

# Changes to an incorporated association's rules

Legal information for South 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 South Australian (SA) 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, 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."). You can check whether your organisation is registered as an incorporated association with Consumer and Business Services (CBS).

### CAUTION

This fact sheet is for SA incorporated associations. 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 incorporated association 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 Incorporation Act 1985* (SA) (**the Act**) is required by the Act to have rules that include a statement of purposes and address specified matters. Incorporated associations' rules must always address all the matters required. These matters are set out in section 23A of the Act.

## FURTHER READING

You can read Section 23A of the *Associations Incorporation Act 1985* (SA) on [the South Australian Legislation 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, the 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, and provide adequate explanation (discussed below)
- the notice must specify the intention to propose the resolution as a special resolution, 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 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 are ones that 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 changes
- 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.

## 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 the controversial changes into separate resolutions. You should 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

Organisations should check that the rules as amended provide for each of the matters specified in section 23A of the Act, incorporated association must lodge their rules with CBS. If the rules of your organisation do not address all of the requirements set out in the Act, CBS will reject the amendments and a new resolution will have to be passed by members.

## TIP

It's a good idea to prepare a list or table, cross-referencing each of the items in Section 23A 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.



## 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.

For more information on members' rights see the Members page of the Information Hub at [www.nfplaw.org.au/members](http://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 under the funding agreement or grant terms and conditions to provide 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 CBS. To do this, a form must be lodged with CBS within one month of the vote. The form will specify the associated fees, signatories and any other requirements.

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

### RELATED RESOURCES

See [Consumer and Business Services website](#) for more information on matters required to be addressed in the rules of an association.

## 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. 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 the 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

All types of 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](http://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](http://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](http://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 1985 \(SA\)](#)

- ▶ [Associations Incorporation Regulations 2008 \(SA\)](#)

## Consumer and Business Services (CBS) resources

- ▶ [CBS's incorporation associations information](#)

This section of CBS's website has information about incorporated associations. Click on the forms for associations link for the forms for changing your incorporated association's constitution or rules.

## Commonwealth Government Resources

- ▶ [Business.gov.au](http://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](http://www.nfplaw.org.au)

© 2015 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](mailto:nfplaw@justiceconnect.org.au)