see the Members page of the Information Hub at www.nfplaw.org.au/members

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.

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, seek legal advice.

Tax status

If your organisation has been endorsed by the Australian Taxation Office as a Deductible Gift Recipient (DGR) or is exempt from income tax, whether as a Tax Concession Charity (TCC) or otherwise, 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 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), check that the proposed changes do not conflict with anything in the relevant funding agreement or terms and conditions of the grant.

Your organisation may also be required by 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 new or amended rules?

For incorporated associations, a special resolution to change the rules of the association will only take effect once it has been approved by the Commissioner of Consumer Affairs. To do this, a number of documents must be filed with the Commissioner within one month of the vote. The documents to be provided to the Commissioner are:

- notice of the alteration
- a copy of each instrument evidencing the alteration, and
- a statutory declaration made by the public officer of the organisation declaring:
 - that the copy is a true copy of the instrument of which it purports to be a copy; and
 - that the alteration is authorised, and was made in the manner provided, by the Constitution of the association.

RELATED RESOURCES

See [Department of Business website](#) for a model constitution of an association.

The Commissioner will review the changes after the vote, and will approve the changes (or reject them). The Commissioner will check that all of the matters required by the Act have been addressed.

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 document', which means changes to your rules. This obligation is in addition to the obligations your charity may have to other regulators. 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 ACNC. The time limit depends on the size of the charity.

- For a small charity (having annual revenue less than \$250, 000), the time limit is 60 days

- 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 is 28 days.

Updated copies

Organisations should make sure copies of the consolidated updated rules (that is, the rules with all amendments made) are provided to committee members/directors 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 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 Act 2003 \(NT\)](#)

➤ [Associations Regulations 2004 \(NT\)](#)

➤ [Associations \(Model Constitution\) Regulations 2004 \(NT\)](#)

Northern Territory Government resources

➤ [Department of Business's incorporated associations information](#)

This page within the NT Department of Business website summarises the annual reporting requirements, provides relevant forms and factsheets for NT incorporated associations, including a model constitution template and an audited annual reporting template for NT incorporated associations

➤ [Incorporated associations – Constitution](#)

This page within the NT Department of Business website provides information about the requirements of a constitution for an incorporated association.

Commonwealth Government Resources

➤ Business.gov.au - ABN Lookup

ABN Lookup provides access to publicly available information provided by businesses when they register for an Australian Business Number.

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

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