

Changes to an incorporated association's rules

Legal information for incorporated associations in Western Australia

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?
- ▶ how do we change our rules?

This fact sheet provides information for Western Australian incorporated associations (IAs) about changing their rules.

Is our organisation an IA?

You can usually tell from an organisation's name whether it is an IA. All IAs must have the word 'Incorporated' or the abbreviation 'Inc.' at the end of their names (for example, ABC Org Inc.).

You can check whether your organisation is registered as an IA with the Consumer Protection Division of the Department of Mines, Industry Regulation and Safety (**Consumer Protection**).



Related resource

Check whether your organisation is registered with the [Department Mines, Industry Regulation and Safety, Western Australia](#) online.



Caution

This fact sheet is for Western Australian IA. For information on updating the constitution of other types of organisations, see our [other resources](#).



Note – new laws for Western Australian IAs

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

All IAs must update their rules to comply with the Act's requirements (set out in Schedule 1 of the Act).

What are rules?

An IA must have a set of rules that describes the association's basic structure and processes and sets out its rules of operation. These rules may be called 'rules', 'constitution' or 'articles'. In this fact sheet, we use the term 'rules'.

An IA's rules usually specify:

- the IA's aims or objects
- how people are admitted as members of the IA
- the IA's members' rights and obligations
- how management committee's office-bearers and members are elected or appointed
- how members' general meetings and management committee meetings are called and conducted
- how the IA is, in broad terms, to be run, and
- what will happen to the IA's assets if it is wound up

IAs registered under the Act must have a set of rules that includes a statement of purposes and addresses all the matters set out in Schedule 1 of [the Act](#).

The *Associations Incorporation Regulations 2016* (WA) includes [model rules](#), which cover all Schedule 1 matters except:

- the IA's name
- the IA's purposes
- the quorum for members' general meetings
- the quorum for management committee meetings, and
- the IA's first financial year period

If an IA decides to adopt the model rules, it will need to insert this information into their rules document before formally adopting it as their rules.

Why would we need to change our rules?

The Act applies from 1 July 2016 and governs Western Australian IAs. IAs incorporated before 1 July 2016 were required to update their rules to comply with the Act by 1 July 2019.

Consumer Protection has developed a [checklist](#) to help your IA work out whether its rules cover the new Schedule 1 matters.



Caution

An IA incorporated under the old Act was required to update its rules to comply with the Act before 1 July 2019. If your IA hasn't updated its rules, it should do this as soon as possible.



It's important that an IA's rules are up-to-date with any changes to the law and that they accurately reflect how the association is governed. You may also need to change your IA's 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

To make sure an IA's rules meet legal requirements and as well as the IA's operational requirements, its rules should be updated when the law changes and also reviewed at least once every three years.

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

How do we update our rules?

To amend an IA's rules, IA members must pass a special resolution at a general meeting resolving to accept amendments to the rules. An IA must make sure it complies with any additional requirements for a general meeting (for example, notice periods and quorums).

Some changes may also require approval from a third party (for example, under a funding agreement). And changes to an IA's rules about charitable status or tax concessions and endorsements may affect the IA's ability to be registered with the Australian Charities and Not-for-profits Commission (**ACNC**) or the Australian Taxation Office (**ATO**).

As well as complying with requirements under the law, your IA must comply with any additional requirements in its own rules. For example, the rules of a locally-based IA may require approval from the national body to changes, or the rules may require a longer notice period when rule changes are proposed.

Requirements for a special resolution

For an IA's special resolution to be valid, the following requirements must be met:

- an IA can only pass a special resolution at a members' general meeting. This can be at the annual general meeting (**AGM**) or a special general meeting (**SGM**). A special resolution can't be passed at a committee meeting or by resolution without meeting
- an IA must give proper written notice of the general meeting or AGM to all members (with certain information about the proposed special resolution), and
- the special resolution must be passed by at least 75% of members (who qualify to vote) who vote in favour of the resolution. This includes members who are not present but whose proxies (explained below) cast votes for them. It excludes members who don't vote (for example, members who don't attend the meeting, or who attend but don't vote at the meeting) – though the members present who don't vote can still be counted for the purpose of working out whether there is a quorum.



Remember

A special resolution must also meet any requirements specified in the IA's rules.

For example, the IA's rules might require a longer notice period or a majority higher than the 75% require by Act for the IA to pass a special resolution.



Note

Members can only vote by proxy or postal vote if an IA's rules allow this.

These methods of voting allow members who can't attend a meeting to vote. But, at the same time, those members will not be able to participate in the meeting discussion.

Proxy vote A proxy is a person authorised to vote on a member's behalf if the member can't attend a meeting. The member must complete a written proxy form that gives the proxy authority to vote. The member can give the proxy authority to vote as they see fit, or can provide specific authority for the proxy to vote in a certain way. IAs may have rules about when proxy forms need to be received (for example, at least 48 hours before the meeting).

Postal vote A postal vote allows a member to vote by post or email. Allowing voting in this way may result in more members voting than might be the case if the vote was restricted to those who attend the meeting.

Consumer Protection recommends IAs give careful consideration to:

- whether their rules allow proxy or postal voting, and
- the process for casting these votes if they are allowed (for example, whether a formal ballot paper must be used, the date and time by which the votes must be received and what measures can be put in place to prevent fraudulent proxy votes)

Notifying members of the proposed special resolution

An IA's notice of a general meeting where the vote will take place must tell members that a special resolution is proposed. The notice must also include the time and place of the meeting and the wording of the proposed special resolution. Use 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

An IA must give members sufficient notice of the proposed special resolution. The Act doesn't specify a minimum notice period that an IA must give members. This will be set out in an IA's rules.

Providing enough notice and explanation of proposed changes

An IA should explain the decision that may be made in the meeting notice clearly so that members understand the matters to be considered. This allows members to decide whether to attend the meeting or arrange a proxy, postal or ballot vote (if these options are available).

If the proposed special resolution is to make changes to the IA's rules the notice should:

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

An explanatory document or table can be a good way to explain the proposed changes and their effect to members.

It's not essential to provide members with a full copy of the proposed new rules if the proposed changes are clear in the notice. However, it's good practice to give members an opportunity to review the exact wording of proposed changes by providing an email address or contact number so that members can request a copy. It can sometimes be helpful to show the changes tracked against the current version of the rules.



Note

For notice to be valid, an IA must give notice to members in accordance with its rules.

If your IA proposes changes to its rules, consider what an appropriate notice period is for your association. For some IAs, 28 days may be too long and prevent the association from being able to respond quickly when needed. For other IAs, a shorter notice period like 14 days may be too short and not give the association enough time to respond. 21 days is the usual notice period for other types of organisations, such as companies registered under the *Corporations Act 2001* (Cth)



Tip

If your IA proposes making a number of changes to its rules, it can be easier to put the 'new' rules to a vote as a whole rather than requiring your members to vote on each change separately. In this way, your IA can adopt a new set of rules (that incorporates all the changes into your old rules) by passing a single special resolution.

If you present one resolution to adopt new rules to your members, you still need to set out all the changes and their effect.

If some of the proposed changes are controversial (and may not be passed by the membership), it may be better to set out the changes in separate resolutions. But, if the membership agrees to some but not all the rule changes proposed, take care that your IA doesn't land up with incomplete, inconsistent or unworkable rules.

What issues should we look out for?

Minimum rules requirements under the Act

When amending rules, or creating a new set of rules, the changed rules must comply with the matters specified in Schedule 1 of the Act.

An IA must lodge its changed rules with Consumer Protection. If the IA's rules don't cover all the Schedule 1 requirements, Consumer Protection will reject the changes to the rules.



Tip

You can prepare a list or table, that checks each item in Schedule 1 of the Act against your IA's new or amended rules.

Write the applicable rule numbers against each of the Schedule 1 matters that must be included. This will help you work out if any items have been left out.

It can also be helpful to provide Consumer Protection with a list of the Schedule 1 matters in a table identifying the IA rules where each matter is addressed.

Members' rights and liabilities

Any changes to IA rules that affect the existing rights of members, or that may increase their potential financial liability, must be approached with particular care. Unless the changes are completely uncontroversial, you may want to get legal advice before putting changes to a vote.



Transitional arrangements

When changing an IA's rules (especially if the IA replaces all the rules), make sure that members under the old rules remain members under the new rules. Problems can arise when IAs change the categories of membership or eligibility for membership. Your IA may need to include a transitional rule dealing with membership issues.

Similarly, your IA may need to make it clear that, despite the changes to the IA's rules, the office holders under the old rules continue in office under the new rules. Alternatively, the IA may hold an extraordinary election for a 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 IA should seek legal advice.

Tax status

If your IA has been endorsed by the Australian Tax Office as a Deductible Gift Recipient (**DGR**) or has been granted tax concessions or exemptions, you must make sure that any changes to the IA's rules will not jeopardise its tax status. In particular, any changes to the IA's purposes or the IA's winding up or distribution rules should be approached with care. If unsure, seek legal advice.



Related Not-for-profit Law resource

For further information on DGR and tax concessions, go to [our resources on tax](#).

Funding agreements

If your IA receives funding from an outside body (for example, a government department or philanthropic trust), you should check that changes proposed to the IA's rules don't conflict with any funding agreement or grant terms and conditions.

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

How do we get government approval of rule changes?

Within one month of passing a special resolution changing or replacing an IA's rules, the IA must lodge the changes online using Consumer Protection's Associations Online system.

Consumer Protection will send the IA a letter confirming lodgement. Most changes to an IA's rules take effect once these documents have been lodged with Consumer Protection. Some types of changes (for example, changes to an IA's name, objects or purposes) take effect once the Commissioner approves the changes.



Related resource

Access the government department's online portal [Western Australian Government Department of Mines, Industry Regulation and Safety - AssociationsOnline](#)

IAs registered as charities

If an IA is registered as a charity with the ACNC, it must notify the ACNC of the changes to its rules and give the ACNC a copy of the updated rules.



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 IAs keep copies of all documents, including changed rules that are lodged with Consumer Protection, because Consumer Protection will not provide final copies to the IAs.

IAs should make sure they provide copies of updated rules to committee members and key staff so they can become familiar with them. Any member is entitled to a copy of an IA's rules, so a copy of the rules must also be provided to any member who requests one.

Resources

Not-for-profit Law resources

- ▶ [Not-for-profit Law's resource getting started](#)
Not-for-profit Law has developed a resource on incorporating and choosing a legal structure
- ▶ [Not-for-profit Law's resource on running an organisation](#)
This resource has information on governance, meetings and record keeping and features the popular Secretary's Guide
- ▶ [Not-for-profit Law's resources on the people involved in organisations](#)
These resources have information on members, clients, employees and volunteers.

Other related resources

- ▶ [Western Australian Government Department of Mines, Industry Regulation and Safety - AssociationsOnline](#)
This is the government department's online portal
- ▶ [Department of Mines, Industry Regulation and Safety Incorporated Associations Guide](#)
The government department's guide for incorporated associations

Legislation

- ▶ [Associations Incorporation Act 2015 \(WA\)](#)
- ▶ [Associations Incorporation Regulations 2016 \(WA\)](#)